AFFECTIVE JUSTICE

THE INTERNATIONAL CRIMINAL COURT AND THE PAN-AFRICANIST PUSHBACK

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Dedicated to my father, the late

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whose quest for understanding complexity
and whose appreciation for the fruits of
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Preface

Assemblages of Interconnection

On the plane en route to Addis Ababa, Ethiopia, to attend my first African Union (AU) summits, 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 online 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 Mazzarella 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.

Introduction

Formations, Dislocations, and Unravelings

On April 27, 2007, the International Criminal Court (ICC) issued arrest warrants against Janjaweed militia leader Ali Kushayb and Sudan's minister of humanitarian affairs, Ahmed Harun.[1] Then on July 14, 2008, the ICC prosecutor requested an arrest warrant against Sudanese president Omar al-Bashir, which was issued on March 4, 2009.[2] Since it came into force through the Rome Statute in July 2001, the ICC, a court with jurisdiction among 123 member states, has implemented mechanisms for punishment of crimes against humanity, war crimes, and genocide committed after July 1, 2002 (when the Rome Statute went into force), and also hopes to do so universally for the crime of aggression.[3] As one of many 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. The court's much-vaunted call for an end to impunity is represented in its moral discourse of supporting victims through the pursuit of those most criminally responsible, including heads of state.

Under the Rome Statute for the ICC, state actors under the jurisdiction of the court have agreed to suspend their sovereignty over the adjudication of particular international crimes and have instead ceded that responsibility to the ICC. The popular expectation is that states under the ICC's jurisdiction will be held responsible for protecting the lives of their citizens from mass atrocity violence, thereby committing to ending the impunity of those who are seen as having evaded justice for too long.[4] By attributing to high-ranking leaders (rather than lower-level actors) the responsibility for mass atrocity violence, the ICC has perhaps done more than any other international institution to promote the need to end impunity. But it has also borne the brunt of

significant critiques in response to local controversies, all the while calling attention to its selection strategies and legitimacy.[5] One such controversy has emerged because court agents can trigger its jurisdiction through a state self-referral for investigation and possible prosecution under Article 13(a) of the Rome Statute. However, given that upper-level leaders are unlikely to investigate their own actions honestly, 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 United Nations Security Council (UNSC) (Article 13(b)). The latter has been controversial because they can also involve referrals of nonstate parties that have not consented to the Rome Statute's jurisdiction. More than half of the states that are permanent members of the UNSC—the United States, China, and Russia—have refused to suspend their sovereignty and submit their states to the jurisdiction of the ICC.[6] This reality has been described by African publics as a cloak of equality in the midst of incommensurably unequal domains.

From its inception in 2002 until the fall of 2018, the ICC has pursued twenty-two cases in nine situations across several African states: Central African Republic, Democratic Republic of the Congo, Ivory Coast, Sudan, Uganda, Kenya, the Republic of Mali, and Libya. It has issued indictments for thirty-six individuals, including twenty-seven warrants of arrest and nine summonses to appear before the court.[7] From the cases of alleged African warlords to the indictments of African leaders—such as President Uhuru Kenyatta and Deputy President William Ruto of Kenya, President Omar al-Bashir of Sudan (not a party to the Rome Statute), and Laurent Gbagbo of Ivory Coast—the predominance of African defendants has led to suspicion about the fairness of prosecutorial justice. Growing numbers of African and other postcolonial stakeholders have begun to see the anti-impunity/rule of law discourse as highly biased and uneven.[8] This was especially the case following the ICC judge'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.[9]

In response to perceived structural injustice, some African leaders, such as Rwandan president Paul Kagame, have offered passionate utterances, as when he stated that the ICC appears to have 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."[10] This comment, made in the context of President al-Bashir's indictment in 2009, reflects the perspective of many on the 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 of African states and economies.

When the ICC prosecutor issued the arrest warrant for President al-Bashir in 2009, it marked the first time that the UNSC had invoked its referral power under Rome Statute Article 13(b) to refer a particular situation to the ICC prosecutor.[11] The referral was predicated on the UNSC's determination that the situation in 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 peace and stability in the region.[12] 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 for the ICC and, therefore, had not consented to suspending its sovereignty.[13] In immediate reaction to the arrest warrant against 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 health care services—creating controversy and further complicating peace negotiations that were underway.[14] In addition to the Sudanese government, the Arab League, the Organization of the Islamic Conference, and some members of the UNSC (most notably China) also objected to the arrest warrant.[15]

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."[16] The UNSC responded minimally to the AU request, considering it only briefly and declining to act on it.[17] When the UNSC refused, the AU called on its members not to cooperate with the ICC's order.[18]

That the state agents of the AU, initially strong supporters of the ICC, have recently adopted an oppositional stance is especially telling. The AU is the largest Pan-African organization, with an expanding mandate to achieve greater unity, solidarity, political cooperation, and socioeconomic integration for African peoples. In regard to President 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."[19] It also reiterated a concern about a possible "misuse of indictments against African leaders."[20] In the end, the UNSC denied its request, resulting in the AU's 2011 decision not to cooperate with the arrest and surrender of al-Bashir to The Hague. Until April 2019, when an army-led military coup in Sudan led to the end of his

thirty-year rule, he has been traveling to various African ICC member states without arrest. After this period, African leaders continued to insist that they would not support ICC-led regime change. If al-Bashir is to be prosecuted, "it would not involve handing him over to outsiders."[21] As of summer 2019, the controversy is ongoing and is part of a broader debate about international justice—what institutions and people have the power to name it, deliver it and why—and is at the center of what I refer to as *affective justice* and that this book takes up.

How do justice institutions like the ICC or the African Court for Justice and Human and Peoples' Rights operate with effectiveness and force when they do not have universal jurisdiction, enforcement power, a police force or military, or the assumed loyalty of a citizenry, as a state does? In this book, I show that they can be explained through a practice theory in which embodied affects, emotional regimes, and technocratic forms of knowledge reflect the interplay among embodied and regimented practice that I call affective justice. This, I argue, is central to the power of such justice institutions and the justice formations they seek to produce.

Affective Justice as a Theorization of Rule of Law Assemblages

Notions of justice have tended to be mapped out against three broad categories of understanding: philosophical, analytic, or 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.[22] 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.[23] 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. Anthropologists have long engaged in documenting practice-oriented meaning making and how notions of appropriateness and inappropriateness are produced through sociocultural behavior. Yet philosophical and analytic perspectives have been privileged in discussions of international justice, and the contributions of an anthropological focus on practice have been less prominent. This book begins to address that gap by illuminating how affects as embodied practices shape emotional responses and how those responses can, through the intensity of their force, produce inter-

national justice in particular ways. Affective justice seeks to illuminate an important process that has remained obscure in the theorizing of international justice: that is, how various forms of legal, political, and economic instrumentalism have produced the force of law, sociomoral affects, and embodied practices that constitute international publics.

Affective justice is the term that I advance for understanding people's embodied engagements with and production of justice through particular structures of power, history, and contingencies. Central to it are the ways that affects, as embodied responses, constitute publics by dislodging identity from its classification domain and relocating it to a domain of practice and regimentations of feelings. This approach allows us to highlight what people do with emotions and is connected not only to affects and their subjectivations, but also to the biopolitical strategies through which life and its human possibilities are managed. As I show, this happens under regimes of knowledge and power, through which law and technocratic and capitalist processes are deployed. Seeing justice through the workings of these affective embodiments, emotional regimes, and biopolitical processes demonstrates that contemporary international justice mobilizations do not gain their power through singular and formalized law-making processes, in relation to which people supposedly engage with and buy into meanings of justice. Rather, they gain their power through the conjunctures amongst legal ephemeral, and embodied imaginaries. *Affective Justice* shows that this happens through technologies, particular legal feeling expressions and narrative devices that are used to expand, displace, and end injustice, thereby producing the basis on which justice is felt.

Affective justice as a practice reflects embodiments of feelings that are manifest in feeling expressions and embodied practices, including the spoken word, legal actions and innovations, or electronically mediated campaigns. In an attempt to shape justice institutions and conceptions of justice, ICC and AU agents, nongovernmental advocates, and civil society activists vie for control of social norms or challenge those norms to produce new ones. Thus, seen through the remit of the ICC, affective justice reflects the way that people come to understand, challenge, and influence legal orders through the biopolitical instrumentalization of technocratic knowledge as well as through their affective embodiments, interjections, and social actions. The practices involved are infinite and span from treaty drafting, ratification, and adjudication to trial attendance, language negotiations, and joking, to refusals that involve rejections, withdrawals, and noncooperation declarations, as well as

the development of countercampaigns. What connects these practices to law's power are the embodied feelings and emotional expressions that drive such acts and circulate them globally. It is these practices that are at the heart of this book and clarify the central role of affective justice in the making of contemporary international criminal law.

Yet international justice, like other forms of justice, is often presumed to be outside the realm of these practices of construction. It is seen by many of its advocates as objective and nonprejudicial, with precedents that are external to sociocultural, political, and precognitive scrutiny. In the realm of cognition, a growing number of contemporary brain scientists have argued that the mind responds to precognitive sensory impressions and processes to produce culturally appropriate emotional responses.[24] Gaining inspiration from this literature, humans translate precognitive affect into hyperlocal cultural terms of understanding that are in turn expressed through emotions and regulated socially and adopted into actionable concepts. *Affective Justice* posits that emotional articulations of bodily processes constitute a critical link connecting the precognitive body to the making and unmaking of sociolegal and political institutions, and that this site of translation can be examined through observations of how affects are legally materialized, discursively and performatively. As the individual feels and expresses, social practices shape what ultimately counts as justice. By introducing a language for clarifying the assemblages of precognitive, sociopolitical, cultural, and moral processes through which justice is produced, *Affective Justice* explores how justice making is enmeshed in bodily affects that give rise to emotional expressions and various racialized iconic figures. It explores some of the ways that bodily affects and their emotional potentialities are entangled in the constitution of international justice and focuses on the way that bodies, psychology, and social practices come together to produce the terms on which justice is materialized, disaggregated, ruptured, and made legible again. The lived material and/or sentient body, the social body, and the body politic—each of these bodies, coproduced and intersecting, is being mobilized through affectively propelled biosocial and social forms. What emerges is an illustration of how affects can shape, through emotional and institutional manifestations, the form that justice takes. It insists that justice is a product of sets of competing practices that are shaped and expressed materially and socially. And 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. As a constellation of competing sensations, these feelings are mate-

rialized socially and provide possibilities for theorizing justice through entanglements that include contingency and structural inequality.

At its base, *Affective Justice* argues that international rule of law formations such as the ICC and, as I discuss later, the African Court do not produce legal processes that articulate justice in stable and predictable ways.[25] Rather, such institutions reflect a complicated and precarious array of infinitely deterritorialized interrelationships among a wide variety of actors who possess differential forms of power and privilege, including citizens, technocrats, judges, advertisers, investigators, evidence procurers, airlines, tourists, those victimized by violence, those being investigated by prosecutors, and so forth. International justice cannot be a sacrosanct, stand-alone space for justice making understood through identity categories such as "survivors" or "perpetrators." In these realms, affects that emerge from a violation or perceived offense produce responses that are irreducible to a singular identity or action or delimitation of power. Rather, the ICC—like other domains of justice making—exists within assemblages that are constituted by networks of emergent properties, manifest in what Gilles Deleuze and Félix Guattari refer to as "component parts."[26] The components as part of international justice function through a set of factions that shape international criminal law moral imaginaries: the figures of the *perpetrator*, the *victim/survivor*, and the *international community* that activate the affective possibilities through which justice is articulated and embodied. In these imaginary spaces, invocations such as the "victim to be saved" and the "perpetrator to be stopped" are deployed as proxies through which law's architecture is retooled, constantly resharpened, and remade anew—as needed. Thus, in order to understand the international management of contemporary mass atrocity violence, we must account for how these affective domains actually constitute law's power in ways that congeal but also redirect meanings of justice.

Characteristic of national and international law assemblages is the idea that social entities—their formations and their existence in practice—are component parts of international criminal justice formations while also being entangled in other relations. As one of a broad array of legal sites, international criminal justice functions within an assemblage of actions, emotions, linkages, reactions, connections, utterances, metaphors, and so forth. From the complex worlds of investigators to the rulings of judges, lawyers, and those victimized by violence, as well as those charged with the perpetration of violence, the assemblage is far reaching. It is more than the sum of its component parts. Through the combustion of those parts, international criminal justice is propelled through affects and emotional domains that communicate what justice

becomes. This way of orienting justice formations 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.[27] Rather, sets of relations and their practices—like international trials that involve attorneys, spectators, perpetrators of violence, security staff, prison guards, activities of media companies, images, the objects of violence such as land or political parties, botched trials, interpreters and misinterpreted translations, legal statutes, nongovernmental organizations (NGOs), images that shape imaginaries, audiences, students, convicts, interns, news reporters, securitization companies, transportation companies, hotels, airlines, and so on—are component parts within a contingent patchwork of relationships.

Central to this book, therefore, are these meta-formations, working alongside micropractices that constitute the international criminal justice assemblage in the contemporary period. The formations do not exist through a universalizing global domain in which fairness and equality constitute international justice everywhere. Rather, international justice gains power through the various affects that are grounded in the deep-seated histories and inequalities whose dispositions are sometimes already inscribed in people's psychic or emotional worlds. Thus, when attempts to rectify injustice are dislodged from sites of suffering to sites of remediation, they have the ability to become aligned with already meaningful moral commitments, such as feelings of structural inequality that are emotionally expressed through anger and public protest. From the meanings of the Nuremberg trials for international justice advocates to the absence of international institutions intervening into colonialism and apartheid, it is through practices that are imbricated with histories of injustice that international institutions gain their power, that law gains its force.

Examining the role of affects in theorizing "the global" requires, then, that we go beyond the fiction of the global as all-encompassing spaces in which competing forces are counterpoised. Making sense of the globalization of international justice involves inserting into justice making the practices, embodied feelings, and regimes of regulation that are constituted through it. As knowledge and media technologies proliferate and advertising and campaign strategies become more sophisticated, these various entanglements come together through deterritorialized component parts of international justice assemblages. As an intensified manifestation of law making and justice practices, this book shows that international justice involves globalizing processes not because there exists a domain called *the global*, but because its processes are imagined and practiced as *global*, and in the context of such imaginaries they

travel, dislodge meanings, and remake them in new spaces and contexts. This is how international justice travels—through embodied domains that inspire legal inventions, protests, and contestation and lead to their rearticulation in new ways. And it is precisely the dynamic basis upon which justice is embodied that discusses the aspirational realities of international criminal law.

Conceptually inspired by Deleuze and Guattari, this patchwork of justice-making practices contains antigenealogical and irreducible components that interact with each other while also maintaining their properties.[28] Applied to international legal spaces, such properties of the composite parts connected to technocratic knowledge 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 contemporary technological tools such as Twitter and Facebook.

Ultimately, the prevailing methodological questions of this book concern the field at the scale of transnational ethnography that is rhizomatic in form but highlights the way that global linkages reflect nodular stems of knowledge, practice, and sites of meaning making that spread rapidly through horizontal networks through a range of powerful legal, aesthetic and political mechanisms, such as campaigns that motivate particular calls to action, even as they leave open itinerant possibilities. The key, following Deleuze and Guattari, is to make sense of these formations that defy not only linear lines of causality but also elude the traditional multisited ethnographic methods that have become popularized in contemporary anthropology.[29] By introducing ways of articulating the complexities of international criminal law institutions and actors, *Affective Justice* provides a tool kit for making sense of the rhizomatic realities of culture and power that has shaped both the ICC and the Pan-Africanist pushback.

To make sense of such complexities, sociologists have explored justice through structural fields as a way to understand culture and power relations.[30] Others have examined the way that legal processes work and shape their constituencies.[31] And some, attempting to clarify the workings of global or transnational theories, have examined legal processes in relation to vertical, horizontal, and structural approaches through their effects.[32] Concepts such as scales of justice and actor-network theory have been developed to make sense of the entanglements between law and the global and trans-

national social spaces within which it operates.[33] I present a way of studying international legal processes and practices by mapping various affects that are manifest in emotional practices that shape and are connected to the component parts of international justice making, especially in relation to the mobilization of the law through appeals to emotion.

As my methods suggest, the actions of judicial institutions, the emotional responses to which these actions give rise, and the sentimental articulations that seek to direct affects into action have no real beginning or end. Their time scapes start neither with the Nuremberg trials as the central marker nor with the 2002 temporal jurisdiction of the ICC. Nor do they start with the acts of violence by which liberal legality identifies culpability. Studying international justice movements necessarily involves looking at the making of component parts, which exist through what Deleuze and Guattari refer to as "ceaselessly established connections between semiotic chains, organizations of power, and circumstances relative to . . . social struggles."[34] The result is an understanding of the social field as an assemblage of different aspects of competing regimes of knowledge and sentimental expressions of this knowledge, which occupies different status designations and meanings depending on the site of inquiry and field of power.

In its focus on social practices fueled with emotional manifestations, *Affective Justice* presents an approach to justice that considers technocratic knowledge production and its biopolitical domains, the role of affects and their emotional expressions, and the representational regimes that manifest through interpretive and institutional practices. 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 that are not simply arbitrary. In other words, affective justice is not 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 and not others. It is a product of immaterial and material practices that find their expressions in bodily or social meaning making. Materialized through expressions, representations, discourses, and feeling regimes that shape the way that justice is embodied and expressed by people, affective justice is constituted by complex assemblages that communicate through convergent, itinerant, and even divergent component parts. By introducing the concept of *reattribution*, which I use to describe a particular form of refusal that involves redirection, I offer an explanation for how those engaged in African international rule of law circles are rethinking justice by dismantling its

meanings in time and place and embodying new formations, even as those new formations may one day become just as hegemonic as the ones they are protesting. These formulations call on us to think differently about the relevance of mechanisms such as treaties and preambles. They open up new possibilities for understanding how legal architectures are historically confronted, challenged, and even dismantled. For example, 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 forms of practices. That displacement involved imperial domination of Africa's ancestral lands, the uprooting of the peoples from those lands, and the restructuring of social organizations, forms of governance, languages, and taxonomies that were foreign and lacked popular legitimacy.[35] This meant that so much of Africa's relationship to legal justice enabled this pillage and was instrumental at best. 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 land and peoples are related to residual colonial inscriptions.[36] Yet, the relationship between colonial injustice and contemporary violence is rhizomatically entangled. This is why we observe a wide variety of African responses to institutions such as the ICC. Some involve NGO- and court-propelled social networks such as those engaged in anti-impunity advocacy. Others involve groups that are rethinking the causes and remedies of structural injustice.

As feelings of political actors are projected onto sites of legal action, those actors jockey for power to establish the core assumptions that underlie beliefs about why something like violence erupts or how it should be mitigated. What we see is that affective justice is a domain of practice, a psychosocial as well as conceptual domain for making sense of the way categories are assembled and people's relationships to them are materialized, and how they are rendered visible through some actions and made invisible through others. This process of justice making operates within contested spaces by which people engage in forms of refusals and recalibrations. In the context of a Pan-Africanist pushback, the book explores the way that refusals are generative of new component parts of the assemblage. Though there has been significant scholarly work attempting to clarify the complexities of assemblage theory and to theorize large social entities and notions of global assemblages in different social universes, little attention has been given to the moral universes that shape justice practices in international rule of law regimes and how they combine with other instrumental and technocratic regimes.[37] And even less attention has been given to the way that these new formations have led to the redesigning and repur-

posing of emergent assemblages whose force is propelled by constant interrelations between history, personal memory, structures of legal instrumentality, and affective resonances, including refusals, reattributions, and endorsements. This negotiation is embedded in assemblages that are not neatly structured in relation to distinct micro-, macro-, and meso-formations. They are messily embroiled in structuring histories and impromptu manifestations that shape how international justice feels. This book presents case studies that emerge from multisited ethnographic research to show how regimented feelings about perceived injustice shape the opportunities and limits of international justice.

In the first decades of its formation, the ICC has been riddled with politicized disagreement and struggles over its perceived legitimacy and institutional power. In particular, some of the most vocal critics have focused on the ICC's anti-impunity sentiments, reified in the institution through frequent invocation of "victim" and "perpetrator" narratives. The terms for the rise of the sentiment of the duty to prosecute that emerged from the 1980s to 1990s were critical for deepening the emergence of the discourses that framed the contemporary rule of law movement. The same was true for the later African postcolonial advocates who joined forces with them to establish the deepening of the moral authority and power of legal accountability for mass atrocity crimes committed by high-ranking leaders. However, this was followed by subsequent emotional refusals by African states because of the ICC's focus on prosecuting African leaders. African critics subverted this narrative by complicating the pursuit of the African perpetrator with the image of the anti-imperial freedom fighter, thus erecting a substantive challenge to the hegemony of the victim-perpetrator binary and its emphasis on individualized guilt over structural injustice.

In international law, the duty to prosecute serious international crimes was first established in a series of treaties recognizing specific atrocities as requiring intervention. The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) recognizes genocide as an international crime, imposes individual responsibility, and requires state parties to try to punish perpetrators of genocide.[38] The Geneva Convention requires states to "search for persons alleged to have committed, or to have ordered to be committed, . . . grave breaches [of the Geneva Convention], and . . . bring such persons, regardless of their nationality, before [their] own courts."[39]

Of late, the notion of a duty to prosecute has been recognized with such a high degree of prevalence that the International Committee of the Red Cross (ICRC) asserts that there is an obligation under customary international law for

states to investigate and prosecute international crimes.[40] Yet a vibrant Pan-African pushback against demands for legal accountability has also unfolded through the initiative of the AU, which has refused to cooperate with ICC arrest requests and has built leverage through threats and actual withdrawals from the Rome Statute. In turn, a global network of progressives—including radical and mainstream members of the African and African diasporic economic and cultural elite—have launched vehement demands for international institutions to pursue justice through accountability outside the confines of African state influence. By organizing grassroots and networked struggles to end corruption, address decimated legal systems, and make perpetrators accountable for mass atrocity violence, various members of the middle- and upper-class transnational elite have mobilized political support to attempt to rectify the perceived failures of African states. As these actors make evident, politically charged emotions are at the heart of contemporary international justice.[41] To understand these processes, we have to turn to how the emotional expression of feelings solidifies sociality in our globalized, contemporary world.

As illustrated, various stakeholders—international lawyers, judges, prosecutors, victim-survivors, defendants, witnesses, African leaders, NGOs, civil society organizations, and everyday citizens—use sentimentalized emotional appeals to contribute to how justice is imagined and the terms through which it is invoked. These affective expressions are not just peripheral. They perform a particular type of discursive work that takes shape through a range of modalities, such as biomediated campaigns, utterances, figures, and symbols that compel constituencies to act. These modalities are profoundly critical in that they shape not only the vocabularies for guilt and innocence, but also contribute to the regimentation of social imaginaries that determine which expressions are deemed legitimate, appropriate, or unacceptable to particular audiences. By detailing the sentimentalized affects of publics for and against African leaders being adjudicated at the ICC—representatives of the court, various NGOs, ICC intermediaries, the international community, and those victimized by mass atrocity violence—*Affective Justice* shows how emotional or feeling regimes are intimately linked to competing interpretations of justice. I explore how histories and structures of power shape, narrativize, and enforce sentimental affinities and practices, how those practices relate to the construction and reception of justice narratives, and how political and racialized subjectivities are made in that process. I analyze these complex processes and document why such approaches to studying justice are critical for making sense of contemporary international justice and the range of responses to it.

Situating Affective Justice through the Study of Emotional Affect

Sociocultural anthropology has long been interested in the study of emotion, and over the past decade, research on emotions in the field has recognized the various affective factors that shape the lives of individuals and, through emotional embodiments, the structure of society.[42] Despite the insights opened up by anthropologists theorizing the study of emotions, political-legal anthropological approaches have been slow to apply the study of affective embodiments to complex macro-global formations within which emotions circulate.[43] Influential political-legal anthropologists have explored how people make and remake their social worlds in conditions of conflict and instability, and much of this work examines notions of violence and social reconstruction through the focus on the daily texture of meaning making.[44] However, these anthropological studies do not take up the role of affects and emotions in mobilizing postviolence practices. Nor are they concerned with the larger global assemblages within which such sociopolitical practices circulate.

Among legal anthropologists engaged in the study of transitional justice and international court institutions, even those texts that focus directly on emotively driven 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* demonstrates this point. *Incitement on Trial* is about the type of speech practices, what he calls revenge speech, that can contribute to violent crime and 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 various mass atrocity crimes, the optic of analysis is focused on how particular speech acts contribute to crimes against humanity and genocide. 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 notions of criminal liability as a measure for culpability.

Further work by Wilson also illustrates this focus on individualized criminal culpability.[45] Wilson is concerned with criminal liability, hate speech, and postatrocity violence, and argues that not only have human rights become the central language of justice worldwide, but the survivors of mass atrocity violence want legal accountability for such atrocity violence. By mapping 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.[46] Advocating the development of a framework for recuperating survivors of violence against various offending political elites, this kind of legal triumphalism depends on the presumption of a "victim/survivor" versus "perpetrator" dyad.

As morally important as it is to support the cause of survivors of violence, the dyadic "survivor" versus "perpetrator" 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 survivors as the subject of inequality misses the importance of understanding not only what hate speech does to produce such constructs but also how such speech acts operate within larger domains of power and inequality. By focusing on individualization and relegating to the margins an analysis of the construction of perpetrators of violence as being outside macro analysis, Wilson contributes to an anthropology of international justice through the production of a liberal and individuated moral universalism that disarticulates the conditions of its making.

Where a rapidly growing body of critical scholarship has begun to explore the particular ways in which emotion and affects work through regimes of expression and practice to construct particular social logics, most studies remain at the micro level of the individual, as does Wilson's concern with the "survivor" and the "perpetrator."[47] While this optic provides part of the story of violence propelled by hate speech 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 justice in the contemporary period. This book demonstrates that it is critical to understand that those designated as both survivors and perpetrators of violence exist within larger structures of inequality, and therefore both are part of the exercise and problem of power. Contemporary forms of international legalisms are part of a larger tyranny of violence that does not stop with the individualization of criminal responsibility and trial performance. 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 is a manifestation of how affects constitute the emotional body and shape the basis on which contemporary justice alliances

are manifesting. Moving beyond the individualization of survivorship and toward an analysis that can detail actual assemblages of power and their embodied manifestations will allow us to analyze features that have been widely neglected in the development of the anthropology of justice literature.

Following Sara Ahmed's work on what emotions do in the world, *Affective Justice* explores what people do with those emotions through the study of a particular international criminal justice assemblage.[48] I bring sociocultural theorizing of justice into the contemporary moment by considering how affects shape sociopolitical consciousness and how they are practiced and rendered visible, and also how they are deployed to reframe constituencies in relation to emotional alignments. This rethinking of the deployment of emotions has critical implications for how we understand justice-making practices through visceral, heartfelt expressions, exclamations, and outbursts that conjoin people according to their emotional practices rather than according to their identities. With this point of departure, this book moves us toward an anthropology of international justice that takes seriously the role of affects by showing how they are embodied and how they manifest in emotional expressions. In an attempt to clarify the framework through which affective justice practices play out, I outline three component parts—legal technocratic practices, embodied affects, and emotional regimes—that shape international criminal rule of law assemblages.

The first component is the domain 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.[49] It involves the management of the population as a political problem, and, by extension, it involves the legal basis on which bodies are managed through particular legal technical classification measures. Following Foucault, economic, political, psychological, and classificatory domains are key to the ways that the body and the population have been and continue to discipline citizens.[50] In international legal assemblages, biopolitics is involved in the implementation of legal processes to manage the body and to train its stewards and publics to participate in the formal or informal implementation of legality. Legal technocratic classification is connected to biopolitical practices that combine relationships between biology, politics, and technocratic practice—in this case, legal practices.[51] 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 technologies 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, like 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 those laws. In the road leading to the Rome Statute for the ICC, this process involved complex technocratic practices over many years—from the drafting of the treaty, to its negotiations, to its ratification and legal promotion. This biopolitical process has produced the social fields in which regimes of international legal knowledge, like other justice domains, have taken shape and circulated through particular narratives.

If we see this biopolitical process of making international criminal law as the production of a rationalizing regime in which determinants for victims and perpetrators are popularized, then it is also important to see this process as central to shaping the basis upon which international legal morality is being normalized and—by extension—how a biopolitics of feeling about those victimized by violence is established through narrative.[52]

Central to such technocratic practices are the ways in which some justice practices (their ontologies and temporalities) displace other practices. This process of displacement is what I call *legal encapsulation*. Legal encapsulation is an adaptation of Susan Harding's notion of narrative encapsulation, which involves the production of dominant narratives that displace others.[53] It is a discursive technocratic practice that, in the negotiation of justice, turns attention from structural equality to the language of the law and the iconic survivor of mass atrocity violence. This biopolitical production of law works through technocratic institutions, such as courts, and morally driven protections of survivors or "victims," leading to the displacement of the political basis upon which injustice might be addressed and replacing it with the celebratory belief in an international judicial order to save lives. In understanding how legal order operates, it is important to note what it displaces and how those forms of displacement ignite affective responses to other conceptualizations of justice, such as redistributive justice or substantive equality.

Another nexus of such displacement, is the hegemonic production of legal temporality, which is a particular way of structuring culpability and, thus, legal possibility. Legal temporality, or what I call *legal time*, is an organizing mechanism through which the culpability of the body is inscribed temporally and spatially and made relevant within particular biopolitical orders.[54] While ICC actors use a strictly defined temporal period to assess which acts of violence are eligible for prosecution, others seek to place those instances of mass

violence within the context of historically inscribed inequalities that have a much longer time line. Many people in Africa regard contemporary violence as a function of colonialism or postcolonial corruption that reflects a kind of collective complicity rather than the trespasses of charismatic leaders that the anti-impunity movement pursues. Accordingly, African critics of the ICC have begun to reattribute culpability from high-ranking leaders to certain groups they deem responsible for underlying factors. Thus, legal time intersects with *judicial space*, such as how the strict post-2002 temporal jurisdiction of the ICC correlates to the centering of The Hague as the neutral site where ICC-brokered justice is performed.

The second component, embodied affects, represents the sensorial sphere within the psychological body through which particular affects are manifest. Rooted in the philosophical ideas of seventeenth-century philosopher Baruch Spinoza and later expanded by French theorists Gilles Deleuze and Félix Guattari, the concept of affect continues to energize psychoanalysts, social scientists, and cultural theorists.[55] From notions of affect as part of the "pre-subjective interface of the body with the sensory world," my approach to affect speaks to the visceral domain in which, following Charles Hirschkind, "memory lodges itself in the body."[56] With the recognition that such affects also involve forces and intensities, I approach embodied affects as experienced through bodily impulses yet propelled by particular sustained social sensibilities. In these domains, powerful and productive sentiments such as anger, pain, and hope are experienced bodily in relation to international justice controversies—especially when people feel that justice is not delivered as promised.

This space of embodied affects is where itinerant and emergent justice potentials are found. It is here that identity is called into question and alternate ways of making sense of human alliances are given life. What we see is that bodily responses are not necessarily tied to specific social identities. Rather, they are a product of complex neurological and physiological processes that make it possible to see affects in far more itinerant ways.[57] The way that justice sensibilities are held and felt allow us to characterize people's alliances based on their interior commitments. Following Brian Massumi, states of intensity that are nonlinear and unpredictable are open to creative potentials and possibilities.[58] This is an approach to understanding potentialities through a notion that affects are presocial and exist before human intentions and subjective beliefs. Affects reflect neurological and bodily brain functions and, in that regard, they speak to complexities of the interior life of the individual.

The third component part, emotional regimes, is connected to the first and second component parts but involves the domain of the social in the manifestation of affects. It has to do with the emotional displays of embodied responses through particular discursive tropes. 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."[59] I extend this concept to think about how emotional regimes shape emotional climates and underpin popular, contemporary notions of justice and people's emotional engagement with them. Through certain kinds of representational practices, emotional responses circulate within sometimes related or competing networks of meaning production. These meaning domains are indexed by icons, words, utterances, color deployment, and hashtags often circulated through technologically driven campaigns. Through the encoding of bodily meanings and experiences, certain archetypal figures (e.g., "victims," "perpetrators," or "freedom fighters/heroes/heroines") serve to reinforce the discursive appropriateness of images or symbols. For example, the ICC's oft-repeated mantras "Justice now" and "No one should be above the law" as well as the AU's Silencing the Guns campaign function in similar ways to appeal to the production of universalist imaginaries that seek to translate feeling into action.[60] Appeals to sympathy or empathy mobilize the power to activate citizens, crafting the human rights citizen-consumer as an actor who has choices about what to prefer and how to engage.[61] 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 landscape produced by the ICC and its allies can be glossed as the international community, to include celebrities, ordinary publics, and Africans on the continent and in the diaspora. Through similar strategies, the public that resides in the landscape produced by the African Court and its allies can be glossed as the new Pan-African movement shaped by African leaders. In the contemporary period, these new publics are being constituted in person, at sites of judicial activity, as well as online, where humanitarian and legalistic concepts circulate and concretize through the emotional imaginary, 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 conviction 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.[62] These formations have led to the rise of a new class of mobile experts on the rule of law (judges, civil society activists, prosecutors, and defense attorneys, etc.) who are engaged in the exchange of techniques and transnational practices. While this outcome is well understood, little attention is devoted to the aesthetic and affective production of rule of law feeling regimes, which render the calls to action by these experts viable and compelling. Furthermore, what the framing of emotional regimes offers us is an opportunity to consider the dynamic interplay between embodied feeling, sociality, and power. Here we see the conjuncture of emotional responses with perceived senses of injustice that may be materialized through various sensory impressions. This, in turn, may 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*.

In analyzing how these competing discourses jockey for influence over the application of justice in African contexts, the existence of affective regimes and the tropes through which the materiality of emotions are manifest allow me to introduce the concept of reattribution. 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 attributed 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. But my use of reattribution in this book extends it 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 of public intellectual pragmatists (described in the preface)—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 that arise. Both temporality and spatiality shape the way that everyday relationships are experienced and felt, for they highlight the contours of affects that develop through the layered influences of history, culture, power, and individual agency.[63] Reattribution, then, contributes to the production of affective justice through its role in the entanglement of complex bodily, biopolitical, and socially regimented configurations.

These three interrelated domains—legal technocratic practices, psychosocial embodied affects, and emotional regimes—come together messily through the rule of law movement to constitute affective justice. As the enmeshment of these component parts, an alliance between the instrumentalization of the law and expressive embodiments of its regimes propels us to articulate what justice is and to clarify meanings of justice through their materialization. Together these components form an international criminal justice assemblage that does not gain its power by focusing on justice for survivors alone. They come together through the production and combination of the figures of "perpetrators," "victims/survivors," and the "international community," which produce compelling domains for the mobilization of affective justice. Defending survivors through legal arguments alone is not how international criminal law surpasses state sovereignty and gains its power. It gains its power through the fusion of its component parts with other contingencies that come together and constitute affective justice.

This book presents a theory of international justice in the twenty-first century that departs from the atomized victim/survivor/perpetrator models or state-centric theories of sovereignty. Instead, it clarifies that international criminal justice as a site of contemporary contestations can only be understood as an assemblage of component parts that are activated through complex interrelationships.

This approach to justice allows us to advance a theory of justice as embedded in embodied and emergent forces, foregrounding affects and their operationalization within particular sociohistorical regimes. At the center of the rule of law movement are not only histories of proclamations, treaties, laws, categories like "victims" and "perpetrators," and so forth; there is also the sensorium—feelings, smells, sounds, historical narratives—that informs the work of international justice. They inspire feelings of righting past wrongs, which is at the heart of the international justice project. But how agents arrive there and come to align themselves with those engaged in similar expressions is where affective justice, as a site for the fusion of various component parts, exists.

Assemblages of Justice Making in Practice

Following the AU's declaration of noncooperation with the ICC's call to arrest and surrender President al-Bashir of Sudan, a number of developments unfolded in summer 2012 when the former president of Malawi, who had committed to hosting the next AU biannual summit in Lilongwe, Malawi, died suddenly.[64] The newly appointed president, Joyce Banda, aware of the ICC's call for the arrest and surrender of President al-Bashir, was expected not only to host the summit but to issue the final invitations to all fifty-three AU member states and their presidents, including al-Bashir.[65] As a new president, Banda began her term by entering into partnerships with a range of international donors. But many of her US-based donors threatened to cancel their financial commitments if President al-Bashir was allowed to come to Malawi without arrest. To them, a visit by him would signify Malawi's unwillingness to fulfill its good-governance commitments. With Malawi's economic constraints in mind, President Banda announced to the AU leadership that if President al-Bashir were to attend the nineteenth AU summit in Malawi, her country would have no choice but to fulfill its ICC obligations to arrest and extradite him to The Hague. According to Banda, "Malawi is already going through unprecedented economic problems and it would not be prudent to take a risk by allowing one person to come and attend the summit against much resistance from our cooperating partners and donors."[66] Rather than stopping at disinviting al-Bashir and affirming an obligation to arrest him, President Banda disinvited the leaders and advisors of all fifty-three AU member states. Within the next four days, the summit was relocated to the headquarters of the AU in Addis Ababa, Ethiopia, and new invitations were issued to AU heads of state, including President al-Bashir.

Ethiopia set a precedent that has been replicated at subsequent AU summits. At the most recent summit in June 2015, South Africa declined to turn over al-Bashir to the ICC. Given South Africa's status as a BRICS country and its recent history of human rights promotion and constitutionalism, this development was curious to many onlookers, who had expected the state to embrace its international treaty obligations.[67] In summer 2016, the controversy around ICC expectations of African states peaked at an AU ministerial meeting, when delegates discussed the contradictions of the duty to prosecute and the status of requested ICC amendments. The ministers complained bitterly about what they saw as inequality in the ICC related to its referrals through

the five permanent member states of the UNSC, which lacks African representation. Articulating positions in animated and colorful language, they took issue with the overall focus of the ICC on selecting African cases and insisted that this perceived bias has political consequences. To the chagrin of various African human rights civil society organizations working for predominantly Western-funded NGOs, the debates were invigorated by angry civil society demands for checks and balances against unchecked African governmental power; leaders met this criticism by publicly calling out the imperial continuities of international legal injustice. The result inspired the call for a coordinated strategy for African states to advance a collective withdrawal from the Rome Statute that established the ICC. What unfolded were emotionally driven expressions of dissatisfaction, leading three African states to declare their intentions to withdraw from the treaty.

Burundi was the first state to formally announce that it would withdraw from the ICC through a decree from its parliament. President Pierre Nkurunziza's government began proceedings following the April 2016 opening of an ICC preliminary investigation of violence in Burundi. The violence unfolded following a third-term presidential bid by President Nkurunziza. This led to imprisonment, torture, killings, rape and other forms of sexual violence, and disappearances. The UN Independent Investigation on Burundi released a report naming officials who, it claimed, orchestrated the violence against perceived political opponents, and citing evidence of rape, disappearances, mass arrests, torture, and murder.[68] The report estimated that large numbers of those victimized by violence were opposed to the proposed third-term mandate of President Nkurunziza. The government of Burundi dismissed the report as biased and politically motivated, denying its allegations. Later, Burundi announced its withdrawal from the ICC.[69]

South Africa was initially a visible champion of African state enthusiasm for the ICC. Following the Burundi decision, however, it declared its intentions to withdraw from the Rome Statute for the ICC in a public announcement stating that the Rome Statute's treaty obligations were inconsistent with customary international law, which offers diplomatic immunity to sitting heads of state. The declaratory statement sent to the UN secretary-general read, "Under these circumstances South Africa is of the view that to continue to be a State Party to the Rome Statute will compromise its efforts to promote peace and security on the African Continent."[70] The statement incorporated language that suggested an alternative logic for justice on the continent:

> South Africa is committed to protection of human rights and the fight against impunity which commitment was forged in the struggle for liberation against the inhumanity of colonialism and apartheid. . . . South Africa, from its own experience has always expressed the view that to keep peace one must first make peace. Thus, South Africa is involved in international peacekeeping missions in Africa and is diplomatically involved in inter-related peace processes on a bilateral basis as well as part of AU mandates. In complex and multi-faceted peace negotiations and sensitive post-conflict situations, peace and justice must be viewed as complementary and not mutually exclusive.[71]

Following the release of this statement, NGOs submitted a complaint to the South African high court rendering the ICC withdrawal declaration unconstitutional. The high court concurred and ordered President Zuma to retract the notice of withdrawal.

The Gambia was the third country to communicate its intention to withdraw from the ICC. Its announcement was made by its minister of information and promoted by former president Yahya Jammeh. Justification for withdrawal centered on what was seen as the ICC's practices of selectively focusing on African human rights abuses. As noted, the minister announced that the ICC was being used for "the persecution of Africans and especially their leaders while ignoring crimes committed by the West," furthermore stating that "there are many Western countries, at least 30, that have committed heinous war crimes against independent sovereign states and their citizens since the creation of the ICC and not a single Western war criminal has been indicted."[72] However, in a country shrouded by two decades of repressive rule and a contested election, newly inaugurated president Adama Barrow pushed back against the AU's withdrawal strategy by canceling the notice of intention to withdraw from the ICC and reaffirming his support for the institution.

Various organs of the ICC, such as the presidency and the Office of the Prosecutor, are consistently responding to these controversies and challenges by shoring up and projecting the core logic of legal accountability as the sole appropriate and objective strategy for ending impunity. For the notion of sovereignty remains at the center of state processes; participation in the Rome Statute treaty system is voluntary, but when states are seen as signing and then ratifying a treaty to establish an international criminal court, what they are doing is taking responsibility for pursuing the crimes under the jurisdiction of the court as well as cooperating to adjudicate the crimes under the

Rome Statute.[73] Article 17 of the statute lays out the basis for the admissibility of a case under the ICC.[74] It clarifies that if member states that have ratified the Rome Statute are "unable and unwilling" to "genuinely" investigate a case under the jurisdiction of the court, the ICC can claim jurisdiction of that case, thereby leading to what many see as the suspension of a state's sovereign right to adjudicate the alleged violence.[75] This architecture provides the framework for the 123 states under the court's remit that have ratified the statute—one-third of them being African states.[76] But in order for this technocratic structure to work, the ICC operates through ideas, convictions, willing membership, and some forms of coercion that travel, take root, and circulate in various ways.

The ICC is not simply its building or its capacity to host criminal trials. It is not just about a single location or a single set of founders or judges. Its work is far reaching and multifarious; its beginning and end go well beyond the Rome Statute. Its legal actions precede the making of the Rome Statute, and it follows violence as well as being constituted by it. This global circulation of the rule of law actors and "actants" (Bruno Latour) is centrally propelled by moral convictions to save victims and stop perpetrators of violence. Its mission operates through moral embodiments in which political commitments against impunity are central to how the component parts of the assemblage function. Yet the morality, emotion, and embodied feelings about injustice are core components of the movement's power. 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 later 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."[77]

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 a liberalist legal discourse that works through legal encapsulation. It equates justice with the law and invokes a mission of protecting "victims" against powerful perpetrators who have enjoyed impunity for too long.[78] 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 prevention—to a very particular application of legal justice. It serves as a sympathizing strategy that neatly collapses the protection of victims with the rejection of impunity for perpetrators, and that reifies the legal tool of holding perpetrators accountable as the sole appropriate mechanism for justice.

This narrative is similar to Judge Song Sang-Hyou's plea for the ICC at the Nuremberg Forum conference on the twentieth anniversary of the Rome Statue. In response to US President Donald Trump's and then John Bolton's 2018 anti-ICC United States protectionist speeches, he insisted that "the ICC is a judicial instrument that operates in a political world. . . . We need to keep the ICC objective. . . . We need to defend the rule of law from the interference of politics."[79] These narratives regale 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.

The manifestations of ICC justice also presume a color-blind racial indifference as a fundamental operating principle that renders senses of race and racism unsayable in the international law landscape. This means that for the ICC, the racial politics of African indictments are decentered from the public discourse. Yet the visual practices of seeing race—however unconscious or conscious—are still part of the affective landscapes in that discursive and representational politics of the "victim," and the "perpetrator" have the impact of precluding certain kinds of claims. For if the "victim" looks like a Holocaust survivor, then "victims" of colonial violence cannot be recognized as they are; if the "perpetrator" looks like a black African man implicated in mass rape or torture, then particular North American or European heads of state may not look like perpetrators from their desks. These forms of representations serve to demand certain actions and priorities as well as wield military and enforcement power in response to these representations. Such paradoxical presences and absences of racial difference highlight both the imaginary fiction of race and the lived experiences of structural violence that can surface in the "hid-

den zones of the unconscious."[80] This dialectics of race is described by Achille Mbembe as an "operation of the imagination" in which he argues that it is in those zones of the unconscious that race is both a site of "reality and truth . . . of appearances" and a site of rupture and effusion.[81] Its appearances are constituted by the "very act of assigning race, and produced and institutionalized through the normalization of human racial typologies in which blackness has been stigmatized."[82]

These consequences of race are a function of modernity in which transatlantic slavery led to the violation of particular black bodies, and later colonialism solidified the ways that those bodies would become governed, resulting in the subsequent structures that produced and continue to produce the very forms of racial inequalities in the first place. Thus the accusations of ICC racism by African leaders are not simply a fictional and strategic invocation of an imaginary category; they are a resurrection of the fictive construction of racial difference that is still felt to be shaping contemporary life in bodily and visceral ways. In the realm of ICC indictments of black bodies, what is the relevance of the racialized body in relation to how international justice works through figures of "victims" and "perpetrators"? And what does studying certain reattributive affects through passionate utterances—such as anger—tell us about structural inequalities as well as particular responses to them? To understand these processes, we have to turn to how the emotional expressions of feelings link sociality and justice in our globalizing world.

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. Just as the agents engaged in the emergent rule of law movement seek to reattribute impunity with persistent justice, so too are Pan-African justice advocates engaged in the reattribution of its products. Through emotionally infused public refusals of ICC justice, we see 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 critiqued for their hypocrisy by proponents of international justice, whereas leaders of economically powerful states are not. The dialectical relationship between the figure of the African perpetrator indicted by the ICC and the seeming hypocrisy of the West makes such emotionally propelled narratives both insidious and compelling. But some African populations also engage in the reassignment of justice against ICC norms while simultaneously struggling with their emotional anger against African leadership for unleashing tyranny and violence against their populations, which includes their com-

plicity in enabling the economic extraction and plunder of African resources. These various and competing responses are rhizomatic and unstable, and they should not be dismissed or rendered invisible in scholarly inquiry.

Consistent patterns of controversy and conflict within justice narratives force us to reexamine the making of international justice frameworks. We need to understand what these 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, we must understand how particular affects make them possible and how they circulate to constitute new alliances that are regulated according to technocratic and social practice regimes.

Emotional Constructions and Deconstructions of Justice in African Contexts: Affective Justice and Affective 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 the violence that unfolded in African regions in the 1980s and 1990s invigorated a moral conscience to act. In order to embrace the ICC, African stakeholders also had to face and seek to transcend residual feelings of indignity and anger stemming 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. In order to accomplish this emotional transition, many actors within African countries took moral leadership from luminaries such as Bishop Tutu, whose emphasis on truth and reconciliation in the South African context had privileged the setting aside of public manifestations of anger in response to injustice in order to verbalize past wrongs and forge a pathway toward forgiveness. Forgiveness represented the emotional blooming of truth, which emphasized the institutional, not only personal, dimensions of apartheid's violence. The truth and reconciliation strategy involved highly public and often exaggerated displays of emotion, 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 a million Tutsis—black African bodies—and the inaction of international actors contributed to the eventual establishment of both the role 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 violence. Gachacha involved its own cultural and performative articulations of justice, in which people were expected to articulate suffering, admit to their crimes, and perform reconciliation. In both examples, we see that emotional displays of forgiveness and reconciliation are not arbitrary. Nor are they necessarily insincere or always predictable in relation to people's national standing. They exist in a domain of personal feelings and practices that operate within and serve to reify particular institutions through which justice is negotiated. As I illustrate in chapter 1, emotionally regimented conceptions of the "victim" and the "perpetrator," as located within particular racialized bodies, are part of this reification; they are part of the moral imaginaries in contemporary rule of law landscapes.

A close analysis of the work that they do reveals how international and other justice forms operate through emotional constructs and carefully crafted campaigns. For as I introduced above and elaborate in this book, legal encapsulation involves legalistic processes that make legible the subjects of the law, and this is where technocratic international processes connect with micro-individual bodily affects and feeling expressions. In the case of international justice, it is the "victim" and "perpetrator" as fictive constructs who are encapsulated within contemporary international legal frames.[83] In African judicial spaces, a popular counterfigure—the Pan-African freedom fighter, male and black, and the victim of colonial injustices—is propelling the emotional domains through which new justice formations are taking shape. What is interesting is how these modes of seeing, engaging, and feeling are working through a biopolitical apparatus involving the pursuit of economic crimes that are taking shape through responses to perceived injustice.

The Freedom Fighter within Pan-African Emotional Regimes

The key to understanding international justice in the contemporary period is to recognize how legal encapsulation produces displacements and how those displacements are leading to the erection of new institutions (in this book described as the Pan-Africanist pushback). This jockeying to redefine justice enables a dialectics of subjugation and emancipatory possibilities. For example,

various stakeholders might insist that African independence is a misnomer because independence marked the beginning of neocolonial governance in which African markets adapted to world-market incentives, and that this process not only fueled economic dependencies but also enabled corruptions of justice central to the crisis of the African neocolonial state.[84] Falling prey to structural-adjustment development policies, African leaders dismantled social institutions and privatized the independence-era welfare state. In response to the challenges of postcolonial economic development a sentimentalized Pan-Africanist discourse is now being employed to reorient the terms of justice, from Western judicial mechanisms to politico-economic sites, to achieve a reorientation of structural justice. This push for new justice arrangements has reconfigured the basis on which international justice for survivors of violence has been articulated.[85] For example, during Kenya's anticolonial independence struggle of the 1950s, Jomo Kenyatta—the father of Uhuru Kenyatta, Kenya's president from 2012 to 2016—was indicted and charged for murder but also imprisoned 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 as primarily a freedom fighter for Kenya's independence.

This reorientation of justice focuses on the way histories of plunder and unequal political economic formations in African countries are encapsulating alternate iconic affects—not just the anticolonial freedom fighter but figures like the displaced villager as well. These are now being packaged and disseminated through countercampaigning strategies and affective performances which insist that legal solutions must be firmly linked 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.[86] Thus, through the power of reattribution, an emergent *African geography of justice* is developing as a counterpoint to what is seen as hegemonic structures of Western approaches to international justice.

Reattribution through the Reorienting of the Terms of Justice

Various members of the African Union have pushed back against anti-impunity assertions of justice and have insisted instead on the relevance of histories of injustice. While the memory of the Jewish Holocaust and the Nuremberg trials 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-Africanist mobilizations. Instead, some of those angered by mass atrocity violence in African countries look to African colonial and neocolonial tragedies, including long years of apartheid violence in South Africa and the genocide in Rwanda, for a countering set of affects. In his opening statement at the Thirteenth Ordinary Session of the Conference of the Committee of Intelligence in 2016, President Kagame aserted, "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."[87] 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. Similar responses of anger against lawfare have included direct accusations of racist and imperial motivations.[88] For example, at the end of an AU session in 2013, the Ethiopian prime minister and chairman of the AU, 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.'"[89]

For many, then, the ICC has come to embody evidence that colonialism still exists, now in a new form. And yet critiques of the ICC can, in turn, serve to simplify the character of the critics, papering over their own public contradictions. For despite President Kagame's international reputation as a leader preaching reconciliation, a man who as a child escaped death 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, he is also popularly seen 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. As a strategy for managing this internal contradiction, he and others have sought to attribute Rwanda's violence to alternate sources, including colonial inequalities that led to the invention of ethnic and racial differences.

One form of reattribution has involved blaming European colonialism and invoking sentimentalized narratives in support of the villager displaced by colonial settlers or the anticolonial freedom fighter. Here, the sentimentalized narrative strategies foreground structural injustice as a corruption of the justice principle, thus resulting in sentimentalized expressions that its constituencies were known to interpret as anger. It is with the presumption that justice

must be extracted from structural injustice that some African actors display particular sentiments in arguing for political solutions. For example, echoing other angry performances, President Museveni 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?[90]

These sentiments, communicated to African constituencies and delivered with 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 fabricated underlying structures of violence on the African continent. They also encapsulate the resonant feeling of resentment that France and England (former colonial hegemons) as well as the United States (a contemporary empire) continue to maintain a patronizing relationship with their former African colonies, a relationship 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 manifested not only in military interventions and NGO funding to propel anti-impunity work, but also in judicial control through international courts. The predominance of African cases before the ICC is causing many African heads of state and lawmakers 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, and not just for Africans. But the perception of a double standard in practice has led to the angry assertion by many Pan-Africanists that Western liberal, sentimental legalism—embodied by the anti-impunity movement—only serves to erase politics and fill vacant spaces with icons that inspire empty social actions (such as hashtag activism and "clicktivism") without any material gains for African citizens.

The perceived erasure of politics through legal encapsulation is seen as not only rendering invisible deep histories of past injustices but ignoring the political potential of judicial action to create the conditions for future peace and lived justice. Popular global governance mechanisms such as the ICC are seen increasingly as tools for maintaining Western power. Some who are protesting the encapsulation of justice and its effects in African postcolonial states are working to redefine it by retelling history and reattributing culpability. Yet within this dialectic, many contradictions and complexities persist. For example, critics within and outside Africa and its diasporas 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 antiopposition movements, leading to the deaths of thousands of their citizens in Ethiopia and Uganda, respectively.[91]

Such postcolonial state concerns, in which the leadership elite are blamed for African violence, are facing serious challenges. On the one hand, in dealing with the internal practices of the state and its economy, they are embedded in limited forms of sovereignty that are constrained by contemporary globalization. On the other hand, not only does the postcolonial state not control key decisions that impact its economy, but state agents have not been able to address its failed social institutions that leave the indigent underserved and offer corruption and illicit violence as viable alternatives to structural injustice. Various African publics approach these challenges and complexities in ways that demonstrate both their ambivalence toward their leaders and the recognition of deep structural inequality that gives rise to state failure. A new generation of African professionals and progressive activists recognizes that the imposition of colonial structures of rule had a crucial determinative effect on the postcolonial conundrum.[92] They point to the myriad ways that, throughout postcolonial Africa, structural inequalities produced and still produce the conditions in which extreme forms of material violence take shape. Within this broader critique, there is a range of positions regarding where to attribute culpability in relation to the unraveling of formal colonialism, the reckoning with African complicity in mass atrocity violence, and the perpetual emergence of neocolonial structures.

Beyond the focus on 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 also heightened additional debates and emotionally fueled arguments about the ICC's ability to provide justice to survivors, as they themselves define it, and to resolve political violence in Africa through judicial solutions. Many have come to resist anti-impunity argu-

ments that the ICC's forms of legal justice are the best way to pursue justice, rejecting it as a mode of justice activism, citing other structural inequalities as the basis for African violence.

However, by rethinking Wilson's assumptions about the basis upon which survivors are relevant to the international justice project, the reality is that various justice imaginaries—such as the "perpetrator" and the "freedom fighter"—operate through emotionally infused icons that draw on deep-seated histories and psychosocial feelings that compel social action. The freedom fighter becomes an icon of justice, a redemptive body who preserves the traces of past actions and brings them into the present as potentials.[93] As Brian Massumi writes, "The body doesn't just absorb pulses or discrete stimulations; it infolds contexts."[94] Through the vehicle of the iconic body, constructed through sentimentalized affect, we experience the embeddedness of history in future sociopolitical effects. This imbrication of the past and the present through affect shapes what Bill Mazzarella refers to as the "pragmatics of institutional practice."[95] Affects articulated through institutional practice emerge as emotional appeals used to address larger sociopolitical concerns, such as racial targeting—feelings that the ICC is an extension of a colonial disciplinary apparatus. Some emotional forms invoke deeply known histories and reattribute what many see as illegitimate hegemonies of the past to reframe new justice narratives about contemporary events and actors. Similar to the noteworthy interventions like that of Jacques Vergés's "rupture defence"—an attempt to challenge the court's legitimacy by calling into question the basis upon which particular social truths and histories are narrativized—through disjunctural narratives in the legal defenses of Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia or Khieu Samphan at the Cambodian trials, we see how narrative ruptures inhere through the telling of different renditions of histories of violence.[96] Similarly, various people who are suspicious of the legal power of ICC-based justice have invoked European colonialism as a continuity of ICC justice. As anti-ICC sentiments are articulated, particular component parts of affective justice are deployed to shape it. And it is here in the spaces of refusal that new legal-justice formations are being assembled in particular ways.

What we are seeing is the formation of new domains of justice making that are not manifestations of an evolutionary progression of judicial justice cascading toward a new, enlightened form.[97] Rather, in response to the feelings of injustice in an unequal world, those pushing back against the justice-as-anti-

impunity discourses are reconceptualizing justice and attempting to differentiate African approaches to international law by embedding them in renewed spaces for reasserting the terms by which justice is reembodied.

Institutionalizing New Spaces of Justice: The African Court, Transitional Justice, and Its Pan-Africanist Affective Regimes

In the pages that follow, I demonstrate how various postcolonial affects, embedded in psychosocial responses to various forms of violence, function within particular Pan-Africanist emotional assemblages that—despite the construction of racial imaginaries—constitute the feeling expressions of various constituencies, not always predictable racially or ethnically constituted groups. The dynamics of race making is also about sense-making imaginaries that are not objective or empty.[98] These are lived experiences that foment emotional alignments with others who feel similarly. Embodiments of emotion confer belonging not to social categories that map neatly onto traditional group identity markers as the anthropological field once knew them—Ashanti, Tutsi, Dinka, Kikuyu, male, or female, for example. Instead, by studying the ways that people communicate their senses of obligation through symbolic, verbal, bodily, and technocratic expressions, a focus on emotional responses that align with regional or global assemblages can show how particular alliances are possible and others rendered unfeasible.[99] One of the ways this is done is through feelings about culpability.

Concerted efforts to expand culpability to actions deemed criminal yet not legible within the Rome Statute's legal architecture mobilize persons according to particular feeling climates or personal commitments. The ICC is also not the only tool for addressing mass atrocity violence, nor does it dominate the management of violence. In the case of the assertion of a new dominion, a set of African spaces that buffer the spread of treaty-driven prosecutorial institutions such as the ICC, other domains are defined by the rallying call, "African solutions for African problems." Through such calls to action, justice is reoriented spatially and temporally within deeply sentimental histories of African subjugation. These forms of reattribution highlight the way that emotional regimes function and create a biopolitics of feeling that shapes the emotional climate within which justice is articulated.

The attempt to establish an African court with criminal jurisdiction to adjudicate cases currently pursued by the ICC is a striking example of how re-

attribution can generate structural transformation, as well as an illustration of how emotions are deployed through historic symbols to regulate sentiments and constitute community. The African Court is the product of spatial and temporal reconceptualizations of international criminal justice as it functions within African landscapes. It is the outcome of an effort to conjure an African geography of justice through sentimentalized invocations of Africa's place in an increasingly interconnected world. But as we shall see, not only is the idea of international justice being reconceptualized in relation to how solutions to violence ought to be addressed, but, in an attempt to move beyond what is seen as the ICC's politically driven core crimes, stakeholders of the African Court project have introduced additional crimes—economic crimes—that they consider to be symptomatic of the "true root causes of African violence."[100] These include piracy, mercenaries, terrorism, corruption, illicit exploitation of natural resources, money laundering, the unconstitutional change of government, and the trafficking of drugs, persons, and hazardous waste. The focus on prosecuting these crimes reflects an effort to articulate a new understanding of what constitutes justice in an African context. It attempts a shift away from the ICC's framework that centers exclusively on individual criminal accountability toward a more expansive notion of culpability that includes corporate criminal liability. Within the logic of the African Court, corporate leaders could be held accountable for their role in seeding the underlying conditions that generate mass violence. The African Court is a concrete example of how a new Pan-Africanism operating at a regional scale is emerging at the site of justice making in order to make new claims on African governance in opposition to perceived neocolonial justice campaigns.

Pan-Africanism has been defined as a "movement of ideas and emotions," reflecting an "underlying unity of emotions and ideas in the black world."[101] At the roots of the movement are deep feelings of dispossession, oppression, persecution, and rejection that appear congruent with contemporary material conditions on the continent. The impetus for Pan-African mobilization emerges from an emotional response to what Colin Legum refers to as a feeling of "loss [that] came [from] enslavement, persecution, inferiority, discrimination and dependency. It involved a loss of independence, freedom and dignity."[102] Pan-Africanist philosophies originated in the late 1800s, and the first Pan-African Congress was held in London in 1900, spearheaded by a range of black intellectuals and African elite students in the diaspora. Pan-Africanism as a coherent political movement was formally launched in 1958 at the First Conference of Independent African States held in Accra,

Ghana, where Patrice Lumumba was a key speaker. The 1958 version of Pan-Africanism held as its prime objective the solidarity of black people around the world and the assertion of "Africa for Africans," which involved the pursuit of independence and the rejection of colonialism in all its forms. Other features involved the aspiration for a United Nations of Africa—a continent unified through regional federations—as well as the reemergence of an African renaissance to recover and recast African societies and cultural traditions into neo-indigenous forms.

One approach to the African renaissance involved drawing on the best of Africa's cultural forms and combining them with contemporary ideas that were deemed desirable. Other viewpoints in the movement included an impulse to construct and project African nationalism as an alternative to tribal and territorial affiliations; the rejection of communism and the reinvigoration of African economies as engines to replace colonial economic markets; the insistence on African societies rather than colonial metropoles as the necessary beneficiaries of development; an adoption of contemporary democratic principles; a rejection of violence as a viable method of struggle; and the adoption of a notion of positive neutrality, which involved the development of what was referred to as a nonalignment movement of African states with global powers, in particular China, the United States, and the former Soviet Union.[103] Thus, it is critical to understand the multifaceted history of Pan-Africanism in order to make sense of its contemporary revivals (such as "African solutions to African problems"). Yet Pan-Africanism, it is important to note, did not critique the myth of racial homogeneity. It contested its inscriptions of inferiority. The paradox of Pan-Africanist narratives is that they produce both a language for the rearticulation of black pride and also reinstate the myth of African unity. The production of Pan-Africanism, then, entails a fiction of racialized and experiential unity and because of this, the terms that define Africanness exist within domains of historical subjugation that shape the ways that postcolonial anti-imperial sentiments emerge and how their related collectivities come into being.

The historically rooted variations in such emotively articulated sentimentalisms foreground the multiple ways African critics of Western liberalism understand culpability. Some African political actors emphasize the injustices of inequality while others call out the indignities of racism. Many foreground a sense of pride in African control of Africa's own future and lift up the African Court as an example of self-determination over matters of criminality and justice. While these points of view are distinct and particular in relation

to each other and to the history of Pan-Africanism, they work in concert as they attempt to rectify the legacy of Africa's structural inequalities and shape the contours of new African judicial spaces.

The Work of Affective Justice in the Making of International Justice

As noted, in contemporary international justice circuits, popularly articulated within anti-impunity social movement circles, the "victim to be saved" and the "perpetrator to be stopped" have come to constitute the moral basis upon which action for justice can occur. When the humanitarian and international justice movement uses aesthetic imagery of bodies to be saved in order to assert strategies of rescue, we see a professional human rights class seeking to crystallize and activate an international citizenry around the idea of ending impunity as the preeminent deterrence for violence and suffering. This narrative moves us beyond the direct experience of suffering and into a disembodied, mediated experience where contemporary justice needs an exemplary judicialized "victim" (also see Sara Kendall and Sarah Nouwen, 2013).

Law garners its authority through emotional affects that produce various forms of encapsulation, and through this process power is made real through various emotive appeals. These expressive practices reflect utterances that allow relevant components of justice assemblages to exercise their related capacities yet retain their component properties. In maintaining their properties, new discursive domains are produced and used to further concretize preexisting forms of segmentation. Those victimized by violence who have particular personal stories, captured in sound bites and captions, represent a hyperembodiment of suffering that can be acted through a biopolitics of protectionism through which the international community engages. The emotive figures for invoking suffering are increasingly racially embodied as black or brown, or Muslim and male, and the responses to such racialized justice sensoria have come to look and feel a particular way. But this is not because of something endemic to race or ethnicity or gender. Rather, because of the way that the symbolics of race operates within particular assemblages of cultural meaning making, power, and possibility, the fiction of difference is reproduced according to particular modes of seeing, feeling, engaging, and speaking. And, as such, in various international justice assemblages involving African constituencies, the manifestation of justice may look different because of the structuring fields, such as various legacies from colonial institutions or the structure of legal temporalities that shape how justice feels in particular spaces. But,

again, key here are the ways that human suffering is decoupled from particular spaces and reproduced through moral obligations that shape justice practices in the contemporary period. By exploring how historically formed social locations, personal commitments, experiences, and affective practices that shape people's relationships to institutions like the ICC and the African Union are, as I have argued, regimented through particular structuring devices, such as figures of "victims," "perpetrators," and "freedom fighters," we can tease out the institutional, historical, and moral orders that popularize various international justice emotional regimes.

As a conceptual framework for clarifying international justice assemblages, affective justice resonates at the level of both the individual (subjective) and the collective (social) consciousness. It is both the performative dimension of sociolegal claims to justice—what Marianne Constable, quoting Stanley Cavell, has termed "passionate utterances"—as well as the embodied responses operating through particular regimes of feeling that shape what Justin Richland calls law as both ideation and materiality.[104] These forms of segmentation are manifest in a range of ways, including constructions of racial difference through which particular bodily inscriptions are made meaningful. For the contemporary period represents, as Achille Mbembe argues, the manifestation of black bodies fluctuating between human and object as the defining feature of the modernity of black life.[105] If this has relevance for how we understand suffering bodies and invocations of justice for those bodies, then the larger questions are: What imaginaries have emerged at this junction in the production of international justice? What does it tell us about the modes of seeing, engaging, feeling, and speaking about both perpetrators and those victimized by violence? How do these modes manifest in the embodied affects that emerge in the field of international criminal justice? And what do those affects and their emotional responses tell us about structural inequalities as well as particular responses to them? To understand these processes, we have to turn to how the emotional expressions of feelings link sociality and justice in our globalizing world.

Affective Justice explores such restructuring processes ethnographically, revealing how they are expressed through sentiments, spread institutionally, and work to enforce the contours of emotional expression in particular ways. In legal studies and studies of humanitarian formations, interrogating affect can be a generative way to make sense of what feeling can tell us about the outcomes of various legal rituals—such as trials, testimonies, or political settlements. In the context of violence and its remedies, studying the deployment

of emotional affects can help us to understand which emotions are likely to mobilize support and with what discursive strategies.

By bringing together complex transnational processes with the study of private, interior microprocesses such as individual emotions and the regulation of public sentiments, *Affective Justice* invites us to reconceive international justice through assemblages of psychosocial and political meanings that are shaping new and old publics. Taking the products of the international social imaginary as key modalities for understanding the enmeshment of individual sentimental responses and larger entanglements with history and power, this book explores how the breakdown of particular social rules leaves open a space for contesting the terms on which feeling rules are negotiated and justice expressions are regulated in daily life.[106] These attempts to rectify injustice make explicit the way that feelings of justice are expressed in daily encounters with international legality and, as such, how their reattributive rectification highlights the way that new remedies are put into tension.

What are the effects when international justice regimes invoke the figure of the perpetrator as black, African, male, and/or Muslim, and the figure of the victim as female, black or brown, and with child? There is a pressing need to contemplate the role that affects play in justice projects and what imaginaries sustain these formations. And this is where the challenge of global ethnography emerges: the complexities of transnational alliances require that we remain analytically vigilant in our assessment of the categories and scales within which we map these connections and through which we determine the purpose. Through a chapter-by-chapter examination of the making, manifestation, transfer, and institutionalization of feelings about justice, this book explores the interpretive authority of legal stakeholders and publics as influencers of the contours of various body politics. While new rule-of-law institutions are emerging as manifestations of new justice/governance projects, the responses of stakeholders to these institutions are also providing alternatives for reconceptualizing justice and governance that are linked transnationally yet play out in locally complex ways. The practices involved are infinite and span from treaty drafting, ratification, and judicial application to trial attendance, nomenclature adoption, and joking practices, to refusals that involve rejections, withdrawals, and noncooperation declarations, as well as the development of countercampaigns. What connects these practices are the embodied feelings and emotional expressions that drive such acts. It is these practices that are at the heart of this book and that clarify the central role of affective justice in the making of international criminal law.

Affective Justice is organized into six chapters that explore various aspects and illustrations of the three dynamic components we have articulated: technocratic practices, psychosocial embodied affects, and emotional regimes. Chapter 1 opens our inquiry into affective justice by exploring the technocratic workings of legal encapsulation and its genealogies. It analyzes how a particular narrative of justice as law has influenced the definition and protection of victims, as well as the judicialization of politics in the late twentieth to early twenty-first centuries. As the justice discourse progressed, "the victim" was invoked not only as the subject to be saved by new judicial mechanisms, but also as the basis for protection through moral responsibility. By explaining the rise of anti-impunity narratives and rethinking the unproblematized notions of the "victim" and the "perpetrator," this chapter maps a particular set of formations through which to make sense of the rise of legal encapsulation as a component part of contemporary rule of law assemblages. It explores the conditions under which humanitarian discourses have gained traction using forms of sentimental attachment to produce the establishment of international justice. Through that mapping it details the ways in which particular campaigns have been deployed to substantiate such imaginaries.

Chapter 2 turns from the technical mechanisms of legal order to the intersubjective. It explores the role of passionate utterances and sentimentalized origin stories, on the part of both ICC advocates and critics, to consolidate contemporary alliances for and within institutions. By illuminating the workings of affective regimes and their institutional expressions, the chapter explores a key result of reattribution, that of affective transference, which produces particular forms of sentimental attachments in situations that could be argued to have otherwise unrelated causality. The connection between one distinctive national or military trial and a criminal tribunal, or the attempt to connect colonial indictments to the ICC's charges for Kenya's postelection violence, provide examples of the sentimental language and strategies by which these social imaginaries of justice are alternately internationalized and regionalized for institutional purposes. In this chapter, we see examples of how protest speech and celebratory rhetoric have harnessed particular sentimental histories and icons to consolidate communities and institutionalize feeling expressions. We also see how audiences respond to these rhetorical strategies. This moves us closer to understanding the affective politics of social protest through the strategy of reattribution and its unifying and galvanizing potential.

Chapter 3 explores another key affective formation in the international justice assemblage: the ways in which online justice campaigns are deployed to

produce a highly diversified international community with newly mediated victims. The Kony 2012 campaign that anti-impunity activists used to bring the leader of the Lord's Resistance Army in Uganda to justice is illustrative. These kinds of campaigns are increasingly propelled by biotechnology and sentimental discourses designed to mobilize publics through new moral regimes of saving people and preventing suffering. The deployment of the #BringBack OurGirls campaign a few years later also reflects these strategies. In this case, the global #BringBackOurGirls campaign was mobilized by concerned citizens, celebrities, activists, and governments worldwide to try and save hundreds of girls abducted in Chibok, Nigeria, and to pursue the prosecution of Boko Haram as perpetrators of that violence. This campaign is a particularly striking example of how political action can be spectacularly driven by emotional reactions and aspirations. Such justice campaigns drive and shape responses to international legality but are not always the most useful or effective ways of understanding real individuals and their social worlds.[107] These campaigns often reveal more about the Western professional class than they do about African victims; they are emotional lenses through which we see only certain positions, and they reflect the traditions of practice through which particular attachments and commitments are emotionally embodied.

This chapter also examines how the temporal immediacy of "the now" structures the demands and expectations about equality, such as how the imagery of girls denied an education by radical Islamic militants became the object of global empathy. However compelling, this popular temporality of justice with its aesthetics of care, compassion, and narrowing sense of time to the urgent now has not added up to its promise of delivering justice. Some of its subjects are pushing back, resisting the hegemonic narrowness of legal time and urging a historical understanding of the root causes for Boko Haram's terror.

In Chapter 4, I extend the previous discussions to consider the workings of reattribution in response to technocratic legal considerations having to do with legal time as an ordering modality of legal encapsulation. By examining how the figure of the perpetrator is produced through the convergence between space/time, culpability, and sentimentality, we see how international rule of law assemblages shape the domain within which emotional regimes propel particular understandings of justice. With its strict understandings and juridical demarcations, legal encapsulation concretizes a sense of stability about who is a perpetrator and how such a figure should be understood and contained. Yet this legal temporality is immediately challenged by questions

about jurisdiction, admissibility, and evidence, as well as competing feelings about the reattribution of culpability. The question of who is responsible for violence against those victimized by violence automatically raises ambiguities about how we measure culpability, particularly in relation to political, social, and historical contexts.[108] This chapter explores these issues through the case of Kenya's Uhuru Kenyatta and William Ruto, whose ICC indictments cohere with and confirm the international image of the African perpetrator. Kenyatta and Ruto deflected and challenged that imagery with their own slick, technologically mediated campaign that used reattributive approaches to reconceptualize culpability through a colonial-postcolonial continuum. Further, many survivors protest the designations of criminal responsibility strictly in relation to individual responsibility, especially when they connect historical inequality with contemporary feelings that justice has been corrupted. This chapter also examines temporality and the reattribution of culpability from the perspective of survivors of the type of violence the ICC attributes to Kenyatta and Ruto.

Chapter 5 follows the discussion of affective politics of social protest and campaigns by exploring how new cartographies of transitional justice are being drafted to reframe the debate around the judicialization of African violence. With reattribution as a core component of affective justice, I begin by showing how AU advocates have built key campaigns, such as their "Silencing the Guns" and "I am African, I am the African Union" fiftieth anniversary branding, in order to reattribute justice in Africa. These campaigns operate to reroute emotional sensibilities through new geographical justice imaginaries shape the material and psychosocial body. These imaginaries, in turn, shape Pan-Africanist emotional regimes and mobilize the imagery of Pan-African histories to produce juridical, democratic, and economic possibilities on the African continent. By linking histories of Pan-Africanist sentiments to the affects that shaped the work of the Malabo Protocol—the treaty that amends the African Court of Justice protocol to establish a new African court with jurisdiction over human rights and general and criminal matters—the chapter shows how its formation involved attempts to gain authority by incorporating the relevance of deep inequalities in Africa's history. This unfolded as the drafters of the protocol also innovated new ways for political actors to navigate the relationship between legal and diplomatic strategies. Ultimately, the chapter rethinks the classic tribunal-centric purview for understanding violence and its causes and instead explores the remaking of African regional institutions as an example of affective justice.

Institutionalized affects are central to how the judicialization of politics is

taking shape in the contemporary period, and, in this light, chapter 6 explores what technocratic legal instruments are being envisioned as alternatives when ICC justice approaches are deemed inappropriate or do not work in the contexts in which they are intended. By examining various judicial possibilities and limits, this final chapter highlights various African actors and their attempts to manage the judicialization of justice. These have manifested in an effort to expand the list of actionable crimes to include those that have enabled violence in Africa, as well as modes of responsibility that include corporate criminal liability. This introduction of new modes of liability represents particular attributions of culpability that go well beyond the individualization of criminal responsibility. Rather, they highlight attempts to reattribute the terms for justice through legal and overt forms of political rearticulation. The crimes adjudicated per the African Court's Malabo Protocol and the provision that grants immunity to sitting heads of state—contrary to the Rome Statute's insistence on the irrelevance of official capacity—highlight how important it is to include the history of Europe's plunder in Africa, its legacies of inequality, and the perception that the ICC continues to control the terms of African subordination in how judicialized justice is both resisted and strategically used through the African Court.

These issues lie at the core problematic of the formation of the African Court, especially in relation to the ICC. For, ultimately, the emotions that have produced the responses to legal encapsulation are not unrelated to the goals, objectives, strategies, and deliberations of the project of liberalist lawmaking itself. They are constitutive of it and require that we uncover the structures of social politics that shape how individuals express emotional responses. Ultimately, we see that feelings of justice are not separate from power and its interpretive impetus for legitimizing social action. They are fundamentally expressed through histories of meaning making around inequality, equality, and the regulatory body politics that shape how sympathies are conjured and produced. The aesthetics of expressions, reactions to perceived racism, and claims of inequality highlight the extent to which emotions are a function of power, legality, hierarchy, authority, and legitimacy, as well as sites for exercising and enforcing feelings and feeling structures through their alliance with various institutions.

In the pages that follow, *Affective Justice* aims to show how international justice works through attempts to regiment itinerant emotions and regulate particular social imaginaries. This is how liberal legality gains its power and how alternatives are produced. Through these domains of power, affective jus-

tice practices are mobilized through the law as tools of legitimation and its various component parts to create the sense of immediacy, urgency, and international priorities. These affective justice mechanisms are powerful because they shape public feelings and have the power to erase some forms of political violence while placing others at the center of global moral concern. Understanding contemporary violence and its management by international justice projects, such as rule of law assemblages, should involve thinking about the way that international justice institutions are imbricated in complicated histories and networks and, as a result, how unsettling emotions emerge from those imbrications.

Is there unity to this justice formation? The context of mass atrocity violence has no unifying metaphor. The coming into force of the ICC has produced an assemblage of intensities, spatial and temporal, whose affects are rhizomatic and conflictual, turbulent and nonuniform. Ultimately, the component parts of affective justice come together to constitute the nexus of legal technocratic practice, emotional affects, and particular emotional regimes and provide a promising site for understanding the relationships between law, discourse, and feeling and between knowledge and power. The practices that produce justice making are often invisible and may only become evident long after tensions are documented. An investigation of affective justice makes these practices visible in real time.

Notes

Acknowledgments

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Preface

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2 Commentary, The African Court and Its Geographies of Justice.
3 Hannah Appel, lecture commentary to author, UCLA, October 2016.
4 Appel, lecture commentary.
5 Cantero, "Specters of the Market."
6 Mazzarella, "Affect," 299.
7 Asad, *Formations of the Secular*, 185.

Introduction. Formations, Dislocations, and Unravelings

1 ICC, Warrant of Arrest for Ali Kushayb (ICC-02/05-01/07-3).
2 ICC, Warrant of Arrest for Omar Hassan Ahmad Al Bashir (Al Bashir 9, ICC-02/05-01/09-1).
3 ICC, Assembly of States Parties, Resolution 5, "Activation of the Jurisdiction of the Court over the Crime of Aggression," ICC-ASP/16/Res.5, December 14, 2017, https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP16/ICC-ASP-16-Res5-ENG.pdf. After receiving the milestone ratification from Palestine in June 2016, the Assembly of States Parties, in their sixteenth session, decided to activate the court's jurisdiction over the crime of aggression as of July 17, 2018. It enters into force for those state parties that have accepted the amendments one year after the deposit of their instruments of ratification or acceptance. This is a historic activation that will enable the ICC to hold leaders individually criminally

responsible for the crime of aggression. Despite the calls for broader cooperation in ratifying the 2010 Kampala amendments on the crime of aggression, as of March 31, 2019, none of the five permanent members and only three (Belgium, Germany, and Poland) of the ten nonpermanent members of the UN Security Council has ratified the Kampala agreement; Global Campaign for Ratification and Implementation of the Kampala Amendments on the Crime of Aggression, "Status of Ratification and Implementation," Update No. 30, October 5, 2018, https://crimeofaggression.info/the-role-of-states/status-of-ratification-and-implementation. United Nations, Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, July 17, 1998 (hereinafter Rome Statute), Art. 5, http://legal.un.org/icc/statute/99_corr/cstatute.htm.

4 Rome Statute, Preamble, para. 6.

5 Rome Statute, Arts. 28, 25(3)(d), and 33.

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7 Arrest warrants were issued for the following individuals: Joseph Kony, Raska Lukiya, Okot Ohiambo, Dominic Ongwen, Vincent Otti, Thomas Lubanga Dyilo, Bosco Ntaganda, Ahmed Haroun, Ali Kushayb, Germain Katanga, Mathieu Ngudjolo Chui, Jean-Pierre Bemba Gombo, Omar al-Bashir, Callixate Mbarushimana, Muammar Gaddafi, Saif al-Islam Gaddafi, Abdullan al-Senussi, Laurent Gbagbo, Charles Blé Goudé, Simone Gbagbo, Abdel Rahim Hussein, Sylvestre Mudacumura, Walter Barasa, Narcisse Arido, Jean-Jacques Kagongo, Aimé Kilolo Musamba, and Fidèle Wandu. Summonses to appear were issued for Bahr Idriss Abu Garda, Abdallah Banda, Saleh Jerbo, Mohammed Ali, Uhuru Kenyatta, Henry Kosgey, Francis Muthaura, William Samoei Ruto, and Joshua Sang. As of March 2019, the following were on trial: Abdallah Banda, Bosco Ntaganda, and Dominic Ongwen. Thomas Luganga Dyilo and Germain Katanga were convicted and serving sentences of fourteen and twelve years, respectively. Mathieu Ngudjolo Chui, Jean-Pierre Bemba Gombo, Laurent Gbagbo, and Blé Goudé were acquitted. Charges were dismissed against Bahr Abu Garda, Callixte Mbarushimana, Mohammed Ali, Henry Kosgey, William Samoei Ruto, and Joshua Sang. Charges were withdrawn against Uhuru Kenyatta and Francis Muthaura. The case against Abdullah al-Senussi was declared inadmissible. Finally, proceedings against Raska Lukiya, Saleh Jerbo, and Muammar Gaddafi were terminated due to the death of the individuals.

8 Regarding countries outside of Africa, as of 2016, the ICC's Office of the Prosecutor was conducting eight preliminary examinations, including an assessment of information about alleged war crimes by UK nationals during the conflict in Iraq from 2003 to 2008; the violence committed in Ukraine since February 20, 2014; an investigation in Afghanistan, in which they have indicated there is reasonable basis to believe that war crimes and crimes against humanity were and continue to be committed there; an examination of violence and alleged crimes in the occupied Palestinian territory since June 13, 2014; and monitoring of national

prosecutions of crimes in Colombia. However, for the first thirteen years of its existence, all of the ICC cases involved Africans. This has shaped the charges that the ICC is engaged in the selective targeting of Africans. For updates on the investigations, see International Criminal Court (https://www.icc-cpi.int/).

9 On April 12, 2019, the ICC judges' refusal to permit the prosecutor of the ICC to open an investigation into US crimes in Afghanistan underscore the feeling that there are double standards in international law. See International Criminal Court (https://www.icc-cpi.int/).

10 Kimani, "Pursuit of Justice or Western Plot?"

11 "Sudanese President Bashir Charged with Darfur War Crimes: International Criminal Court Issues Warrant Alleging War Crimes and Crimes against Humanity," *The Guardian*, March 4, 2009, https://www.theguardian.com/world/2009/mar/04/omar-bashir-sudan-president-arrest. ICC, Decision on the Prosecution Application under Article 58(7) of the Statute, Harun (ICC-02/05-01/07-1).

12 ICC, Harun (ICC-02/05-01/07-1).

13 Jalloh, Akande, and Du Plessis, "Assessing the African Union Concerns about Article 16," 7.

14 Akhavan, "Are International Criminal Tribunals a Disincentive to Peace?," 648.

15 Murungi, "10 Years of the International Criminal Court."

16 Kimani, "Pursuit of Justice or Western Plot?"

17 Jalloh, Akande, and Du Plessis, "Assessing the African Union Concerns about Article 16," 8.

18 Note that a Kenyan court held that Kenya is under international obligation to arrest al-Bashir whenever he visits Kenya. Some scholars argue that he has immunity and that Act 98(1) of the Rome Statute protects him. This is a counterargument by Dapo Akande that the Security Council referral suspends his immunity. See Akande, "The Legal Nature of Security Council Referrals to the ICC"; Akande, "The Bashir Indictment"; Akande, "The Jurisdiction of the International Criminal Court over Nationals of Non-Parties." See also Jalloh, Akande, and Du Plessis, "Assessing the African Union Concerns about Article 16," 8.

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20 Kimani, "Pursuit of Justice or Western Plot?"

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25 The AU decided to merge the currently functional African Court of Human and Peoples' Rights, which was established in 2004, and the African Court of Justice, which was envisioned in the Constitutive Act of the African Union but not established, in 2008. This was mostly due to concern over the cost required to maintain two continental judicial bodies. Before the Merger Protocol came into force, African states agreed to revise the composition of the court once again with the aim of expanding the subject matter jurisdiction of the proposed court. In 2014, the AU adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (ACJHR). In addition to human rights (jurisdiction currently being exercised by the African Court on Human and Peoples' Rights) and general affairs (jurisdiction essentially to be exercised by the African Court of Justice), the newly proposed court would also have jurisdiction over international crimes. The amended protocol has yet to be ratified by any African state. See Werle and Vormbaum, *The African Criminal Court*.

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27 De Landa, *A New Philosophy of Society*.

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29 Deleuze and Guattari, *A Thousand Plateaus*.

30 Bourdieu, *Outline of a Theory of Practice*.

31 Eltringham, "When We Walk Out."

32 Kersten, *Justice in Conflict*.

33 Fraser, *Scales of Justice*; Valverde, *Chronotopes of Law*. See also Jonas Bens, "Gerechtigkeitsgefühle und die Legitimität des Internationalen Strafgerichtshofs in Norduganda," *Gerechtigkeitsgefühle: Zur affektiven und emotionalen Legitimität von Normen*, January 2017, transcript; Latour, *Reassembling the Social*.

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ICRC, *Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War*, August 12, 1949.

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59 Reddy, *The Navigation of Feeling*, 129.
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105 Mbembe and Dubois, *Critique of Black Reason*.

106 Hochschild, "Emotion Work, Feeling Rules, and Social Structure."

107 Fischer, *Emergent Forms of Life and the Anthropological Voice*; Haraway, *Modest_Witness@Second_Millennium.FemaleMan©_ Meets_OncoMouse*; Masco, *The Nuclear Borderlands*; Cazdyn, *The Already Dead*; Rajan, *Lively Capital*.

108 Dominic Ongwen's case provides an excellent example of how one can be both a victim (he was abducted as a child) and a perpetrator (he allegedly climbed the ranks of the LRA to be Joseph Kony's second in command) and the role of understandings and temporality in the construction of the perpetrator.