

## Recent publications

### ***KM Clarke *Affective justice: The International Criminal Court and the pan-Africanist pushback****

Duke University Press (2019) 384 pages

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The International Criminal Court (ICC) was established as one of the means to establish justice and peace but there have been debates and criticisms, such as whether the ICC is an extension of imperialism due to its focus on Africa. Authored by Kamari Clarke, *Affective justice: The International Criminal Court and the pan-Africanist pushback* contributes to the ongoing debate by providing ethnographic accounts of different regimes of emotions and affects that are mobilised in the quest for peace and justice. By exploring how they take shape within international law assemblages, the book takes a profound step in clarifying some of the most challenging complexities in the rule of law movement in Africa. It is a great addition to scholarship on international law for it closes the gap in understanding how 'moral and emotional affects' shape the practices of justice within international criminal law using particular approaches to assemblage theory.<sup>1</sup> It also leaves unanswered questions about the

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<sup>1</sup> KM Clarke *Affective justice: The International Criminal Court and the pan-Africanist pushback* (2019).

effects of perpetrators in the commission of violence and the place of activism in international justice arenas.

Professor Kamari Clarke is a recognised scholar who has published significantly on issues related to legal institutions, human rights, international law, religious nationalism and globalisation. With her primary discipline in anthropology and her secondary discipline in law, Clarke is a renowned legal anthropologist who has been involved in a range of projects that look at the gaps in international criminal law. Her goal is to both provide solutions for African institutions, such as the to-be-established African Court of Justice on Human and Peoples' Rights, and to develop theories of justice that considers particular forms of affective practice theory. *Affective justice* provides a snapshot of six years of research. It offers a framework of how daily lives are impacted by 'sentimentally institutionalised approaches to justice'.<sup>2</sup>

Assemblage theory serves as the conceptual framework for *Affective justice*.<sup>3</sup> This theory provides a way of analysing social complexities by seeing different component parts as fluid, related yet exchangeable with others because of multiple functionalities. Clarke theorises that affective justice is part of the international rule of law assemblages which plays out through three component parts – legal technocratic practices, embodied affects and emotional regimes. These three components shape the structuring of the book into six chapters, an introduction and an epilogue.

The theoretical framework deployed in this book is inspired by Deleuze and Guattari's theory of *rhizomatic model of learning/knowledge*. In the rhizomatic model, there is no beginning or an end and while Clarke, in some parts of *Affective justice*, oscillates between World War I and the Cold War as a key node in shaping the contours of affective justice in international legal circuits, she constantly reveals her anti-colonialist sentiments by placing colonialism as a critical node in Africa's engagement with the ICC. This is understandable considering that *Affective justice* is focused on sub-Saharan Africa.

*Affective justice* re-thinks the work of Richard Wilson and other socio-legal justice scholars who privilege justice analysis through the lens of those who claim 'victim' status. What it offers is a way of demonstrating how and why affects are central to the making

2 <http://www.kamariclarke.com/professional-biography> (accessed 10 September 2020).

3 <http://www.oxfordbibliographies.com/view/document/obo-9780199874002/obo-9780199874002-0114.xml> (accessed 10 September 2020).

of justice – whether through ‘victim’ narratives or through other narratives. Using case studies that are also theorised through presumptions of justice as ‘affective’, some of the key arguments that Clarke makes are that international criminal justice institutions as globalised formations have their foundations in affective justice domains. She is insistent that ‘justice is a product of a set of competing practices that are shaped and expressed materially and socially’ and that it should not be reserved for some at the exclusion of others, by demonstrating that people understand, challenge and influence legal orders through ‘their embodied affects, interjections and social action’. In this regard, Clarke demonstrates that justice produced by international law formations such as the ICC and the African Court of Justice and Human and Peoples’ Rights is influenced by several stakeholders that hold different forms of power. These include citizens (the public, victims, perpetrators), technocrats, judges, advertisers, investigators and evidence procurers, and these are affected by histories such as colonialism or agendas such as pan-Africanism.

The account that Clarke provides as case studies is transnational, multi-sectoral with different affective regimes and interactions showing how actors within the ICC, pan-Africanists and civil society movements arouse emotions to deliver the best (in their view) juridical justice. The book exposes readers to nuances that are gleaned from actions otherwise seen as neutral but which have undertones. For instance, it demonstrates how the emergence of justice as law is related to the structural inequalities within post-colonial Africa.

Combining approaches to justice and its complexities, Clarke engages concepts such as ‘legal encapsulation’ and ‘retribution’ to explain components of international justice assemblages as well as to capture them as part of the larger justice assemblage. Chapter 1 explores the technocratic workings of the legal encapsulation of the invocation of the terms ‘victim’ and ‘perpetrator’ as part of the rule of law assemblage and how these legal encapsulations have influenced the kind of justice produced to save the victim and protect against the perpetrator. Chapter 1 is particularly graphic in how it shows that we sentimentalise legal processes through the view of victim to be saved and perpetrator to be held accountable. Chapter 2 explores retribution through the workings of psycho-social embodied affects and how these produce passionate utterances that can mobilise action within international justice both internationally and regionally. In chapter 3 Clarke probes some online justice campaigns such as *#BringbackourGirls* and the *Kony 2012* campaign as one of the affective formations in international justice assemblage. These

campaigns, she argues, were driven by emotions and not 'necessarily an understanding of real individuals but the campaigns have shaped responses to international legality'.

It is in chapter 4 that Clarke combines an analysis of both reattribution and legal encapsulations within the discourse of culpability to show how a perpetrator has been fixed by legal encapsulations but also how 'competing feelings of reattribution' (fuelled by history of inequality) is shifting culpability. Clarke dives into African debates and criticisms against the ICC in chapter 5 highlighting how pan-Africanists have emotionally mobilised imageries that have influenced the re-making of African regional institutions and types of justice for Africa. The last main chapter is the sixth, where Clarke queries the alternative ways proposed by Africans to juridicalise justice by expanding the actionable crimes, introducing new modes of liability and, more importantly, to get justice legally and politically. Together these chapters articulate the complexities of affective justice as a rhizomatic project.

One conclusion in *Affective justice* is that the ICC is not the ultimate solution to Africa's problems because the gross human rights violations were not caused by emotions but fuelled by historical and contemporary political and economic problems that continue to be in place despite the juridical justice provided by the ICC. *Affective justice*, therefore, is a keen advocate for more politically and contextually-appropriate justice. In other words, Africa's colonial past set in place the conditions for under-development through the plundering of Africa's resources and even continued under neoliberalism through the Brentwood Institutions. These have led to new crimes that ought to be adjudicated not only as crimes but as after-effects of colonialism. Clarke conjures up a possible future within 'Africa's geographies of justice where legal and political subjectivities are created and negotiated to imagine new spaces of justice that holistically addresses peace and security in Africa'. This, she hopes, will be African-led transitional justice that is achieved by 'strategic sequencing of peace and security'. Perhaps, as Clarke posits, there is the possibility that the framework for peace and justice being considered by Africa will address foundational structural inequalities while also providing political and juridical solutions.

However, there are other sentiments (one of which I share) that doubt the true commitment of African leaders or other actors to setting up such peace and justice structures, and it is not clear what Clarke's position is on this, for by taking all subjects equally as affective justice producing agents, what we miss are the ways that their actions are suspiciously detrimental to the poor. While Clarke

is able to account for such leaders by highlighting the structural conditions of inequality, she does not necessarily critique their motives and the consequences of the forms of re-attribution that they produce. The main audiences for *Affective justice* are African leaders, pan-Africanists, activists, judges, international law experts as well as scholars of law and social processes. Other audiences that can benefit are those victimised by violence or those seen as perpetrators who seek to understand the nuances of international justice. Perhaps Clarke is right. There are no sides in international justice – everyone can lose and everyone can win. The goal of *Affective justice* is to understand the practices through which feelings of winning and losing are articulated.