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# Dis-Affective Justice in Abderrahmane Sissako's *Bamako* (2006)

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**Abstract:** Drawing on the work of Kamari Maxime Clarke and Peter Rush, this essay offers a reading of Abderrahmane Sissako's *Bamako* (2006) as a cinematic articulation of affective justice. In particular, it explores how, via the contrivance of a staged trial against the International Monetary Fund (IMF) and the World Bank, the film makes a direct yet deft intervention in the politics of international criminal law and global justice in the aftermath of the policies of structural adjustment imposed on the South by international financial institutions (IFIs). Mobilising the possibilities of cinema as a political and aesthetic practice, Sissako presents an “imaginative solution” (B.S. Chimni) that resists and re-envisions international law in the register of an affective call to justice. This call is grounded in two particular commitments: first, in an implicit critique of narrowly judicialized forms of justice that disregard the deeply felt realities of violence and inequality in the African postcolony; and second, in an imaginative effort to look beyond the limited horizon of current law and to envisage alternative possibilities for pursuing accountability and narrowing the impunity gap in present-day frameworks of international and global justice.

**Keywords:** affective justice, *Bamako*, Abderrahmane Sissako, pre-enactment, performance, slow violence, international law, international criminal justice

“Why do we reproduce the tribunals in the plays of Büchner, instead of creating tribunals in theatre that reflect on the injustices of today?”

– Milo Rau<sup>1</sup>

“The trial has become annoying.”

– Character in *Bamako*<sup>2</sup>

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1 Milo Rau, “New Realism and the Contemporary World: The Re-enactments and Tribunals of the International Institute of Political Murder,” *Documenta* 34.2 (2020): 121–137, 134.

2 Abderrahmane Sissako, *Bamako* (Artificial Eye DVD, 2006). For ease, we have used the film's subtitles.

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# 1 Introduction

In her 2019 book *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback*, Kamari Maxime Clarke offers a compelling account of the “emotive narratives about justice”<sup>3</sup> that attend current controversies in international criminal law. For Clarke, such narratives do more than merely articulate different ways of conceptualizing justice through a (re-)thinking of the political; they also produce significant expressions “about who we are, what we stand for, what matters, and why,” and are thus “vulnerable to be[ing] driven by our bodily affects.”<sup>4</sup> With this as a starting point, Clarke advances the term “affective justice” as a conceptual category for understanding the relevance of affect in shaping how justice is materialized, and for comprehending the complex assemblages of legal technologies, embodied affects and emotional regimes that work to “expand, displace, and end injustice,” and which thereby “produc[e] the basis on which justice is felt.”<sup>5</sup>

Writing in the preface to *The Arts of Transitional Justice: Culture, Activism, and Memory after Atrocity* five years previously, Peter Rush presents a slightly different framing to the notion of affective justice. Engaging the particular question of art’s role(s) in post-conflict settings, Rush asserts that, in the aftermath of violence, the disputes of transitional justice can only be mediated by history and “visceral notions of personal and collective responsibility.”<sup>6</sup> This, he suggests, we might think of as affective justice – “not so much an emotion as a bodily feeling, a corporeal sonority, a rhythm that places bodies on the line, an obligation that haunts and unsettles the narratives of transitional justice.”<sup>7</sup> A few lines later he enlarges on the claim, stating that “if the form of justice is cultural” – that is, routed through the cultural imaginary – “then its force is not so much normative as it is affective.”<sup>8</sup> For Rush, this urges attention to art’s capacities to disclose not just the complexities of justice, but also and particularly its affective and embodied dimensions as historical fact and lived experience.

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**3** Kamari Maxime Clarke, *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback* (Durham, NC: Duke University Press, 2019), xxiii.

**4** Clarke, *Affective Justice*, xxii. While emotion is more cognitive and affect more embodied, they are “inextricably linked.” Emma Hutchison, *Affective Communities in World Politics: Collective Emotions after Trauma* (Cambridge: Cambridge University Press 2016), 16.

**5** Clarke, *Affective Justice*, 5.

**6** Peter D. Rush, “After Atrocity: Forward to Transition,” in *The Arts of Transitional Justice: Culture, Activism, and Memory after Atrocity*, eds. Peter D. Rush and Olivera Simić (New York: Springer, 2014): v-xi, vii.

**7** Rush, “After Atrocity,” vii.

**8** Rush, “After Atrocity,” viii.

In what follows, we combine the theories of Clarke and Rush to derive a framework for a reading of Abderrahmane Sissako's 2006 film *Bamako* as a cinematic articulation of affective justice. With Clarke, we share an initial focus on thinking about, and thinking through, responses to "judicial inequalities that do not always find expression in legal frameworks."<sup>9</sup> A significant stake of Clarke's argument is that "lawfare"<sup>10</sup> is not adequate to the task of confronting the *longue durée* of structural violence that has afflicted Africa, and which continues to be felt in everyday life. In particular, Clarke targets what she refers to as a practice of "legal encapsulation"<sup>11</sup> that diverts attention from structural injustices to matters of individual legal accountability and the moral responsibility to assist victims. Affective justice, in Clarke's understanding, counters this by placing the structural underpinnings of institutional violence at the heart of the problem, mobilizing a sense of justice that is "not just about addressing theft and violence through law", but about "addressing the larger conditions within which theft and violence happen."<sup>12</sup> From Rush, meanwhile, we take the turn to artistic practices and their discourses of aesthetic judgement as an alternative space and idiom for working through such structural injustices, and for the expression of an affective justice that unsettles dominant legal and political narratives.

With this as our lens, we propose here a reading that constitutes *Bamako* as a direct yet deft intervention in the politics of international criminal law and global justice in the aftermath of the policies of structural adjustment imposed on the South by international financial institutions (IFIs). Our departure point is the imaginative scenario around which the film revolves: a fictional trial, mounted in the interior courtyard of a house in Bamako,<sup>13</sup> at which the people of Africa sue the International Monetary Fund (IMF) and the World Bank for impoverishing the continent through their structural adjustment programmes. Via the conceit of the staged proceedings, *Bamako* presents a reckoning with the predatory politics of the financial instruments of Western neo-liberalism, which perpetuate a 'slow violence' across the African world – debt, famine, and, above all, an inability to benefit from the continent's richness of natural resources. In its obvious improbability, moreover, the trial conveys a criticism of the limits of law and its claim to equal treatment, voicing an appeal for justice in the name of a community that cannot rely on any existing formal institution, national or international, for proper legal redress and representation. It is in respect of these matters that we locate the

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<sup>9</sup> Clarke, *Affective Justice*, xxiii.

<sup>10</sup> Clarke, *Affective Justice*, 31.

<sup>11</sup> Clarke, *Affective Justice*, 17 (and throughout).

<sup>12</sup> Clarke, *Affective Justice*, 263.

<sup>13</sup> Sissako's original title for the film was *La Cour*, a deliberate play on the double meaning of the French word meaning both courtyard and court.

film's investment in a sense of affective justice that is constitutive of its political vision, and which is grounded in two commitments – first, in an implicit critique of narrowly judicialized forms of justice that disregard the deeply felt realities of violence and inequality in the African postcolony; and second, in an imaginative effort to look beyond the limited horizon of current law and to envisage alternative possibilities for pursuing accountability and narrowing the impunity gap in present-day frameworks of international and global justice.

## 2 Situating *Bamako*

Before unpacking the representational strategies that disclose these commitments, we think it useful and important to situate *Bamako* in four distinct yet overlapping contexts.<sup>14</sup> A first is to loosely place the film as a work of political cinema<sup>15</sup> that, in responding to conditions of violence and oppression, speaks to Rush's suggestion of art as an opening to affective justice. Across disciplines, there is a substantial and growing literature on art's capacities to reconfigure the sensible texture of politics by expanding the range of what can be seen, said, and thought.<sup>16</sup> Within the wide span of law-and-humanities scholarship, there are also distinct strains of work that, across diverse contexts, claim the potential of art to expand our imaginative and critical capabilities by making legible subject positions or experiential realities elided by formal legal discourse. Charged with a distinct sense of authenticity – that of the *lived experience of injustice* – such personal (counter-) narratives can work to expose the shortcomings of existing legal and political grammars of recognition, and to urge attendance to prevailing conditions of precarity and marginalization.<sup>17</sup> By providing access to the affective world of those affected by regimes of injustice, violence and inequality, they can, moreover, constitute a sense of affective justice that admits – and is inseparable from – feelings and embodied experience.

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<sup>14</sup> These are, of course, contexts relevant to the particular purposes of this essay. *Bamako* sits within a range of further traditions and currents, including those of African cinema and politics, that we do not comment upon here.

<sup>15</sup> See William Brown, "Listening to the Future: The Film-Philosophy of Abderrahmane Sissako," in *Third Cinema, World Cinema and Marxism*, eds. Ewa Mazierska and Lars Kristensen (London: Bloomsbury Academic 2020): 235–254.

<sup>16</sup> See Jacques Rancière, *The Politics of Aesthetics*, trans. Gabriel Rockhill (London: Continuum, 2006).

<sup>17</sup> See Steven Howe and Clotilde Pégorier, "Law, Narrative and Critique in Contemporary Verbatim Theatre," *Pólemos* 14.2 (2020): 385–405.

A second move is to position *Bamako* alongside other artistic interventions that mobilise aesthetic strategies to render and critique the structural injustices of global power and capital in particular. Here, we cite just two prominent examples. Steve McQueen, in his short film *Gravesend* (2007), presents an oblique meditation on neo-colonial exploitation in the Democratic Republic of Congo, juxtaposing images of the brutal, impoverished conditions involved in the local extraction of coltan, with those of futuristic processing plants in England, where the mineral is refined prior to use in systems of global communication. Using the idiom of montage, McQueen connects the wealth of multinationals with the depredations of a country that shares the world's lowest Human Development Index – despite its immense natural wealth. Through its titular reference, meanwhile, the film situates current exploitative practices within the longer history of colonial appropriations – as one insert reminds us, the English port town of Gravesend was the location from which Marlowe set sail for the Congo in Conrad's *Heart of Darkness*. More overt in its political foregroundings, meanwhile, is Milo Rau's 2015 piece *The Congo Tribunal*, a civil tribunal into the brutal crimes committed in the context of the ongoing civil war in the DRC – described by Rau and his team as the “biggest and bloodiest economic war in human history.”<sup>18</sup> Staged over six days – three in Bukavu and three in Berlin – and designed, in Rau's own words, to “counteract [...] decades of impunity”,<sup>19</sup> the hearings converged around the complicity of political elites, multinational mining companies and the international community in creating and proliferating violence and poverty in the region. Like McQueen, Rau also embeds current injustices symbolically in the extended context of colonial history – the choice of Berlin as the seat of the tribunal in Europe evokes the Berlin Conference of 1884/85, at which European powers set out a new framework for managing the ongoing process of colonialization, transforming Africa into a “conceptual *terra nullius*.”<sup>20</sup> With T.J. Demos, we might thus ally both *Gravesend* and *The Congo Tribunal* with current artistic practices that pull attention towards “zones of economic and political inequality that are normally and tragically unrepresented within the dominant mainstream and western media.”<sup>21</sup> At the same time, both works also pointedly take into account, and hold to account, the structural agencies of violence and inequality, gesturing towards a sense of

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<sup>18</sup> See <http://www.the-congo-tribunal.com/#description>.

<sup>19</sup> See <http://www.the-congo-tribunal.com/#hearings>.

<sup>20</sup> Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), 91.

<sup>21</sup> T. J. Demos, “The Art of Darkness: On Steve McQueen,” *October* 114 (2005): 61–89, 62–63.

affective justice that attends to the experiences of the dispossessed and marginalised, as shaped by subsisting structures of “power, history and contingencies.”<sup>22</sup>

Third, we think it vital to attend the possibilities of *Bamako* as an artistic intervention not just *about* but also *from* the Global South. Here we take our cue from David Babcock and Peter Leman who, in their introduction to a recent special journal issue, urge closer scholarly attention to artworks from southern sites, and ask what it might mean to *do* law and literature (or law and art) from the perspective of the Global South.<sup>23</sup> In particular, Babcock and Leman make the case for reading art from the South for its “privileged insight into the workings of the world at large,”<sup>24</sup> and for its ability to make legible forms of violence and victimhood that follow from the processes of global capitalism.<sup>25</sup> We share the view that art from the Global South is a valuable resource not just of new critical subjects and spaces, but also of new ways of thinking law and justice. In *Bamako*, we discern this particularly in the unique vantage point the film presents for critiquing international law’s colonial past and present, and for re-imagining its possible future.

The fourth contextualizing frame, meanwhile, is to consider Sissako’s turn to the trial or tribunal as a particular form and forum for pursuing justice for disaffected groups or communities. The obvious touchstone here is the Russell Tribunal, held between May and November 1967, with the aim of documenting and publicizing crimes committed in the context of the Vietnam War, and to pressure the international community to meet its legal and normative obligations to uphold justice. In the words of co-founder Jean-Paul Sartre, the tribunal “emerged from a void, and in response to an appeal”<sup>26</sup> – it was born of the absence of formal institutions adequate to the task of delivering accountability, and of the demand that this be pursued via alternative routes. The tribunal served, in other words, as a symbolic corrective to perceived deficiencies in the current framework of international justice and envisioned a new model for thinking about forms of international criminal accountability. Subsequent iterations – including the sessions of the Permanent People’s Tribunal (PPP) on the policies of the IMF and the World Bank in Berlin in 1988 and Madrid in 1994 – have contributed towards similar aims,

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<sup>22</sup> Quotation from an interview with Clarke in the journal PoLAR. See <https://polarjournal.org/2019/11/19/kamari-clarke-on-affective-justice-polar-author-interview>.

<sup>23</sup> David Babcock and Peter Leman, “Introduction: Law and Literature from the Global South,” *Journal of Commonwealth and Postcolonial Studies* 7.1 (2019): 1–10.

<sup>24</sup> Jean Comaroff and John L. Comaroff, *Theory from the South: Or, How Euro-America is Evolving Toward Africa* (Abingdon: Routledge, 2011), 1.

<sup>25</sup> See Babcock and Leman, “Introduction,” 4.

<sup>26</sup> John Duffett (ed.), *Against the Crime of Silence: Proceedings of the International War Crimes Tribunal* (New York: Simon and Schuster, 1968), 42.

and reinforced a view of the peoples' tribunal as a compelling mechanism for challenging the inadequacies of existing law, and for invoking a collective responsibility to ensure that justice is done outside official legal and judicial spaces.<sup>27</sup>

In the field of art, too, the tribunal has a distinct lineage as a form of political and aesthetic (re)presentation, particularly on the stage. One thinks immediately of the tradition of 'tribunal theatre', commonly associated with the re-enactments of Heinar Kipphardt, Rolf Hochhuth and Peter Weiss in the 1950s and 1960s, and later thrust back to the fore in the collaborations of Nicolas Kent and Richard Norton-Taylor at London's Tricycle Theatre from the mid-1990s into the early 2000s. Still more pertinent for present purposes is an alternative vein of works that, rather than reconstructing official proceedings, instead imagine and stage tribunals that do not (yet) exist in the world. Over the past decade, this kind of technique has been given a new inflection in the form of theatrical pre-enactments that use the space of art to perform new symbolic institutions – tribunals, courts, parliaments, assemblies – that respond to perceived gaps or weak spots in existing systems of law and justice.<sup>28</sup> Examples include Jonas Staal's *New World Summit*, which invites representatives of communities and groups excluded from the mainstream of democratic discourse to participate in a temporary global parliament, and Staal's more recent collaboration with Radha d'Souza, the *Court for Intergenerational Climate Crimes* – a "more than human" tribunal that models an alternative jurisdiction for dealing with intergenerational climate crimes committed by states and corporations.<sup>29</sup> Rau's *Congo Tribunal* also sits squarely within this current of contemporary practice – as an artistic response to the absence of any actual political or judicial process that might stop the violence in

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<sup>27</sup> See Regina Menachery Paulose's recent definition of peoples' tribunals as "movements created for the purpose of examining rights violations whereby civil society believe the violation has not been formally recognised or addressed by the state, community, or a legal system." Regina Menachery Paulose, "Can You Hear the People Sing? Victim/Survivor Rights in Peoples' Tribunals," in *Peoples' Tribunals, Human Rights and the Law: Searching for Justice*, ed. Regina Menachery Paulose (Abingdon: Routledge 2020): 2–22, 2. See further the earlier verdict of Arthur Jay Klinghoffer and Judith Apter Klinghoffer: "International citizens' tribunals can therefore serve as a corrective mechanism through which public intellectuals mobilize world public opinion against powerful countries shielded from sanctions under international law. If the absence of effective and permanent legal structures is the problem, then tribunals may offer an appropriate solution." Arthur Jay Klinghoffer and Judith Apter Klinghoffer, *International Citizens' Tribunals. Mobilizing Public Opinion to Advance Human Rights* (New York: Palgrave, 2002), 5.

<sup>28</sup> Our comments on these pre-enactments owe in part to a reading of Steven Howe's unpublished paper "Imagining Law Otherwise: Theatrical Preenactments and Future Justice," delivered at the Critical Legal Conference in September 2021.

<sup>29</sup> See <https://framerframed.nl/en/dossier/court-for-intergenerational-climate-crimes-cicc/>.

the Congo, and an attempt to provide the missing courtroom for an indictment against those responsible in the name of “truth and justice.”<sup>30</sup> Each in their own way, these pre-enactments imagine – and actualize in the “here and now” of the theatre – alternate legal frameworks that borrow from, and variously re-work, the familiar forms, scripts, and gestures of legal justice. They each, moreover, use the affordances of the tribunal form to critically and creatively engage urgent, ‘live’ issues – as a space for platforming the voices of the disaffected, for critiquing the failures of existing law to punish perpetrators and provide recognition for victims, and for trying out new vocabularies of representation and accountability. Under this optic, these performances resonate as popular expressions of justice that, in a manner akin to peoples’ tribunals, reflect and respond to the shift to anti-impunity in discourses of human rights and international justice.<sup>31</sup>

It is against this backdrop that we propose our reading of *Bamako*’s particular articulation(s) of affective justice. This point bears underscoring. By contextualizing the film within the above registers, we do not mean to reduce it to a banal iteration of a stock set of familiar political statements. On the contrary, it is by exploring *Bamako* alongside and against these various practices and discourses that we hope to disclose the uniqueness of Sissako’s cinematic vision and, particularly, the sophisticated nature of his legal-political critique.

### 3 An Improbable Trial

First, a brief word of introduction on Sissako. One of the most celebrated contemporary African filmmakers, he was born in Mauritania, raised in Mali, and studied in the former Soviet Union in the 1980s. His best-known feature films – *Waiting for Happiness* (2002), *Bamako* (2006), and the award-winning *Timbuktu* (2014) – explore how migration, capitalism, and Islamic fundamentalism respectively shape everyday life in contemporary African locales. Sissako has been termed a “*griauteur*” whose films “combine the collective sensibility of the *griot* with the singular vision of the *auteur*.”<sup>32</sup>

A majority of these films bring together universal themes with African particularities. In a 2003 interview, Sissako emphasized the universality of desperation and hopefulness when talking about *Waiting for Happiness*:

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**30** This was the banner under which the project ran.

**31** On this point with regard to peoples’ tribunals, see further Diane Otto, “Impunity in a Different Register: Peoples’ Tribunals and Questions of Judgment, Law and Responsibility,” in *Anti-Impunity and the Human Rights Agenda*, eds. Karen Engle, Zinaida Miller and D. M. Davis (Cambridge: Cambridge University Press, 2016): 291–327.

**32** Brown, “Listening to the Future,” 242 & 244.



Desperateness is part of all people's day-to-day existences, in the North and the South. ... Africa may have more crucial problems, but not a specific desperateness!

The quest for happiness is something that is never resolved in any civilisation. It cannot be to go to Paris or anywhere else. ... We build happiness in different ways, and we manage when we have hope.<sup>33</sup>

A few years later, describing his decision to make *Bamako*, Sissako clarified that wealthy Western states and international financial institutions had imposed a very "specific desperateness" on Africa in the form of structural adjustment programmes and debt burdens. "Faced with the gravity of the African situation, I had felt it an emergency situation to evoke the hypocrisy of the North vis-à-vis the countries of the South."<sup>34</sup> From that, it was but a short step to "using cinema as a vehicle for representing injustice."<sup>35</sup>

In opting for the medium of the trial, Sissako selects a perhaps obvious way of (re-)presenting injustice. Yet, as he explains, the trial is in ineluctable tension with its filmic representation:

I had the desire to perform a political act, which was the trial. A highly improbable trial, one that is impossible today. Tomorrow, maybe not. But while it's impossible today, it can be made up in a film. This is the role of creativity of the artist. To dream things up.

But for me setting it in a courtyard allowed everyday life to not only transcend the trial but to take centre stage. ... It reinforces the idea that the role of a film is not to be right. ... So while the role of the trial is to expose a truth, with a film it's the opposite. A film is ... more subtle, more ambiguous ... Its role is to pose questions.<sup>36</sup>

Sissako's casting, script, directing, and editing heighten this tension between trial and film in a number of distinct ways. First, he has prominent lawyers – Senegalese lawyer Aissata Tall Sall and French lawyers William Bourdon and Roland Rappaport – playing themselves alongside actors and regular inhabitants of the courtyard.<sup>37</sup> Second, he frames the trial's documentary fiction within the fictional melodrama of a collapsing marriage between Melé, a Senegalese nightclub singer, and Chaka, her unemployed Malian husband. Third, he inserts a film within the

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<sup>33</sup> "Interview with Abderrahmane Sissako, by Olivier Barlet," *Africultures.com*, 30 April 2003, available at <http://africultures.com/interview-with-abderrahmane-sissako-by-olivier-barlet-5602/> (the quotations have been reordered).

<sup>34</sup> "Entretien avec Abderrahmane Sissako" at 5.

<sup>35</sup> DVD Interview with Sissako by Daniel Graham (Ion Productions 2007) included on *Bamako* (Artificial Eye 2007).

<sup>36</sup> DVD Interview with Sissako.

<sup>37</sup> Sissako talks about how "the real people who have always lived in the courtyard ... play their role, which is to get on with everyday living." DVD Interview with Sissako.

film – a mock Spaghetti Western called *Death in Timbuktu* – that plays out on a television set in the courtyard after dark.<sup>38</sup> Fourth, he keeps cutting away from the trial – perhaps most self-reflexively when he shows a group of bored youths outside the courtyard disconnecting a loudspeaker relaying the proceedings.

Furthermore, the trial itself keeps getting interrupted: first by a woman in charge of dyeing cloth outside the courtyard, then by a wedding procession, and ultimately by Chaka's funeral. Sissako has explained his decision to intercut the trial with other storylines and everyday life, writing that he “believe[s] profoundly that life and hope go past the notion of justice” and that he “wanted the discourse of the protagonists in the trial to be regularly chopped off by other realities.”<sup>39</sup> These realities include scenes of everyday life in and around the courtyard: a young man tying up the back of Melé's dress in full view of the court; a doctor caring for a bedridden young man; and a group of women dyeing fabrics. The overall effect of these interruptions and disruptions is to constantly remind us how the quotidian, including everyday injustices, intrude on and complicate the pursuit of justice.

At first glance, Sissako's decision to stage an improbable trial – which trades on the language of international law and criminal justice – seems perplexing. For one thing, international law has historically served the interests of imperialism, colonialism, and globalization. For another, international criminal justice has disproportionately targeted African defendants. Our argument, however, is that *Bamako* both references and resists international law and criminal justice via an act of artistic reimaging – of law, justice, and the genre of the trial film itself. In this sense, we read the film as a kind of cinematic pre-enactment that, like its theatrical counterparts, shifts focus from past to future legal judgment,<sup>40</sup> and re-works the familiar scripts and gestures of justice to articulate a critique of current legal frameworks. In doing so, *Bamako* also draws together Rush's and Clarke's respective notions of affective justice, turning to the space of art to prompt “visceral notions of collective and personal responsibility”<sup>41</sup> in the viewer about their complicity in the “larger conditions within which theft and violence happen”<sup>42</sup> in Africa.

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**38** See Tsitsi Jaji, “Cassava Westerns: Ways of Watching Abderrahmane Sissako,” *Black Camera* 6.1 (2014): 154–177.

**39** “Entretien avec Abderrahmane Sissako” at 5.

**40** Steff Nellis, “Enacting Law: The Dramaturgy of the Courtroom on the Contemporary Stage,” *Lateral* 10.1 (2021) [online].

**41** Rush, “After Atrocity,” vii.

**42** Clarke, *Affective Justice*, 263.

## 4 An Annoying Trial

For many, international law has been the handmaiden of globalization. Hence, the fact that, in the film, “the hungry and exploited subscribe to the very idea of *suving* IMF/World Bank – meaning world capitalism – in a *court of law* is the number one evidence that they have lost.”<sup>43</sup> International law would appear to constrain the very possibility of holding the IMF and World Bank to account – making the implausible actually impossible. Yet, we read *Bamako* as both critically resisting and imaginatively transforming international law. In 2003, B.S. Chimni issued a “Manifesto” for Third World Approaches to International Law (TWAAIL), that begins:

The threat of recolonisation is haunting the third world. ... International law is playing a crucial role in helping legitimize and sustain the unequal structures and processes that manifest themselves in the growing north-south divide.<sup>44</sup>

Chimni counsels against wholesale rejection of international law and insists on the need for TWAAIL to embrace “imaginative solutions.”<sup>45</sup> One is to “make the story of resistance an integral part of the narration of international law.”<sup>46</sup> He suggests this be done through the arts: “There is perhaps a need to experiment with literary and art forms (plays, exhibitions, novels, films) to capture the imagination of those who have just entered the world of international law.”<sup>47</sup> Sissako answers this call by imaginatively deploying international lawyers to prosecute international financial institutions in a highly localized, everyday space – a domestic *court/yard* in Bamako – where “international law is being materialized today.”<sup>48</sup> *Bamako* thus responds to Anthony Anghie’s “hope [...] that international law can be transformed into a means by which the marginalized may be empowered.”<sup>49</sup>

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<sup>43</sup> Tejumola Olaniyan, “Of Rations and Rationalities: The World Bank, African Hunger, and Abderrahmane Sissako’s *Bamako*,” *The Global South* 2.2 (2008): 130–138, 134. He goes on to argue that “the film is actually far more radical, just very deceptively so.” (135).

<sup>44</sup> B.S. Chimni, “Third World Approaches to International Law: A Manifesto,” *International Community Law Review* 8 (2006): 2–27, 2.

<sup>45</sup> Chimni, “Third World Approaches to International Law,” 26.

<sup>46</sup> Chimni, “Third World Approaches to International Law,” 22.

<sup>47</sup> Chimni, “Third World Approaches to International Law,” 22.

<sup>48</sup> Luis Eslava and Sundya Pahuja, “Between Resistance and Reform: TWAAIL and the Universality of International Law,” *Trade, Law and Development* 3.1 (2011): 103–130, 127. Eslava and Pahuja further argue the need “to start locating the international in those places that usually escape our attention and yet regulate our lives, especially the lives of the billions who are subject to developmental interventions.” Eslava and Pahuja, “Between Resistance and Reform,” 129.

<sup>49</sup> Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), 318.

International criminal justice, meanwhile, has mostly emphasized spectacular violence and individual criminal responsibility rather than structural violence and the responsibility of international organizations and multinational corporations. In doing so, it has focused heavily on Africa: the UN's International Criminal Tribunal for Rwanda, the internationalized Special Court for Sierra Leone, the International Criminal Court's (ICC's) case docket, and the lengthy efforts to prosecute former Chadian dictator Hissène Habré. Clarke thus takes international criminal justice to task for ignoring "structural forms of victimhood caused by deep and persistent conditions of economic and political disenfranchisement."<sup>50</sup> *Bamako* advances a similar critique of international criminal justice as disconnected from the needs of many Africans. Rather than trying African dictators or warlords in The Hague or Arusha for *crimes against humanity*, it puts the IMF and World Bank on trial in an African courtyard for *crimes of inhumanity* against African society as a whole. William Bourdon eloquently sums up the case for the civil parties (African society as a whole):

You'll declare the World Bank guilty and force it to become more humane. You'll declare it guilty of the crimes of inhumanity and cynicism committed over 20 years. The only sentence possible is ... the most clement one. We can't throw [then World Bank President Paul] Wolfowitz in the Niger. The caimans wouldn't want him. The sentence that we request of you: community service for mankind for all eternity.

As Bourdon surely knew, there is no crime of inhumanity and the existing crime against humanity for other inhumane acts (under the ICC Statute) could not be applied to legal persons like the World Bank. What Bourdon and, by extension, *Bamako*, are doing here is to argue that international criminal justice needs to go beyond its fixation on warlords<sup>51</sup> and pay greater attention to economic "crimes of the powerful"<sup>52</sup> – including the World Bank's globalization.

Turning now to consider the trial film or courtroom drama – this is, of course, a staple of Hollywood films and television series. As Austin Sarat, Jessica Silbey and Martha Merrill Umphrey write:

The pleasures of the genre flow from the very process of watching, weighing, and testing characters, evidence, process, and outcome. Such films create a theater of justice and injustice; and to the extent that they interpellate us successfully as jurors-spectators, they

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<sup>50</sup> Clarke, *Affective Justice*, 54.

<sup>51</sup> Kirsten Ainley, Stephen Humphreys, and Immi Tallgren, "Introduction: International Criminal Justice on/and Film," *London Review of International Law* 6.1 (2018): 3–15, 9–10.

<sup>52</sup> See for example David O. Friedrichs, "Crimes of Globalization and Asian Dam Projects: Powerful Institutions and Slow Violence," in *Revisiting Crimes of the Powerful: Marxism, Crime and Deviance*, ed. Steven Bittle et al. (Abingdon: Routledge, 2021): 231–242.

create conditions of possibility for our continuing attachment (however ambivalent) to the project of law.<sup>53</sup>

Sissako subverts the genre by constantly interrupting our spectating and disrupting our attachment to law. There is no central character, no dramatic build-up, and ultimately no verdict. The villains are nowhere to be seen. The camera is restless and the audience listless. Towards the end, three young men hanging about outside the courtyard express their boredom in turn:

- The trial has become annoying.
- When is it going to end?
- No one can say.

There are two ways to read that annoyance. The first is that the trial – and the attendant filming of the trial – are disrupting everyday life in and around the courtyard. Indeed, these same young men had earlier switched off the loud-speaker.<sup>54</sup> The second is that the trial – and its artistic representation – cannot deliver justice. As Korsten observes, “[o]ne of the reasons that art can be annoying in its connecting law and justice is that any call for justice is always, in a sense, out of date: it ought to have already been answered.”<sup>55</sup> The absence of a judicial verdict at the close suggests, moreover, that the struggle for justice – as represented by and through the trial – remains unfinished and hence annoyingly ongoing.

## 5 Performing Affective (In)Justice

There is much to say about the particular ways in which *Bamako*'s cinematic pre-enactment of the trial process prompts a reimagining of law and justice.<sup>56</sup>

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53 Austin Sarat, Jessica Silbey, and Martha Merrill Umphrey, “Introduction: The Pleasures and Possibilities of Trial Films,” in *Trial Films on Trial: Law, Justice, and Popular Culture*, eds. Austin Sarat, Jessica Silbey, and Martha Merrill Umphrey (Tuscaloosa AL: University of Alabama Press, 2019): 1–16, 11. Silbey goes further, arguing that trial films are affective instruments for American liberal-legalism. Jessica Silbey, “Patterns of Courtroom Justice,” *Journal of Law and Society* 28.1 (2001): 97–116, 98 & 116.

54 One source of annoyance and boredom may well have to do with the fact that much of the trial was conducted in French rather than, say, Bambara. See Jonas Bens, “Transitional Justice Atmospheres: The Role of Space and Affect in the International Criminal Court’s Outreach Efforts in Northern Uganda,” in *Normative Spaces and Legal Dynamics in Africa*, eds. Katrin Seidel and Hatem Elliesie (Abingdon: Routledge 2021): 41–60.

55 Frans-Willem Korsten, *Art as an Interface of Law and Justice: Affirmation, Disturbance, Disruption* (Oxford: Hart 2021), 4.

56 We plan to extend our reading of the trial in an expanded book chapter to be published shortly.

In the interest of brevity, however, we limit our focus here to several affective performances of justice and injustice during the imagined proceedings.<sup>57</sup> The first is a silent performance of distress and shame. One witness, Samba Diakité, lists his profession as a former school teacher. After providing his details, he lapses into a discomfiting silence that has listeners outside the courtyard checking to see if the loudspeakers' wires have come loose.<sup>58</sup> The presiding judge finally asks "You have nothing to say?" Diakité responds by turning away and walking out of the courtyard. In fact, he has a lot to say. Recovering his voice outside, he first tells a youth to disconnect the loudspeaker – a performative silencing of the trial. He then relates a recurrent dream to the security guard: how he dips his hand into a bag full of heads of state. The guard cautions him: "Don't tell anyone else about this dream. Don't talk about it again." Another silencing.

The second is a performance of anger and disgust that links together the micro-enterprises in and around the courtyard with the macro-economic forces on trial. The film initially shows these parallel worlds by cutting from the trial to scenes of cloth production and dyeing: a girl and her grandmother inside the courtyard turning cotton bolls into thread; a group of women outside the courtyard dyeing cloth. These artisanal activities are juxtaposed with testimony in the trial about how first structural adjustment programmes and then Chinese dumping have undercut local textile production. As one witness, Aminata Traoré (Mali's former Minister of Culture and Tourism, lead organizer of the 2005 World Social Forum in Bamako, and noted public intellectual), states: "I'm fighting for the possibility for a country like Mali to produce cotton if it wishes and to earn a living from it." The lead woman dyer loudly interrupts the proceedings to accuse the African defense lawyer of complicity:

How can you defend them? Until your dying day you'll never be like them. ... You're lost for us.<sup>59</sup>

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<sup>57</sup> See for example Jonas Bens, "The Courtroom as an Affective Arrangement: Analysing Atmospheres in Courtroom Ethnography," *The Journal of Legal Pluralism and Unofficial Law* 50.3 (2018): 336–355, 342–346.

<sup>58</sup> At this moment, the "impossibility of communication" underscores "Sissako's larger point that Africa is a continent that has had very little chance or ability to speak for itself." Alison J. Murray Levine, "Words on Trial: Oral Performance in Abderrahamane Sissako's *Bamako*," *Studies in French Cinema* 12.2 (2012): 151–167, 156–157.

<sup>59</sup> In an earlier scene, Traoré testified: "the impetus is northern but the theft is local done with our complicity."

The presiding judge's effort to silence her only goads her into greater anger:

Let me speak to this fool! Look what he's doing. ... If we were alone you wouldn't leave unharmed. I'd accept the consequences. Enough suffering. Enough manipulation.

This scene is quickly followed by the *Death in Timbuktu* sequence which portrays African complicity through a very broad scene that converts the slow violence of structural adjustment into the speedy violence of the Wild West. A white cowboy tells his African sidekick: "They don't need two teachers [pause] ... spare the kids." The African then guns down the extraneous teacher.<sup>60</sup>

The third is a performance of anger and distress. As part of a prologue before the film's title, we watch an old farmer, Zegué Bamba, seeking entrance to the *court/yard*. A few minutes later, he takes the stand without being called and the ermine-robed presiding judge and court usher try to restore order:

Judge: Would the court usher ask the gentleman to remove his hat? Tell him it's not his turn to speak yet. He'll get his chance to speak ...<sup>61</sup>

Bamba: Words are something. They can seize you in your heart. It's bad if you keep them inside.

Court usher: You can say what you have in your heart when the time comes. Since he [the presiding judge] hasn't asked you to speak, stop now and sit down.

Bamba: It doesn't matter. The goat has its ideas but so does the hen. When you come for something you have to do it. ...

Court usher: You haven't been asked to speak. Go and sit down. Your chance will come. They're asking you to wait.

Bamba: I'll give him back his word. My words won't remain within me.

Bamba is true to his word. Near the end of the trial he interrupts the proceedings again – this time with a sung lament while angrily shaking his fly-whisk. He sings in a language from the south that few in Bamako speak.<sup>62</sup> This time, the presiding judge submits to Bamba's authority and listens respectfully if

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**60** As Sissako explains, this scene "was a more direct way of expressing the idea that Africa, too, is responsible for what happens to her." DVD Interview with Sissako. The shooting of the superfluous schoolteacher also reminds us that the mostly silent witness, Samba Diakité, was a former schoolteacher.

**61** In his closing statement, Bourdon seems to implicate the presiding judge in the silencing of Africa's suffering when he says: "For Africa to remain silent in her suffering that requires ... prison guards at times."

**62** DVD Interview with Sissako.

uncomprehendingly. As Durham observes, “[t]his man’s complaint, his expression of the wrong that he has suffered, must be heard within an existing space of juridical and political discourse that has neither a place for it, nor the means to fully comprehend it.”<sup>63</sup>

Sissako explained why he chose not to translate Bamba’s song:

It’s a cry from the heart. ... [He represents] people who have never had their voices heard, who have never given their opinions, but still suffer a great deal of injustice today. And for me, the act of having your voice heard like that, of singing, of shouting is also the most universal form of communication. A cry doesn’t need to be translated. ... So since he was able to move people [in the courtyard] without them understanding, I felt it wouldn’t be right to translate his words.<sup>64</sup>

Bamba’s lament is more affective – more communicative – by virtue of not being understood or translated. Indeed, his song captures the attention not only of the court but also of those working inside and outside the courtyard. Sissako uses reaction shots to show how affect travels among bodies. Bamba’s lament brings into being a new “affective community”<sup>65</sup> that links court and courtyard at least temporarily.<sup>66</sup>

Later, Malian lawyer Aissata Tall Sall makes Bamba’s *words* the centre-piece of her closing argument:

Have you heard Zegué Bamba’s lament, Your Honour?

This peasant who asks, ‘Why don’t I sow anymore? When I sow, why don’t I reap? Why don’t I eat when I reap?’

This Africa, Your Honour, is asking you with dignity, humility and modesty, but with legitimacy for justice.

And you will give Africa the justice she deserves.

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**63** Scott Durham, “‘The Center of the World Everywhere’: Bamako and the Scene of the Political,” *World Picture Journal* 2 (2008): 1–14, 6, available at [http://www.worldpicturejournal.com/WP\\_2/PDF%20Docs/DurhamPDF.pdf](http://www.worldpicturejournal.com/WP_2/PDF%20Docs/DurhamPDF.pdf).

**64** DVD Interview with Sissako. This echoes an earlier interview where Sissako observed that “the intention to communicate is more important than communication itself. There is a world that invents means of communication but which is not capable of greeting its neighbour.” In fact, there is no subtitling for any of the music in the film: Melé’s torch song, the (*sumu*) wedding singer, or Bamba’s lament.

**65** Hutchison, *Affective Communities in World Politics*.

**66** Durham, “Bamako and the Scene of the Political,” 7–9 & footnote 12.



This time around the audience in the courtroom claps at Bamba's now-translated words.

As Bamba's sung testimony makes clear, the trial provides a space for the disaffected to affectively claim justice. The trial privileges affect over evidence and legal argument. The lawyers for the civil parties repeatedly ask witnesses how they *feel*. After listing statistics about the effects of structural adjustment on various African economies, Sall asks the witness: "How do you feel about these figures that are particularly disastrous for African peoples?" There is a similar moment in Bourdon's direct examination of another witness:

Bourdon: When you add it all up, this money squandered, these public holdings sold off, these families ruined, what is your feeling about that today?

Witness: A feeling of shame, of anger, of anger and compassion. Compassion for the country.

Rappaport, the defense lawyer, is dismissive about the evidentiary value of witnesses' feelings. From the witness stand, Traoré counters that expertise also comes from "issues that I experience from the inside." Later, Rappaport accuses the African judges of bias against the IMF and World Bank: "Your heart suffers and your thoughts are with them rather than with us."

## 6 "When Is It Going to End?"

The film concludes without the presiding judge pronouncing a verdict – the most explicit and most enforceable performative utterance there is.<sup>67</sup> Rather, he is last seen in the courtyard, no longer wearing his robes, among the mourners at Chaka's funeral. By ending the film without a judgment, Sissako reminds us that the trial was a mere performance and that global justice is a deferred hope. The blue-dyed cloth covering Chaka's dead body affectively links his suicide back to the trial's effort to hold the IMF and World Bank accountable for the slow death of Mali's textile production and for the high unemployment rates (of which Chaka was just one casualty). The final frame of the film is the last line from Aimé Césaire's "The Thoroughbreds": "My ear against the ground, I heard Tomorrow pass."<sup>68</sup> This final statement suggests that, if we could but listen closely enough to Bamba's lament, we might just bring the future to pass, transforming pre-enactment into enactment, prefigurative into reconfigured politics, and affective into effective justice. In the

<sup>67</sup> J.L. Austin, *How to Do Things with Words* (Boston MA: Harvard University Press 1975).

<sup>68</sup> The line before is "'rest my cruelty,' I thought." *The Collected Poetry of Aimé Césaire*, trans. Clayton Eshleman and Annette Smith (Oakland CA: University of California Press 1983), 103.

meantime, though, the film's abrupt and inconclusive conclusion leaves us disaffected – waiting, wanting, and hoping for a better ending. Only now more impatiently than before.

## Bionotes

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