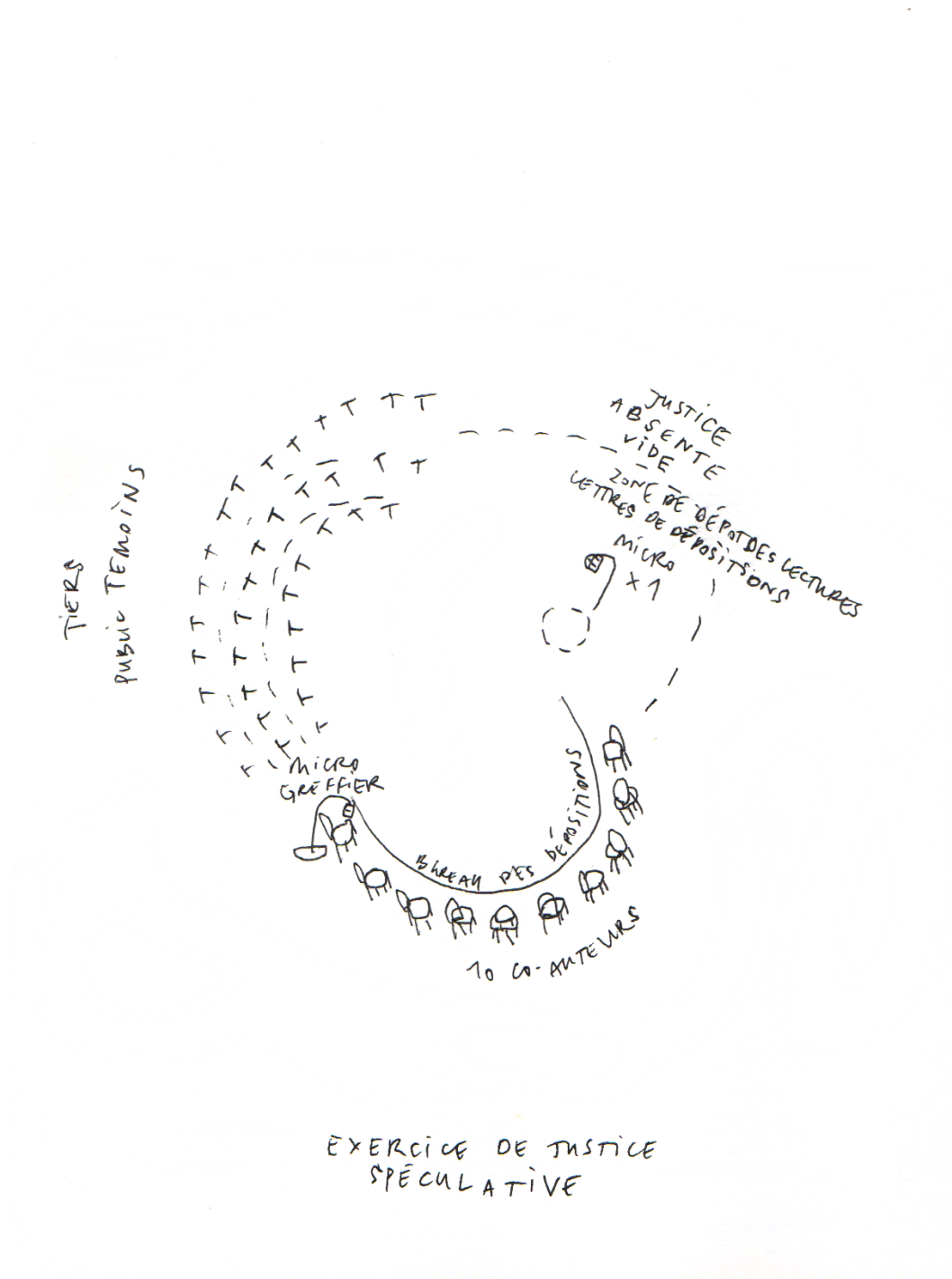


Speculative Justice as Decolonial Intervention: The Aesthetics and Politics of the Bureau des Dépôts

Shela Sheikh and Olivier Marboeuf



[see separate image file]

Exercise in Speculative Justice

It is the afternoon of Saturday, 10 October 2020. Around thirty people are assembled in a performance space of the Fonds régional d'art contemporain Provence-Alpes-Côte d'Azur (FRAC PACA) in the Marseille neighbourhood of Joliette (France).¹ Across one half of the windowless room are chairs for the limited number of spectators, evenly spaced according to social distancing measures due to the ongoing pandemic. The other half is less populated; half of an open semi-circle, facing the audience, is made up of ten seats, one of which—at one end of the semi-circle—is accompanied by a table and microphone. Opposite this, on the other side of the semi-circle, is a full-height microphone stand. Nine people enter and seat themselves on the chairs. Thus begins the 90-minute performance entitled *Exercices de justice spéculative* (Exercises in Speculative Justice). The performers are the members the Bureau des Dépôts (literally, Bureau of Depositions): Ben Moussa Bangoura, Laye Diakité, Mamadou Aliou Diallo, Pathé Diallo, Mamadou Djouldé Baldé, Mamy Kaba, Ousmane Kouyaté, Sarah Mekdjian, Marie Moreau and Saâ Raphaël Moundekeno.² The ensemble is comprised of ten co-authors with varying legal and administrative statuses, documented and undocumented (i.e., *sans papiers*, literally 'without papers'), the majority of whom were born and lived in Guinea, the former French colony in West Africa, prior to making their journey to France in 2016 or 2017 in order to demand asylum.³ Ousmane Kouyaté stands up, thanks the audience for being present, and introduces himself and the group. The other members in turn rise to introduce themselves, each declaring themselves an irreplaceable member of the Bureau des Dépôts. Following this, Ben Moussa Bangoura explains the following, which we quote at length given its significance for introducing the central gesture of the performance:

You find yourselves facing an *oeuvre*. For this *oeuvre*, this work to be activated, for it to exist, for us to be able to continue to create it and transform it, a fundamental condition

¹ The performance was part of a series entitled *Les parallèles du Sud* that was organised under the framework of the 13th edition of Manifesta, the European Nomadic Biennial. The Bureau's inclusion in the programme was proposed by Vertical Looping (Star)/curator Claire Astier. See <https://manifesta13.org/projects/bureau-des-depositions-exercices-de-justice-speculative/> and <https://www.fracpaca.org/Bureau-des-depositions-Exercice-de-justice-speculative>.

² The Bureau consists of ten co-authors, but in fact, due to medical force majeure, Marie Moreau was not able to be present for the Marseille performance. The ten seats remained nonetheless.

³ The names as well as date and place of birth of all members are listed at the beginning of the score of *Exercices of Speculative Justice* that follows this article. For more extensive biographies, see <http://mariemoreau.fr/project/bureau-des-depositions>. Of the ten, only two—Mekdjian and Moreau—have settled citizenship status. The Bureau des Dépôts was initiated by Moreau and Mekdjian in 2018, following an earlier collaboration on the project *Crossing Maps*, 'a research-creation platform on the cartography of journeys made clandestine by migratory policies.' See <https://www.antiatlas-journal.net/01-re-drawing-the-experience-art-science-and-migratory-conditions/> and <http://www.antiatlas-journal.net/pdf/01-Mekdjian-Moreau-re-drawing-the-experience-art-science-and-migratory-conditions.pdf>.

is necessary: our co-presence, in other words the physical co-presence of all of us together, ten co-authors.

We are the exclusive and irreplaceable performers of this work.

This work is not a theatrical play where the cast members may change.

It is a performance that renders us irreplaceable. Here, now, and also in your absence, we sculpt this work. And it sculpts us. Each text that is read, each interaction relates our singularities and our relations of co-dependence.

Thus, if one of us is missing, against our will, due to a change in our administrative status, in particular an arrest, placement in an administrative detention centre, a deportation, a removal from French territory, a transfer to another state, administrative or judicial summons, the work cannot be activated. We cannot perform it in public or continue with its (ongoing) creation.

Additionally, in the case of an involuntary absence of one of the co-authors due to a change of their administrative situation, we ask the institutions that have programmed us to cancel the event and to replace it with a press conference to reveal and publicize the situation, to organize an onstage conference between the audience and the press without the work.⁴

Following this, two more speakers take turns to come forward to further elucidate the form and aims of the performance, as a work of art, and the structure of co-presence and co-dependence upon which both the Bureau more broadly and the *Exercises* in particular are premised. As Laye Diakité explains, this co-dependence is asserted in the face of deportation orders from France, which are a threat to both the lives of the undocumented members and the work that is the Bureau, including the *Exercises*. The tool for this is a legal petition that the Bureau is working on with a legal office in France, which pits the ten co-authors against the Prefecture of Grenoble (France), where they currently reside. A further member explains how in May 2019, the ten co-authors had been hosted for a creative residency at the Centre national d'art contemporain de Grenoble, le Magasin des Horizons, in order to work on the creation of the *Exercises* performance. During this time, one of the co-authors was forcibly transferred to Spain under the Dublin Regulation, which seeks to establish the EU Member State responsible for the examination of individual asylum applications.⁵ During his 90-day transfer, the work of the Bureau could not continue. As such—and this is the crux upon which the Bureau, as a creative work, rests—, [w]e have collectively suffered an impediment to our creative freedom, our freedom of expression, our freedom of information. The integrity of our work and our right to

⁴ See note 2. Moreau's absence was not a deprivation of liberty by the state, hence the possibility of performing.

⁵ For current information on the Dublin Regulation, following the adoption of a New Pact on Migration and Asylum on 23 September 2020, see https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en.

disseminate the work have been affected.⁶ Details of the various attacks on works by the Bureau—deportation of co-authors from French territory, administrative summonses and deprivations of liberty during residencies and performances—are compiled in the form of ‘*depositions*’ (‘statements’, ‘declarations’, or ‘testimonies’) in a legal file that they are assembling with their lawyer. With this, the Bureau demands that the Tribunal Administratif (administrative court) note ‘these infringements and restrictions on our fundamental freedoms and our authors’ rights.’ The same co-author, Laye Diakité, continues to elaborate upon the Bureau’s legal claim.

As will be vital for our commentary that follows, what distinguishes this particular performance from others that deal with the relationship between art and law, as well as postcolonial critiques of migration policies, is the fact that the abovementioned legal claim is not simply *represented* or commented upon in the performance; rather, the performance, as well as the work of the Bureau des Dépôts more generally, is the conduit *through which* the legal case is enacted. In other words, as we will elucidate, the speculative legal case depends upon the form and content of the performance.⁷ Furthermore, the performance does not simply appeal to existing French laws but simultaneously *uses* existing law in order to construct a ‘speculative exercise’ regarding law, rights and justice—in order to ‘suspend current justice and [...] make justice’. This speculative exercise goes beyond simply naming and critiquing (attacking or opposing, even) the insufficiencies and injustices of French and European migration law (although this it also does extensively) and *intervenes* in its offering of an alternative conception of justice—one that is embodied by the performers, their lived experiences and the survival strategies that they have collectively developed over the past few years.

The Bureau’s legal strategy consists of bringing a petition before the French courts not in the name of the right to asylum, as one might perhaps expect (a strategy that lamentably is often unsuccessful), but rather for infringement of the integrity of the work and the Bureau’s fundamental freedoms of expression and artistic creation. Here the Bureau make reference to French laws (specifically the French Intellectual Property Code, especially on moral and patrimonial rights to the work) that protect the right of disclosure, the integrity of art works, and

⁶ Bureau des Dépôts, personal correspondence, 2020. Our translation here and henceforth.

⁷ The Bureau uses the term ‘speculative’ in a pragmatic and empirical sense. As the Bureau write: ‘We understand the term “speculative” following the writings of Didier Debaise and Isabelle Stengers for whom speculation “implies the attachment to something in a world that is disappearing, the insistence on possible futures, all those ‘could haves’ or ‘could have beens’ that haunt situations. To import a situation, past or present, is to intensify the sense of possibility that it conceals through struggles and demands for another way of making it exist.’ Bureau des Dépôts, personal correspondence, 2020. See for instance Didier Debaise and Isabelle Stengers, ‘L’instance des possible. Pour un pragmatisme spéculatif’, *Multitudes*, vol. 4, no. 65 (2016), pp. 82–89; Debaise, *Speculative Empiricism: Revisiting Whitehead* (Edinburgh: Edinburgh University Press, 2017); Debaise, ‘The Emergence of a Speculative Empiricism: Whitehead Reading Bergson’ in *Delenze, Whitehead, Bergson: Rhizomatic Connections*, ed. Keith Robinson (London: Palgrave Macmillan), pp. 77–88. References provided by the Bureau, personal correspondence, 2021.

the freedom of artistic creation.⁸ This is because under European law, through authors' rights (*droits d'auteur*, which are similar to but not the equivalent of copyright),⁹ the 'author' is recognised as any person who creates an original work, whether or not they have papers or an assured legal status in the country in which the work is created (authors' rights are based on private property rights and hence are not subject to nationality). While in other cases of artistic practice (be this literary, musical, plastic and so on), claiming and solidifying legal authorship status may be desired for a host of reasons (including protection against appropriation and plagiarism of an individual personality's creative work, i.e., moral rights; or for economic benefit, i.e., property rights), in the case of the Bureau this is not the case: rather than being an end in itself, or indeed even a desired status, the status of author is instead employed strategically insofar as it 'allows us to affirm, to insist on, to import, and to re-verify our links of co-dependence here and now, our equality which is already present.' Put otherwise, mobilising the legal rights of *the* author, in the singular, paradoxically becomes a way to reinforce a creative process of mutuality that is dependent upon the presence of multiple irreplaceable individuals. Thus, when the Prefecture of Grenoble issues an expulsion order against one or more member, the gamble taken by the Bureau is that in the eyes and ears of French law,¹⁰ appealing to the rights of the author could potentially be more effective than appealing to rights of asylum or the sanctity of human (non-citizen) life. Through the *Exercices*, the co-presence and co-dependence of the ten co-authors is thus reinforced in opposition to migratory violence premised upon deportation and separation.

Let us return to the performance. After the introductory announcements described above begins the second of three parts. Summoned by Saâ Raphaël Moundekeno who, seated at the table with the microphone, takes on a role akin to that of a clerk, the co-authors take turns to approach the standing microphone (the *zone de depot*, 'deposition area') and read 'letters of deposition' that each had authored and that act as testimonies to the violences produced by migration policies such as the Dublin Regulation as well as documenting the conditions of the

⁸The authors may object to any alteration, suppression or addition liable to modify the original work, whether in form or spirit. See Code de la propriété intellectuelle, <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006069414/> and 'LOI n° 2016-925 du 7 juillet 2016 relative à la liberté de la création, à l'architecture et au patrimoine', *Légifrance*, <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000030857456/>, last modified 16 March 2017. See also Articles L111-1 and the following, CPI, Article L 111-2, Article L122-1, Article L122-2 and following: 'An author shall enjoy the right to respect for his/her name, authorship and work' (Art. L121-1 CPI). https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042814694.

⁹ Legally, common law copyright is to be distinguished from civil law authors' rights (*droit d'auteur*). See Françoise Benhamou and Joëlle Farchy, *Droit d'auteur et copyright* (Paris: La Découverte, 2014).

¹⁰ Regarding the 'eyes and ears' of the law, see Yates McKee, 'Eyes and Ears: Aesthetics, Visual Culture, and the Claims of Non-governmental Politics' in *Nongovernmental Politics*, ed. Michel Feher with Gaëlle Kirikorian and Yates McKee (New York: Zone Books, 2007).

creation and distribution of the work. (We will in what follows refer back to the content of some of these ‘letters’, extracts of which comprise the ‘attachments’ [*pièces jointes*] that are named according to number as ‘exhibits’ [*pièces*] in the performance.) The reading of the exhibits is organised into three parts: 1. The post-colonial France–Guinea continuum; 2. The conditions of the migratory journey and life in France and the legal production of clandestine labour; 3. The question of what it means to do justice. Between each reading of an exhibit at the microphone is a cacophonous period of debate among the members of the Bureau, who describe it as follows: ‘we discuss in an improvised way what has been read, we rewrite it orally, we update it, we translate it into different forms of languages, we say our disagreements too, we ask questions to the author.’¹¹ These discussions constitute a communal scene of dissensus that, as we will elaborate upon, ‘[sets up] an already existing scene of justice’.¹² The performance ends with a discussion into which the audience is invited. As such, the work comprises a living archive, constantly performed and re-performed in its singularity, each time idiosyncratic. Unlike the introductions referred to above and the extracts of deposition letters read out, all of which are documented in a publicly available ‘score’ (*partition*) that we include in translation as an appendix to this article, these improvised parts are not included in any documentation of the performance. This is due to the premise of the *Exercises* being that the ‘work’ is only accessible in its integrity through the physical co-presence of the co-authors, along with their respective audience-witnesses; hence the necessity to refuse the circulation of an archivable or computable form of the work in its entirety—a refusal that is at once strategic for the efficacy of the legal case and also, as we will argue, with respect to a decolonial refusal of capture, the tentative production of a commons.

The genesis of this co-authored article is our shared experience of witnessing the *Exercises* in Marseille and being struck—among other things, as we each detail in what follows—by the role assigned to the audience. Early on in the performance, Ben Moussa Bangoura poses the question of how the audience can apprehend the work and what the audience allows the Bureau to do. For the Bureau, what matters is ‘the extensions of the work in life’. On the one hand, as we will see, this is a matter of how the work ‘seeks to create precedents and thus participate in the constant, processual transformation of law and life into a trial.’¹³ But this also relates to the potential responses of the audience members, who, beyond being welcomed into the discussion

¹¹ Bureau des Dépôts, personal correspondence, 2021.

¹² Bureau des Dépôts, personal correspondence, 2020.

¹³ Bureau des Dépôts, personal correspondence, 2020.

at the end of the performance, are also invited to contribute through future alliances. For instance, we hear the following towards the end of the performance:

The Bureau of Depositions is open to new instances of cooperation, to new studies in law clinics, to studies by jurists, to counsel from lawyers, to research in law and in art history, to methods of writing that refuse charity, create justice, that see no difference between us and see us as individuals, that transform us.

And as we later read in a dossier provided to us by the Bureau: ‘It is in the context of building our judicial case that we are seeking support from people who are also experimenting with aesthetic and political forms, from which alliances can be forged.’¹⁴ Setting aside for the moment this potential experimentation (something we are nonetheless invested in), in the present article we take a first step of reflecting upon the significance of the work for each of us—one an academic who teaches postcolonial cultural studies, often times through the field of artistic practice, in the UK (Sheikh); the other an author, curator and film producer involved in issues of minority representation and decolonial activism in the cultural field in France (Marboeuf); but each with an interest in and familiarity with the echoes and divergences between the post-colonial presents of the two countries—as well as some shared concerns that translate across disciplinary and professional boundaries and geographical demarcations. While one of us writes from an embeddedness within both the centre and peripheries of the global contemporary art world and the other a more peripheral position that nonetheless takes artistic practice as a privileged form, we share an interest in what it is that art works, and aesthetics more broadly, can *do* in the world.¹⁵ Our gesture is a doubled countersignature composed of our distinct voices that transposes the cacophony of the *Exercises* into yet another tongue, ear and nationality in the hope of continuing to learn from it, elsewhere, as well as feeding its virtual audience.

Our interest in the *Exercises* lies not only in its aesthetic form but in what we can call its decolonial intervention, with the understanding here that a decolonial work—including the aesthetic—is a process of emancipation from the postcolonial condition. We choose the term ‘decolonial’ here in order to point to a decidedly activist or militant orientation that is nonetheless rooted in intellectual, albeit ‘southern’, histories. In the French context, for instance, whereas the emergence of ‘postcolonial studies’ can be traced to the academic sphere, the understanding of the term ‘décolonial’ in public space implies a break from the ‘études postcoloniales’ to be found in the halls of universities and the term circulates more in civil

¹⁴ Bureau des Dépôts, personal correspondence, 2020.

¹⁵ Regarding the propositional potential of art with regards to law and testimony, see Shela Sheikh, ‘More-than-Human Cosmopolitics’ in *Propositions for Non-Fascist Living: Tentative and Urgent*, ed. Maria Hlavajova and Wietske Maas (Utrecht and Cambridge, Mass.: BAK and MIT Press, 2019), pp. 125–40.

society, associated in particular with militant anti-racist groups, who were the first to make use of the term.¹⁶ Likewise, in the UK, recent years have witnessed an upshot in the usage of terms such as ‘decolonial’ and ‘to decolonise’, which, although not unproblematic in their employment, can in the current climate be traced to movements such as Rhodes Must Fall in South Africa and at Oxford University, as well as the marked increase in student-led calls to ‘decolonize the curriculum’ since 2015.¹⁷ This is coupled with the recent marked increase in the use of the prefix ‘decolonial’ in English-speaking activist spheres of racial justice, prison abolition, climate justice and, importantly, migrant justice, to name but a few. As such, our choice to locate our reading within the decolonial signals at once a rootedness in decolonial intellectual thinking as inherited from the ‘decolonial turn’ emanating from Latin America¹⁸ and a militant, activist orientation—as evidenced in the work of the Bureau.¹⁹

Before sharing our reflections on the *Exercice*, however, we first offer a summary of the genesis of both the work and, more broadly, the formation of the Bureau des Dépôts.

Bureau des Dépôts

The Bureau des Dépôts comprises the ten co-authors introduced above, as well as a series of performances and ongoing research-creation processes that, together, are signed in co-authorship, i.e., with each member in co-dependence with the others. The works of the Bureau are performances presented in public—more precisely, they are the public performance of contracts entered into with public institutions—and, as mentioned above, can only be activated if all ten co-authors are physically present, of their own free will. The Bureau was initiated by Moreau and Mekdjian in February 2018 on the campus of the University of Grenoble in Saint Martin d’Hères. A space known as the Patio (occupied and self-managed by the Patio Solidaire collective), formerly the premises of a law research laboratory, was being squatted by mostly

¹⁶ See Norman Ajari, *La dignité ou la mort. Éthique et politique de la race* (Paris: Editions La Découverte, 2019), esp. ‘Les deux sources de la pensée décoloniale’, pp. 12–20. For an English-speaking summary of the decolonial movement in France and the attacks its proponents have faced, see Claire Gallien, ‘A Decolonial Turn in the Humanities’, *Alij*, vol. 40 (2020), pp. 28–58, at 44–48. Regarding the similarities and divergences between the ‘postcolonial’ and ‘decolonial’ in the academic sphere globally, see Gurinder K Bhabra, ‘Postcolonial and Decolonial Dialogues’, *Postcolonial Studies*, vol. 17, no. 2 (2014), pp. 115–21.

¹⁷ See for instance Gurinder K. Bhabra, Dalia Gebrial, Kerem Niñancio, eds., *Decolonising the University* (London: Pluto, 2018).

¹⁸ For instance: through the work of Anibal Quijano, Arturo Escobar, Ramón Grosfoguel, Catherine Walsh and Walter D Mignolo, not to mention feminist decolonial thinker Maria Lugones. For a critique of the so-called militancy of some of these thinkers, see Silvia Rivera Cusicanqui, ‘*Ch’ixinakax utxiwa*: A Reflection on the Practices and Discourses of Decolonization’, *South Atlantic Quarterly*, vol. 111, no. 1 (Winter 2012), pp. 95–109.

¹⁹ Based on this, the *sans papiers* movement beginning in the 1990s that we will refer to below can in this sense be conceived as ‘decolonial’.

asylum seekers since the beginning of winter 2017. The Bureau emerges from the relations between a host of people who were either inhabiting or visiting the Patio, be they students, researchers or other members of the public. Their first work, *Angle de transformations des politiques migratoires capitalistes et imperialistes* (Place of Transformation of Capitalist and Imperialist Migration Policies) (Editions Brouillon Général), is a collection of letters co-authored between February and July 2018, addressed to those who make and implement migration policies, from French Minister of the Interior Gérard Collomb to President of Guinea, Alpha Condé, Vincent Bolloré, the French CEO of the investment group Bolloré that holds the concession for the container port of Conakry, and others.²⁰ *Exercice de justice spéculative* followed, co-created between February and June 2019.²¹ Prior to Marseille, this processual work had already been ‘activated’ in several cultural institutions across France,²² with the premise being that each time, the institution in question would enter into a contract with the Bureau that stipulates that if one of the co-authors cannot physically be with the others to create, research and perform, due to the evolution of his or her administrative status (deportation, transfer, deprivation of liberty), the performance cannot take place and that, as we have seen in the long quotation at the outset, the institution must replace it with a press conference about the situation. A further performance, *35 co-auteurs co-auteurs*, has been performed three times since March 2020. Another performative, immaterial work, it is co-signed by 35 co-authors including musicians, visual artists, researchers, dancers, Deliveroo riders, travellers and poets. Lastly, while we have stressed physical co-presence as integral to the work, a further aspect of the Bureau’s practice is that of radio transmission, in particular with the arts and community web radio R22 Tout-monde (<https://www.r22.fr>).²³ This virtual co-presence—structured through the acts of emitting, receiving and listening—allows for an address to publics known and unknown ‘who could not go where they wanted to, because of the border devices, because they are locked up, controlled, prevented, because they are women...’²⁴

²⁰ A partial script of the work is available in French at <http://mariemoreau.fr/project/bureau-des-depositions>. See also <https://halshs.archives-ouvertes.fr/halshs-01853732>.

²¹ The first performance was called *Exercice de justice spéculative* but following this the plural ‘Exercices’ was introduced so as to indicate that the performances that followed were not ‘reproductions’ or ‘representations’ (i.e., as per the re-playing of a theatrical work, following a script), but performances that, upon each activation, are transformed. Bureau des Dépôts, personal correspondence, 2021.

²² For a list of performances thus far with further details, see <http://mariemoreau.fr/project/bureau-des-depositions>.

²³ R22 Tout-monde is an online radio launched in June 2014 by Khiasma, a cultural platform and art centre founded by Olivier Marboeuf and based in Les Lilas, on the north-east outskirts of Paris. After the closure of Khiasma on 2018, R22 Tout-monde became an independent structure. See <http://www.r22.fr>.

²⁴ Bureau des Dépôts, ‘Changement de Programme n°3: Les sons de la radio’, R22 blog, 2 June 2020, <https://www.r22.fr/blog/changement-de-programme-n03>. Audio extracts from an earlier performance of the *Exercices* are available at <https://www.r22.fr/antennes/bureau-des-depositions>. See also the radio seminars, ‘Working with the limits of law’ (*Euvrer les limites du droit*), organised by the Bureau:

The majority of the co-authors reside, along with around 60 other asylum seekers, at the Patio. Apart from Kouyaté, Mekdjian and Moreau, the other co-authors, all of whom are less than 30 years old, are asylum seekers in France or live either under the Obligation de quitter le territoire français (OQTF) ('Obligation to leave the French territory') or the so-called Dublin transfer. The former, the OQTF, is an administrative decision of deportation that often accompanies a refusal of a residence permit or a refusal of international protection (rejection of an application for asylum or subsidiary protection);²⁵ under the Dublin agreement, migrants are obliged to be transferred back to the first country in Europe that received them, where their personal details (i.e., fingerprints) were initially recorded. The objective of each is to remove the 'foreigner' from French territory. It is against this migratory violence and deportation decisions that the co-dependence of the Bureau is activated.

A plea for jurisprudence

Rather than engage at length with the broader work of the Bureau des Dépôts, in what follows we focus on the 2020 Marseille performance, to which we were witnesses,²⁶ as well as its genesis and form. We draw from our recollections of the performance as well as commentaries by the Bureau and two published 'scores' (*partitions*) of the first two sections of the performance: one from 2019 and a revised edition from 2020.²⁷ (An English translation of an earlier 2020 version is contained in this special issue as an appendix to the present article.)²⁸ As noted above,

<https://www.r22.fr/blog/oeuvrer-les-limites-du-droit-deuxieme-session>. The radio-broadcast seminars took place at Un lieu pour respirer in Les Lilas (outer Paris) in the company of members of Rester. Étranger, a multilingual collective organised by writers in the situation of exile, and were open spaces in which authors, lawyers, students, artists and researchers shared their work and questions vis-à-vis the limits and possibilities of law in their respective practices. 'For three days, we shared recipes, cooked the law where it seemed indigestible and worked on other ways of sharing the table with our guests. From this moment, there remains a radio set and a quantity of escape routes to continue inventing.'

²⁵ '[The objective of the OQTF] is the removal of the foreigner from French territory, whether voluntarily or compulsorily, because he or she is not in one of the situations listed by the Code d'entrée et de séjour des étrangers et du droit d'asile (CESEDA [Code of Entry and Residence of Foreigners and the Right of Asylum]) giving a right to residency.' <https://consultation.avocat.fr/blog/gregoire-hervet/article-32982-face-a-une-obligation-de-quitter-le-territoire-francais-quels-recours.html>. Our translation.

²⁶ Despite the emphasis on physical co-presence, the Bureau refers to readers of the score, listeners of radio broadcasts and spectators of the actual in-situ performances alike as witnesses to their request.

'We address you, the audience, the airwaves audience, the reading audience, as witnesses to this request.' Bureau des Dépôts, *Exercice de justice spéculative* (2019), p. 1, <https://www.antiatlas.net/bureau-des-depositions-exercice-de-justice-speculative/>.

²⁷ The 2019 version can be found in French at <https://www.antiatlas.net/bureau-des-depositions-exercice-de-justice-speculative/>, and in translation in English in Sophie Kaplan, ed., *Lili, the Rozell and the Marimba: Vernacular & Contemporary Art* (Rennes: La Cricée Centre for Contemporary Art, 2019), pp. 103–15. The 2020 version is included as an appendix to the present article.

²⁸ The translated score included herein refers to a performance in February 2020 in Meylan (France). The October 2020 Marseille performance that we were present at was not followed or preceded by a written

given that the legally-protected immaterial work only exists in the physical co-presence and live performance of all ten authors, no script or recording (audio or video) of the entire performance is publicly available, and the published scores function as supports to the work—in other words, as moments in time amongst the processual continuum of the work—rather than constituting the work itself.²⁹

In the performance, Mamy Kaba reads the following: *Nos vies pourraient-elles faire jurisprudence ?* One of the key points of the Bureau is that the lives of the group, bound in co-dependence, might enact a form of jurisprudence—a precedent-making that entails but also transcends the legal. We can address this in terms of precedence—a central aspect of jurisprudence—and hence translate the question as ‘Could our lives set a precedent?’. As per the nature of law, based as it is on precedent and (re-)citationality and hence never being completely ‘original’, the *Exercices* are infinitely processual, always in the process of being tested out, as if on trial for themselves to themselves, perpetually open to the input of new authors and material. (*Un procès* in French signifies a ‘trial’ or ‘lawsuit’, as well as ‘proceedings’, ‘case’ or ‘legal action’.) Which is not to say by any means that they are ‘merely’ fictional. As with jurisprudence, which refers back to earlier acts of law-making in addition to its own self-referentiality, the performances are reiterative of earlier works: in this case, *Plaidoirie pour une jurisprudence. X et Y/Préfet de...* (‘X and Y v. the Préfet: The Case for a Legal Precedent’), co-created in 2007 by artists Olive Martin and Patrick Bernier with lawyers Sylvia Preuss-Laussinotte and Sébastien Canevet, from which the Bureau acknowledges drawing inspiration.³⁰

The *Plaidoirie* is a fictional case that relies on juxtaposing the legal status of two co-authors, one French and the other undocumented (*sans papiers*), and was made in the recognition of the expansion of copyright and intellectual property rights laws in the digital age that went hand in hand with the tightening of laws restricting immigrants’ freedom of movement under both French and EU law.³¹ These developments gave the artists the idea to combine these two

publication, and was a partial, oral ‘rewriting’ of the Meylan score. There is no written trace of the Marseille performance.

²⁹ Based on this logic, it is nonetheless permissible for extracts of the various elements of the performance to be published. Audio extracts of an earlier iteration of the *Exercice de justice speculative* performed on 13 and 14 June 2019 at the Theatre Midi/Minuit, Grenoble, are available on the R22 web radio. See ‘Extraits de la requête “Atteinte à l’intégrité de l’œuvre Bureau des Dépôts. Exercice de justice spéculative’, <https://www.r22.fr/antennes/bureau-des-depositions/requete-pour-atteinte-a-integrite-de-l-oeuvre-bureau-des-depositions-exercice-de-justice-speculative/extraits-de-la-presentacion-en-public-de-la-requete-atteinte-a-integrite-de-l-oeuvre-bureau-des-depositions-exercice-de-justice->

³⁰ *Plaidoirie pour une jurisprudence. X et Y/Préfet de...* was produced as part of Martin and Bernier’s 2007 residency at Les Laboratoires d’Aubervilliers in Paris, entitled *Projet pour une jurisprudence*. See <http://www.leslaboratoires.org/projet/projet-pour-une-jurisprudence/projet-pour-une-jurisprudence>.

³¹ See Audrey Chan, ‘Artists at Work: Patrick Bernier and Olive Martin,’ *Afterall*, 3 November 2009, <https://www.afterall.org/article/bernier-martin.essay/>, in which Chan interviews the artists in English.

branches of law that are otherwise held at a distance. Preuss-Laussinotte and Canevet, lawyers in immigrants' rights and authors' rights respectively and each an activist in their field, appear on a bare stage, dressing themselves in their black robes as the audience take their seats. The setting is an administrative court (Tribunal administratif) responsible for cases involving deportations. The two lawyers present their cases, addressing the audience as they would the (fictional) judge in a tribunal. They are defending their client, X, an invented character (who could be either male or female) who functions as a stand-in figure for individuals facing deportation orders in French courts. Besides being deemed an 'illegal immigrant', X is also the co-author (along with another character, Y, a French citizen) of a site-specific, immaterial art work. For the two lawyers, X is to be considered not as a 'foreigner' but as an author; evoking legal cases in which immaterial works were protected, they argue that the work cannot exist if X is sent back to their country and that X should be allowed to remain in France due to authors' rights that should protect not only the work but also the author.³² (As Cécile Debost writes of the performance, 'Canevet and Preuss-Laussinotte base their reasoning on the intellectual property code, the case law on copyright, the European Convention on Human Rights and the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.'³³ Neither the Prefecture's defence nor the final legal decision are included in the performance; rather, each member of the audience is left to make their own judgement and is encouraged to use their own creative powers in doing so. So as to ensure the wide dissemination of the legal arguments, a thirty-page document that contains the legal texts evoked during the performance (i.e., as would typically be given to a judge in a case) is placed on each of the audience members' chairs, with references made to the documents therein throughout the performance (i.e., akin to the references to numbered attachments of the *Exercice*). The open-source inflection of this gesture³⁴ is carried over into the *Exercices*, with the accompanying scores being not only distributed among the audience but also freely available online. The Bureau des Dépôts was in 2018 declared in progress as a performative,

In summarising the work, we draw from Chan's interview as well as Cécile Debost, 'Plaidoyer pour une jurisprudence,' *Les cahiers de la justice* #2015/1 (n°1), special issue on 'Art et justice', pp. 23–27, <https://www.cairn.info/revue-les-cahiers-de-la-justice-2015-1-page-23.htm>.

³² The *Plaidoirie* is an attempt 'to return to an idea dating from the French Revolution, developed by Abbé Sièves and [Pierre] Beaumarchais: that an author's rights are meant to protect an author from a producer, such as a theatrical producer or record label' (Bernier). 'In contrast to British and American copyright law, which privileges the publisher or editor of a work, French law recognises *les droits d'auteur* [rights of the author]. In fact, in France a work can only be protected if it is an *oeuvre de l'esprit* [a work of the mind] that has emanated from an author's intellect' (Chan). Chan, 'Artists at Work', op cit. In the performance, Canevet evokes Article L 111- 2 of the Intellectual Property Code (IPC), which protects unfinished works, and Articles L 112-1 and L 112-2, which state that the immaterial nature of a work is not an obstacle to its protection by French copyright.

³³ Debost, 'Plaidoyer pour une jurisprudence,' op cit, p. 26.

³⁴ Bernier: 'We give the plea and the sources of the plea to the audience. It's connected to open source theory.' Chan, 'Artists at Work', op cit.

immaterial, processual and infinite work (*oeuvre*)³⁵ and the scores are published under copyleft. The umbrella structure from which creative commons licences emerge, copyleft is not the simple opposite of copyright but rather *utilizes* copyright law to actively encourage reader-users to share the work/information and calls for adaptation, as well as ‘interoperability and nonclosure of systems’³⁶—a gesture that we aspire to take part in through our countersignature in the present article (here in English and elsewhere in French) and our inclusion of the translated script as an appendix.

The *Plaidoirie*, unlike the *Exercices*, is fictional; but this is not to denigrate the work by any means. Both works—fictional or not—are premised upon propositional gestures that one can argue each time *produce*, rather than merely *represent*, present and future realities precisely through their precedential nature. (The distinction ‘fictional vs. real’ in any case requires deconstruction, above all in the context of law, since courtrooms are always theatrical and the law and its representatives always performative.)³⁷ Likewise, each can in their own way be described as activist (or, to use the French term, *militant*).³⁸ The *Plaidoirie* is a theatrical staging that asks the audience to ponder upon the nature of law, justice and judgement. This it does—as per many other artworks and performances dealing with performance, law and aesthetics—by taking law outside its usual institutional settings and making propositions that might otherwise be inadmissible within a court of law *sensu stricto*.³⁹ As per the subsequent *Exercices*, the *Plaidoirie* is

³⁵ The French *oeuvre* can be translated as both ‘work’ and ‘body of work’, and this polysemy should be registered throughout: each iteration of the *Exercices* is a work but only functions as part of a broader body of work that is itself constituted by the physical bodily presence of each of the members.

³⁶ Yann Moulier Boutang in Gaëlle Krikorian, ‘Interview with Yann Moulier Boutang’ in *Access to Knowledge in the Age of Intellectual Property*, ed. Gaëlle Krikorian and Amy Kapczynski (New York: Zone Books, 2010), pp. 575–94, at p. 593, <https://www.opensocietyfoundations.org/sites/default/files/age-of-intellectual-property-20101110.pdf>.

³⁷ See for instance Jacques Derrida, ‘Signature Event Context’, in *Limited Inc*, trans. Samuel Weber (Evanston, Illinois: Northwestern University Press, 1988), pp. 1–23. Regarding law, tribunals and theatricality, see Başak Ertür, ‘Spectacles and spectres: political trials, performativity and scenes of sovereignty’ (2015), doctoral thesis, University of London, <https://eprints.bbk.ac.uk/id/eprint/40110/>.

³⁸ For Martin and Bernier, the public presentations of this performance constitute the framework of an activist action, which is based on a legal argument intended to be re-used by magistrates and lawyers during real litigation. See Debost, ‘Plaidoyer pour une jurisprudence’, op cit, p. 24. It is also worth noting that Bernier worked for many years with GASPROM (Groupement Accueil Service Promotion du Travailleur Immigré), an association that agitates on behalf of immigrants. ‘For about three years, I worked there as a volunteer and activist, sorting post and writing official letters for immigrants requesting asylum from the French government. The letter writing was my informal training in foreigners’ rights. People told me their causes for leaving their country for France. Little by little, I began to understand how I could combine these two activities, my art practice and my activist practice.’ Bernier in Chan, ‘Artists at Work’, op cit.

³⁹ The *Plaidoirie* was performed at Les Laboratoires d’Aubervilliers, an arts centre in Paris that commissioned and produced the project, after having already been presented at a reception centre for asylum seekers in Massy, close to Paris, as well as the Maison de l’Europe in Paris and the Amphithéâtre de morphologie des Beaux-Arts de Paris, where Bernier and Martin had studied art. The work was later performed outside of France, for instance in 2009 at the European Court of Human Rights. It is also worth noting that the work is never performed in theatre spaces. When performed outside France, the plea is addressed to an imaginary

always followed by a discussion between the performers and the audience (Bernier, Martin, Preuss-Laussinotte and Canevet, the ‘authors’ of this ‘unidentified artistic object’, also take part). In both performances, the audiences find themselves implicated in decisions surrounding now-routine deportations: in the *Plaidoirie* the creative power of the audience’s judgement is called upon in order to make new legal precedents; in the *Exercices* the audience (us as authors of this text included) is appealed to as witness to the legal request.

Besides the similarities between the two works, there are significant distinctions that in our reading make for the progression from activist art work to a *decolonial aesthetics* that intervenes through an alternative framework of representation and justice. The *Exercices* is not simply a work of art *about* migratory violence, but a work whose ‘transformative properties’ are used in order to protect the lives of the artists. A work that both points to the limitations of existing (Western) justice *and* exceeds it.

In both cases, the public presentations, in their emphasis on precedent, function as rehearsals and creative gestures. But whereas in the case of the *Plaidoirie*, this is for an abstract tribunal-to-come in the administrative courts, with the *Exercices*, the performance is on the one hand directed towards an insufficient existing institution of justice, and is simultaneously a rehearsal for an actual case being prepared with lawyers, as well as being the subject of actually-existing contracts with the institutions in which it is performed. In other words, while both are works of art, the *Plaidoirie* builds its legal proposition by referring to the existence of a hypothetical art work *beyond* the performance, whereas in the *Exercices* the structure is self-referential, folding back into itself: the performance itself, in its speculative making of precedent, is the art work the legal status of which is being capitalised upon. Unlike the plea to the fictional judge in the *Plaidoirie*, the *Exercices* appeal to actual judges. As we read in a description of the work by the Bureau:

The co-authors, co-authors of the Bureau of Depositions, with the counsel of a lawyer at the Paris Bar, Ms. Greig, are working on filing a legal motion to ask a competent court to establish the infringements and hindrances suffered as a result of these removals, in particular infringement of the integrity of the work, infringement of the right of dissemination of the work, hindrance to the freedom of artistic creation and the freedom of information.⁴⁰

judge of the European court, rather than the French court. Hence title is changed to *X and Y v. France: The Case for a Legal Precedent* and the arguments are based on the 10th article in the European Convention of Human Rights (1950) on the freedom of expression and artistic liberty. See Bernier in Chan, ‘Artists at Work’. The work has also been performed in Belgium and Austria. As Martin relates, ‘Courthouses would be the real site of the work, but it’s not our goal. The first goal was to set a legal precedent. While it may not be a realistic goal, we wish that it could happen.’ Chan, ‘Artists at Work’, op cit.

⁴⁰ <http://mariemoreau.fr/project/bureau-des-depositions>. Our translation.

As the third speaker in the introduction to the performance announces:

We call on the creative power of the judges of the administrative tribunal: to create rights that tend toward life, towards creation, to transform authors' rights [*le droit d'auteur*] which rely in great part on a material and market conception of works of art, to transform the rights of foreigners and the right of asylum, blind and deaf to the imperatives of art, creation, and life.

And a little further on:

The work that we perform here is neither a simulacrum of the case that is being prepared for the administrative tribunal, nor an imitation: it is an exercise in justice which allows us, on this stage that we make both public and political, to take justice [*prendre justice*],⁴¹ to interrogate law, to transform our relations.

Our work is not the work of amateurs or non-amateurs, it is a work of art that establishes, through its transformative properties, to protect our lives there where others kill, exploit, allow to die and feed on unburied bodies.

We will now address our elements of evidence concerning the lack of justice and we ask you to be the living witnesses of this trial that goes beyond institutional justice.

Ecology of shadow

Olivier Marboeuf: Theatre is always the place where interpretation is renewed. And for this reason it is the art of updating a story, a question, a conflict, and thus the site of repetition and return of the *same/different* in new bodies and new spaces. *Exercise in Speculative Justice* is a form that I feel responds to necessities other than those of *re-presentation*. Or rather, the representation of that which escapes the exhibition of the living in favour of moving towards the living itself, towards lives to be saved (*des vies à sauver*) and lives that run away (*des vies qui se sauvent*).⁴² It's perhaps because I've long been trying to challenge the representational impasse of minority speech and its deathly staging in the crucible of collective projects that this *Exercises* affected me

⁴¹ The Bureau intentionally uses a play on words here: in French, *rendre justice* or *rendre la justice* would be the act of 'giving justice' on the part of magistrates. Where *prendre justice* is used by the Bureau, this would literally translate as 'to take justice', in this case signalling the co-authors' gesture of substituting themselves for the official magistrates and not waiting for the latter's decisions. While the authority of judicial power is not completely overthrown, there is an attempt to gain some autonomy with respect to the delivering, or rather taking, of justice. Bureau des Dépôts, personal communication, 2021.

⁴² Here it is not a question of using the verb *sauver* ('to save') in the sense of religious or humanitarian morality. Instead, I would like to put my remarks back into a non-heroic narrative perspective that I consider to be part of a Caribbean epistemology—one that comes from the experiences of slavery, thought beyond mere captivity, as negation of life, of life *in* death. *Se sauver* ('to run away') is used in the sense of fleeing, temporarily or permanently, in the near or far, in the masquerade by day and in the dance by night. This is then a fundamental gesture of resistance that is also a form of return/detour towards the living *beyond death*.

so strongly.⁴³

I arrived in Marseille full of an indigestible and particularly toxic knowledge accumulated over the years I've spent in the margins and sometimes the centres of Western contemporary art. I've long observed the way in which this field knows how to develop a formidable relational agility, a form of predatory love aimed at absorbing all forms of vulnerable and dangerous life, all voices and political bids. And this with the objective of extracting capital by conceiving mimetic and ventriloquist performances that emptied these gestures of their transformative potential for those who had imagined them. I was trying to discover how to move beyond this situation in order to renew potentials for emancipation, for distance from this fatal impasse, for movement towards an *outside-beyond* (*en-dehors*) that would allow the individuals involved to emerge from their passage, their brief appearance in the spaces of representation, with something for themselves.

This was one of the reasons that had led me over a period of many years to explore situations where speech is difficult to grasp—to catch hold of, to understand—and where it participates in no form of enlightenment, clarification, elucidation. On the contrary, it interests me precisely at the junction where it creates confusion and casts shadows. I began to be interested by scenes without transparency, invisible from the exterior, where methods of transmission of knowledge required the implication, the hand-to-hand combat even, of an ephemeral community. This is the case of riots and wakes, which for me are two essential minority rituals where a request for justice is not made, but rather a state of justice is installed through mourning, by a process of necromancy.⁴⁴ In sum, minority forms that escaped from their staging (*mise en spectacle*)—at least temporarily—by proposing concrete displays of opacity and of life for the self. Opacity in this context is not limited to a strategy of retreat from light, clandestinity, silence, a shield. As we will see in what follows, it is sometimes a question of hiding *on the surface of the visible*, by saturating it, occupying the scene of confessions through the diversion of cacophony. In short, speaking as a way of not speaking. But indicating nonetheless, by this fleeting and shattering appearance of speech on a stage, the existence of another scene where possible lives are played out. Permitting the emergence of an uninvited speech which, silenced for much too long, refuses any interrogation, be it loving or hateful. An emancipatory speech that does not present itself with a

⁴³ See for instance Olivier Marboeuf, 'Variations décoloniales' / 'Decolonial Variations', May 2019, <https://olivier-marboeuf.com/2019/05/09/variations-decoloniales/>; and 'La leçon de Bruxelles' / 'The Brussels Lesson', March 2021, <https://olivier-marboeuf.com/2021/03/27/la-lecon-de-bruxelles-the-brussels-lesson-fr-eng/>.

⁴⁴ See Olivier Marboeuf, 'Ceux qui veillent les images nègres' / 'Those who hold a wake for Negro Images' in Bonaventure Soh Bejeng Ndikung, ed., *Courants de conscience. Une concaténation de "dividus" / Streams of Consciousness: A Concatenation of Dividuals*, Reader of the 12th Bamako Biennial (Berlin: Archive Books, 2019), available at https://oliviermarboeuf.files.wordpress.com/2019/12/those_who_hold_a_wake-uk-1.pdf.

known face or familiar words and that would form, on the contrary, the negotiated conditions for another place of encounter, *outside-beyond* and to-come. A speech that would deliberately choose to begin when it wants and to stop when it wants.

Of this, I was witness. I saw the Bureau des Dépôts create a place for ephemeral emancipation where its members controlled the conditions, the frequency of appearance, persistence and disappearance. I saw the Bureau des Dépôts produce by and for speech a political night that welcomed and protected. And I accepted to be an accomplice in this ecology of shadow that consists of taking care of this night from a position at the periphery of the visible, this night where one may enter only by accepting, as all the other inhabitants have done, to risk one's life (*jouer sa vie*).

Testimony: from Plaidoirie to Exercises

Shela Sheik: I'd like to pick up on what you said about witnessing, and the creation of a certain kind of speech—one that, among other things, one could call 'testimonial' in its poetic economy of never being fully provable, never fully transparent, of always being in excess.⁴⁵ As someone who has long been interested in varying forms of witnessing and testimony, increasingly in relation to the representational and epistemological issues posed by the decolonial, what immediately struck me about the performance was not only the manner in which the audience was interpellated as active witness but also, significantly, the performative role that testimony plays for the members of the Bureau.

In its presentation of X as author rather than 'foreigner', the *Plaidoirie* opened up a breach for the Bureau to slide into. But where in the *Plaidoirie* the exemplary character (X) is presented as a nameless foreigner, in the *Exercice* X categorically becomes an irreplaceable author and proper name, in fact ten irreplaceable and named signatories, each contributing to a co-dependent testimony.⁴⁶ In the *Plaidoirie* the only characters are the two lawyers, who are representatives of the law; the absent X—as *subject* of the law and as the subject who would offer testimony—is excluded from the arena of law and self-representation, and with this of agency. As such, in the *Plaidoirie*, testimony is not admitted, at least first-hand. In the *Exercices*, however, there are no

⁴⁵ Regarding this poetic economy of witnessing, see Jacques Derrida, 'Poetics and Politics of Witnessing', in *Sovereignities in Question: The Poetics of Paul Celan*, eds. Thomas Dutoit & Outi Pasanen (New York: Fordham University Press, 2005), pp. 65-86.

⁴⁶ I use the term 'exemplary' here following Jacques Derrida, for whom exemplarity signals an irreplaceability and, simultaneously, in its role as example, the constant risk of replaceability. This is all the more so in the case of the witness or testimony, both of which must be unique and irreplaceable and yet, through the technical reproducibility and alterability of language (*iterability*), are always replaceable. 'The singular must be universalizable; this is the testimonial condition.' Jacques Derrida, *Demeure: Fiction and Testimony*, trans. Elizabeth Rottenberg (Stanford, California: Stanford University Press, 2002), p. 41.

lawyers present: the members of the Bureau take matters into their own hands, performing themselves and speaking in their own names, through the presence of their own irreplaceable bodies, as both living witnesses to the violences they have suffered and continue to suffer, and ‘sculptors’ of law and justice. Hence the radical shift that we are considering through the notion of a decolonial intervention. As Ousmane Kouyaté states in a 2019 iteration of the *Exercices*:

We write deposition letters together, these letters allow us to take responsibility for the violence we suffer and of which we are living witnesses. Since this practice of writing together, we stand up to say that what is happening today is not being done in our name. It is from this desire for justice that we sign this exercise in speculative justice.

Beyond the significance of this self-representation, which should not be downplayed, I read the *Exercices* as notable in its reconfiguration of testimony for a number of reasons, some of which relate to your work on minority speech. These living witnesses, as *superstes* (i.e., witnesses [témoins] who speak of their own experience; who have lived through, survived, an experience that they hence relay to others),⁴⁷ speak in their own terms—which includes long moments of remaining silent in between the various kinds of speech—in a manner that evades the economy of compassion that one often finds in the humanitarian realm, in particular with respect to the plight of asylum seekers, refugees and migrants. Where the colonial state (France, for instance, but also other European states, as well as the UK) dehumanises undocumented migrants, a sticking point for the liberal left (including of the contemporary art world) is the manner in which humanitarian efforts oftentimes (knowingly or unwittingly) reduce individual migrants to passive victims, capitalising upon or extracting from narratives of suffering.⁴⁸ (Unfortunately, this is also often the case with verbatim theatre that aims to ‘give voice’ to experiences of asylum and migration but often-times ends up reproducing expected narratives.) This one sees in both the UK and French contexts, where refugee and asylum seeker statements—i.e., the *depositions* that the Bureau des Dépôts take into their own hands—require expert drafting and doctoring in order to best fit the expectations of the system and hence be successful.⁴⁹ In other words, where survivor testimony requires the expertise or translation (both within and beyond single

⁴⁷ See Jacques Derrida’s reading of Emile Benveniste’s *Vocabulaire des institutions européennes (Indo-European Language and Society)* (1969/1973) and the consideration therein of the witness as ‘*testis*’ (the one who is present as the ‘third’ person, *testis*, at a transaction where two persons are concerned) or as ‘*superstes*’ (the one who testifies in the sense of surviving something) in ‘Poetics and Politics of Witnessing’, *op cit*.

⁴⁸ See for instance, Heath Cabot, “‘Refugee Voices’: Tragedy, Ghosts, and the Anthropology of Not Knowing’, *Journal of Contemporary Ethnography*, vol. 45, no. 6 (2016), p. 1–28; Bishupal Limbu, ‘Illegible Humanity: The Refugee, Human Rights, and the question of Representation’, *Journal of Refugee Studies*, Vol.22, no. 3 (2009), pp. 257–82; Ian Patel, ‘The Role of Testimony and Testimonial Analysis in Human Rights Advocacy and Research’, *State Crime Journal*, vol. 1, no. 2 (Autumn 2012), pp. 235–65.

⁴⁹ See for instance the guidelines for drafting appeal statements in response to UK Home Office asylum refusal letters offered on the Electronic Immigration Network website at <https://www.ein.org.uk/bpg/chapter/12> (last updated January 2021).

languages) of an other, rather than speaking or standing for itself. Or, in the case of subaltern testimony, where the representational gesture of the humanitarian, lawyer, activist, concerned citizen, and so on, who speaks *on behalf of* the subaltern, ends up silencing the original ‘speech’.⁵⁰ In the case of the Bureau, each of the co-authors takes on the role of ‘expert witness’, albeit ‘expert’ in an alternative, speculative schema. Furthermore, in their emphasis on simultaneous singularity *and* relations of co-dependence, the witness-authors here break out of the dominant legal model of testimony that expects a witness to be an irreplaceable individual,⁵¹ or the liberal tradition’s expectation that self-determination is co-extensive with individual self-authoring (something I have more to say about in relation to the authorship of artworks and copyright), and hence a certain model of liberal subjectivity.⁵² In the construction of the *Exercises*, what binds these witness-figures together is the fact that their individual testimonies *must* be part of a co-dependent offering in order for them to have the desired effect. The aim is for the performances, including the letter-writing exercise that the Bureau has been performing over the years, to eventually provide legal proof for the group’s links of co-dependence.⁵³

As French anthropologist and sociologist Didier Fassin diagnoses, within the field of humanitarianism—which we can extend to the general public’s perception of migration, asylum and hospitality—there is an expectation (part of the above-mentioned economy of compassion within advocacy) that the testimony of undocumented migrants be emotional and affective, dramatized and trauma-oriented, rather than ‘reasonable’ or analytic.⁵⁴ Or, as we see in the *Exercises*, cunningly speculative—productive with respect to the very system and spaces in which testimony is offered. These authors do not wait to be invited to speak about their experiences and for this to be codified in a language of asylum claims that is audible to European law, which in turns computes or renders such narratives legible for itself (we recall the statement cited above about what French migrant and asylum law can and cannot see or hear)—renders them transparent to itself, translates them for itself.⁵⁵ Rather, through the enactment of its own

⁵⁰ See Gayatri Chakravorty Spivak, ‘Can the Subaltern Speak?’ in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg (Urbana, IL: University of Illinois Press, 1988), pp. 271–313.

⁵¹ See Derrida, ‘Demeure: Fiction and Testimony’, op cit.

⁵² See Patel, ‘The Role of Testimony’, op cit, p. 254. This expectation regarding self-authoring is of course deconstructed by thinkers such as Jacques Derrida, for whom autonomy is always an a priori heteronomy, or George Simondon, who stress the ways in which entities are in-formed in relation to both each other and their milieus, to name but a few.

⁵³ Bureau des Dépôts, personal correspondence, 2020.

⁵⁴ Didier Fassin, *Humanitarian Reason: A Moral History of the Present*, trans. Rachel Gomme (Berkeley; Los Angeles; London: University of California Press, 2011).

⁵⁵ Regarding the ‘computability’ of testimony and the computational logic of law and justice, versus what we might call a decolonial incommensurability, see Susan Schuppli, ‘Computing the Law: Searching for Justice’ in *Former West: Art and the Contemporary after 1989*, ed. Maria Hlavajova and Simon Sheikh (Cambridge, Mass.: MIT Press, 2016), pp. 535–49. This incommensurability is also a matter of translation: for the Bureau, more than the reading of the deposition letters, what is important is the improvised discussions where they ask questions,

particular aesthetics and testimonial form, premised as this is upon co-dependency rather than individualism, the Bureau collectively produces alternative claims to cosmopolitan care.⁵⁶ Furthermore, the testimony offered here does not simply report back on experiences of the past and present; in its speculative nature,⁵⁷ it opens up proposals for another context—another ecology of representation and meaning-making with an alternative economy of knowledge and solidarity, an alternative horizon of justice—in which testimony might circulate and operate.⁵⁸

Speech as place

OM: Talking about space and speech, I have to say I wasn't very reassured on my way to the FRAC PACA. The Manifesta Biennale—of which this performance was one of the associated events—hosted by Marseille, a city that is so powerfully working class, rebellious and cosmopolitan, was in itself a critical situation for the strategies and itineraries of the globalized world of art. How not to remain among one's kind while establishing a tissue of relations with a population that cannot be limited to a resource of diversity to be extracted and exhibited? The question is always the same: should we accept the accumulation in one single place of all knowledge, all means and forms of expression, while every day the possibilities for autonomous lives and for places for encounters and speech are diminishing?

The significance of what the Bureau des Dépôts was doing at the heart of this thorny situation is that the collective was on tour in Marseille—it is based in Grenoble—*without a place*. What the performance is thus going to produce is the flagrant necessity of establishing a place

discuss the texts and/or state 'we don't understand' what has just been read out—in other words, that translation is needed. Here the opacity of speech and ongoing processes of translation are embraced, as is a heterolingualism *within* the French language: i.e., the French that is spoken in courts and written in legal codes is different to that spoken in universities, on the street in France, in Guinea, and of course to Malinke and Pulaar. For the Bureau, all speech or communication comprises ongoing translation, which entails necessary acts of indeterminacy, disagreement, dissensus. Bureau des Dépôts, personal communication, 2021. Regarding translation and untranslatability (what I am here calling decolonial incommensurability), or translation, the border systems of knowledge and that which remains 'in excess of modernity's epistemic territory', see Rolando Vázquez, 'Translation as Erasure: Thoughts on Modernity's Epistemic Violence', *Journal of Historical Sociology*, vol. 24, no. 1 (March 2011), pp. 27–44.

⁵⁶ See Lilie Chouliaraki, 'Cosmopolitanism' in *Media Studies*, ed. John Gray and Laurie Ouellette (New York: New York University Press, 2016).

⁵⁷ Regarding testimony as speculative and future-oriented, see Shela Sheikh, "The Future of the Witness: Nature, Race and More-than-Human Environmental Publics," *Kronos: Southern African Histories*, vol. 44, no. 1 (2018), pp. 145–62.

⁵⁸ Returning to Spivak's 'Can the Subaltern Speak?', this alternative ecology that the Bureau creates could be one in which what Spivak calls 'subaltern insurgency' takes place: i.e., 'an effort to involve oneself in representation' albeit '*not* according to the lines laid down by the official institutional structures of representation'—as an alternative space to the typical discourse of political agency and enlightenment self-representation. Gayatri Chakravorty Spivak, 'Subaltern Talk: Interview with the Editors' in *The Spivak Reader: Selected Works of Gayatri Chakravorty Spivak*, ed. Donna Landry and Gerald M. MacLean (New York: Routledge, 1996), pp. 287–308, at p. 306.

for speech. This place will be added to the FRAC's hospitality. It uses this hospitality and immediately moves beyond it and frees itself of any debt accrued from the invitation. The space where something is going to occur is quickly taken over by the co-authors. It does not superimpose itself on the performance space at the art centre. It takes it elsewhere, it dissolves it. The performance *Exercises in Speculative Justice* is therefore presented from a place of speculative enunciation. In a minority situation, speech always has the double function of instituting a place and saying something there. *Speaking the place* before *speaking in the place*—and as we will see later, *speaking towards another place*. Which to my way of thinking explains why performative forms and more precisely spoken performative forms are in the process of becoming the privileged artistic spaces for subaltern lives. Because here speech *changes everything*, or at least has the potential to change everything, in the economy of bodies presented on neoliberal scenes of diversity where morbid and libidinal passions are replayed to exhaustion. Speech changes everything as soon as it refuses to respond to an injunction to speak, now, when it is asked to perform a supposed representation of its life. It changes everything when it cleverly establishes another place—both ghostly and to-come—in the place of performance.

Dissensus as 'outside-beyond' and the politics of the living

OM: In the practice of Augusto Boal's Theatre of the Oppressed, theatre is proposed as a situated scene of exhibition and resolution of conflict, as a *forum theatre*, a *citizens' theatre*. For Boal, the question of the implication of the community relies on the postulate that within itself the community possesses all the tools and means for making justice, here and now. That it exists as a community of destinies and means. Again, *Exercises in Speculative Justice* reflects a different context, that of the diasporic condition, produced as illegal. The *Exercises* therefore cannot rely on an existing community, it must create it. And this community will be speculative, to-come.⁵⁹ The performance will engage with this, demand it, even. But the proposition of the Bureau will not limit itself to the tools of justice made available to it in the place where the co-authors happen to be and where the lives that compose it are produced as criminal lives. To a certain extent, where the Theatre of the Oppressed doesn't need to conceive of its representation as performance, since it is based on the active implication of all those who are present in order to restage and collectively resolve conflicts, *Exercises in Speculative Justice* must accommodate the codes of the

⁵⁹ For the Bureau, 'The common is an ongoing process, it cannot be reduced to a "community", it's a process made of constant dissensus. We spend our time not agreeing, continually translating ourselves; our desire is linked precisely to dissensus. It's because we do not understand each other (including ourselves, since we are each transformed by our co-dependence with the other co-authors) that we need to see each other, to be together.' Bureau des Dépôts, personal correspondence, 2021.

Western scene of representation even while trying to foil them. Because of this, the Bureau must confront a scene of justice but also an aesthetic scene from a minority perspective, which I will try to examine more closely in order to show how the *Exercises* proposes a decolonial gesture, which I assimilate here to a movement towards a living, an *outside-beyond* of the scene of representation of art—which can yet be seen from the latter—as well as an emancipation from the postcolonial condition and its critical lexicons.

Working on the play *The Wake* with The Living and The Dead Ensemble,⁶⁰ we touched on a similar intuition to the one that so remarkably structures *Exercises in Speculative Justice*. In *The Wake*, after crossing through a poetic night made up of stories, dreams, apparitions and calls to fight, moving from a mutating French to Haitian Creole, the piece culminates in the cacophony of a free-ranging and agitated conversation in Creole concerning the burning of carnival stands in Port-au-Prince in 2019. A few months later, I found a similar, but to my eyes more successful, staging of this cacophonous strategy at the heart of the Bureau's *Exercises*. At the end of each deposition in the performance, after the exhibition of each group of attached documents, an animated conversation begins concerning the logic of the arguments developed. These exchanges in which all the voices intermingle translate the possibility of multiple points of view assembling beneath the collective surface that is exposed to western laws, in another space to defend, that of living dissensus. Briefly visible and audible, this discursive world remains however the most evanescent part of the performance, both its night and its promise. The fugitive moments are not notated in any score of the piece and are systematically interrupted by the clerk, who calls for a new element in the dossier and indicates which narrator must read it. This effect of an improvised montage and rupture in the flux of speech is a striking proposition. These noisy conversations—as well as the silences that intersperse among them—indicate that something else is happening, something undecided that the scene of representation in which we find ourselves cannot grasp and that also eludes any attempt at reproduction. This political event—which is a scene of dissensus where the community unravels and then recomposes itself—occurs on another stage. We can only apprehend it in a fleeting way. It is the political promise that we may only enter it on the condition that we accept the risk of physically engaging (*faire corps*) with lives to be saved, to take part in a performance of justice from a situation of existences produced as criminal. This horizon is unattainable in the comfortable regime of the

⁶⁰ *The Wake* is the second artistic production by The Living and The Dead Ensemble, a collective composed of artists from Haiti, UK and France. It is a hybrid work between theatre and cinema that considers the space of the night as a possible place of re-composition for a community that dreams of flight, travel, alliances between diasporas and the restless souls that haunt our electronic worlds. <https://thelivingandthedeadensemble.com/t-h-e-w-a-k-e/>.

spectacle of theatre yet we can briefly glimpse it *from* the scene of art. It is an *outside-beyond* that we are allowed to feel if we pay attention—attention equals engagement here, for as soon as we see this other scene, we can no longer *not see and not consider it*. This is one of the most remarkable aspects of this work: to manage to comply with the obligations of representation even as it foments escapes towards a politics of the living.

The lining of this robe of justice

SS: I'd like to pick up on what you said about criminality. Besides the mobilisation of testimony, what I find fascinating about the *Exercises* is the Bureau's relation to law and rights, which I read as a 'southern' mode of working with or inhabiting the breaches of western law, albeit from its underside, so to speak—as a decolonial gesture.⁶¹ As noted above, what sets this art work apart from others is its being a processual enactment that takes as a starting point the plasticity of law and the necessity for it to be 'handled and transformed by the practices and usages of our lives.' But before getting to the Bureau's strategic use of law, I'd like to remain a while with rights.

As you know better than me, recent decades in France have seen a proliferation of claims made by *sans papiers*, *in their own name*, to rights. This can be traced back to 18 March 1996, when the first autonomous organization of undocumented migrants (24 Africans, including 80 women and 100 children) occupied the church of Saint-Ambroise in Paris in protest against the anti-immigrant Pasqua Laws and demanded the regularization of their immigration status. (The occupation and its subsequent police eviction mobilized large-scale public demonstrations in support of the *sans papiers* as well as many further *sans-papiers* collectives across France, with some actions, including hunger strikes, leading to regularization.)⁶² More recently, in July 2019, the *Gilets Noirs* ('Black Vests'), who describe themselves as the largest collective of undocumented migrants in France, occupied the Panthéon in Paris, a mausoleum for notable French citizens and hence a significant site for this performative staging, demanding *papiers* ('papers', shorthand for the legal right to residency in France).⁶³ Indeed, included in the performance is a letter (exhibit 10, section 2) read out by Ben Moussa Bangoura to the *Gilets Noirs* in which he acknowledges that the Bureau has read the *Gilet Noirs*' leaflets about their

⁶¹ Regarding 'southern epistemologies', see Boaventura de Sousa Santos, 'Epistemologies of the South and the Future,' *Postcoloniality*, 'From the European South' (2016), pp. 17–29, http://www.boaventuradesousasantos.pt/media/Epistemologies%20of%20the%20south%20and%20the%20future_Poscoloniality_2016.pdf.

⁶² See Thomas Nail, 'Migrant Cosmopolitanism,' *Public Affairs Quarterly*, vol. 29, no. 2 (April 2015), pp. 187–99, at pp. 193–95.

⁶³ For an English-language overview of the occupation and the aims of the *Gilets Noirs*, see Luke Butterly, 'The *gilets noirs* occupy the Panthéon', *Verso Blog*, 15 July 2019, <https://www.versobooks.com/blogs/4379-the-gilets-noirs-occupy-the-pantheon>.

struggles for regularization, as well as their occupations and campaigns, and affirms their support of the movement. The letter notes that although in Grenoble there are, as yet, no Gilets Noirs, ‘we are Black Vests on an individual basis,’ and notes a desire to join with the collective and embark upon discussions, either in person or by phone or email. The letter continues:

We are fighting for our rights, but not only that. We are also fighting against the system that is in place. One day, even if I have my rights, those who come after me will still be implicated in the same system and will be in the same nightmare that I have been in. And this is why we support you, so that we can abolish this evil system and ban in particular the reasons against emigrants on European soil.
Long live the Black Vests!

‘We are fighting for our rights, but not only that.’ Just as for the *sans papiers* in 1996 it was imperative that the struggle go beyond obtaining papers and that it also, in the words of Ababacar Diop, spokesman for the *sans papiers* of St. Bernard (a Parisian occupation that started in June 1996), ‘address the underlying questions, not only in France but also, especially, in our countries of origin... What is the purpose of migration policies? Should frontiers be open?’⁶⁴ As we see in the extract of the letter above, for certain individuals to win rights would not change anything in the longer term. Rather, the Bureau stresses a need to ‘institute rights through our social system’—rights that ‘take care of life and connections when others kill them’.

As such, ‘rights and legal scenes are not ends, but means to create new forms of life.’ The co-authors acknowledge the necessity of rights ‘in a world effectively governed by them’, but not without recognising rights as ‘powerful instruments of control, producing the subjects they claim to protect or emancipate.’ (Here they reference political theorist Wendy Brown’s caution, drawing from the work of Michel Foucault, against confusing rights with equality, legal recognition with emancipation.)⁶⁵ Therefore, ‘it is not so much a question of “claiming” or “defending” rights’—or, we might add, of claiming ‘the right to have rights,’ to use Hannah Arendt’s formula⁶⁶—‘as working with their plasticity, “exceeding” them by placing them in confrontation.’⁶⁷

Turning to law, far from being a mere dismissal of (European, colonial, capitalist) law, the

⁶⁴ Ababacar Diop, ‘The struggle of the “sans-papiers”: realities and perspectives’, trans. Iain Nappier, 4 April 1997, available at <https://www.bok.net/pajol/sanspap/sptextes/ababacar2.en.html>. Cited in Madjigue ne Cisse, ‘The Sans-Papiers: a woman draws the first lessons’, trans. Selma James, Nina Lopez-Jones and Helen West, available at <https://artactivism.gn.apc.org/allpdfs/038-The%20Sans%20Papiers.pdf> (Original French version published in *Politique*, la revue, n°2 October, 1996).

⁶⁵ Bureau des Dépôts, personal correspondence, 2020. See Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton, NJ: Princeton University Press, 1995).

⁶⁶ Hannah Arendt, Part II: Imperialism, *The Origins of Totalitarianism*, 2nd ed. (San Diego, New York, London: Harcourt Brace & Company, 1973 [1958]), pp. 296, 298; see also Werner Hamacher, ‘The Right to Have Rights’, *The South Atlantic Quarterly*, vol. 103, no. 2/3 (2004), pp. 343–56.

⁶⁷ Bureau des Dépôts, personal correspondence, 2020.

Exercices strategically uses current French and European law, appropriating for their own means the plasticity of law and rights, building upon and *exceeding* existing laws, using them against themselves even. As we read in the 2019 score: ‘By “speculative justice” we mean suspending the existing justice system, while building on existing law, the creative power of jurisprudence, the creative power of judges.’ As such, this exercise of speculative justice might be understood as what philosopher Olúfémi O. Táíwò describes as ‘a world-making project: aimed at building and rebuilding actual structures of social connection and movement, rather than mere critique of the ones we already have.’⁶⁸

As explained earlier, this manipulation of law entails taking the rights of the author (*le droit d’auteur*) as ‘as a basis for attacking litigation related to the rights of foreigners.’⁶⁹ Here it is worth lingering a while on the legal framework of intellectual property rights, as well as patents, copyrights and trademarks, each of which are forms of intellectual property. As Amy Kapczynski writes in an overview of the conceptual genealogy of the ‘access to knowledge [A2K] movement’,⁷⁰ ‘[i]ntellectual property rights are legal entitlements that give their holders the ability to prevent others from copying or deploying the covered information in specific ways’ and ‘effectively give creators the ability to market information while also preventing it from being imitated and reproduced by others’.⁷¹ In many respects, the use of intellectual property rights can be considered as a ‘new mode of conquest and imperium’ insofar as it is often countries of the global north and multinational information industries that insist upon the suturing of intellectual property laws into international trade agreements.⁷² Likewise, the link between patents and

⁶⁸ Olúfémi O. Táíwò, ‘Being-in-the-Room Privilege: Elite Capture and Epistemic Deference’, *The Philosopher*, vol. 108, no. 4 (‘What is We?’) (November 2020), <https://www.thephilosopher1923.org/essay-taiwo>

⁶⁹ Bureau des Dépôts, *Exercice de justice speculative*, 2019. My translation.

⁷⁰ ‘A2K is an emerging mobilization that includes software programmers who took to the streets to defeat software patents in Europe, AIDS activists who forced multinational pharmaceutical companies to permit copies of their medicines to be sold in South Africa, and college students who have created a new “free culture” movement to “defend the digital commons”—to select just a few. A2K can also be seen as an emerging set of theoretical commitments that both respond to and reject the key justifications for “intellectual property” law and that seek to develop an alternative account of the operation and importance of information and knowledge, creativity and innovation in the contemporary world.’ Amy Kapczynski and Gaëlle Krikorian, ‘Preface’ in *Access to Knowledge in the Age of Intellectual Property*, ed. Gaëlle Krikorian and Amy Kapczynski (New York: Zone Books, 2010), pp. 9–14, p. 9, available open access at <https://www.opensocietyfoundations.org/sites/default/files/age-of-intellectual-property-20101110.pdf>, p. 9.

⁷¹ ‘Patents typically cover forms of technological invention—once things such as machines and mouse-traps and today things such as new molecules, plant varieties, and software. [...] Copyrights typically cover expressive or literary works—classically, maps, charts, and books, but today also things such as sound recordings and software. [...] Trademarks protect the use of a distinctive trade name in commerce [...].’ Amy Kapczynski, ‘Access to Knowledge: A Conceptual Genealogy’ in *Access to Knowledge in the Age of Intellectual Property*, op cit, pp. 17–56, p. 23.

⁷² Regarding the international TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement adopted in 1995 as a ‘new mode of conquest and imperium’, see Amy Kapczynski, ‘Access to Knowledge: A Conceptual Genealogy’ in *Access to Knowledge in the Age of Intellectual Property*, ed. Gaëlle Krikorian and Amy Kapczynski (New York: Zone Books, 2010), pp. 17–56, at pp. 25–26.

colonization can be traced historically. As Indian ecofeminist Vandana Shiva recounts, '[a]t the beginning of the colonization of the world by Europe, [patents] were aimed at the conquest of territory; now they are aimed at the conquest of economies. [...] Five hundred years after Columbus, a more secular version of the same project of colonization continues through patents and intellectual property rights.' Through the mechanism of intellectual property rights, transnational corporations claim 'the same freedom that European colonies have claimed since 1492 as their natural right to the territories and wealth of non-European peoples'⁷³—a 'natural right' evoked by Mamy Kaba's letter (exhibit 2, section 1), signed by Kaba 'in the name of the Guinean people of the Patio', which testifies to the manner in which Guineans are dispossessed of sovereignty over their own resources (in particular by multinationals such as Rio Tinto and Bellzone Mining PLC).

So we see here how even though within the deposition letters links are made between histories of colonization and exploitation (for instance of Guinea by France) on the one hand and contemporary migration to Europe on the other, the legal and epistemological framework of patents and intellectual property rights that has allowed and continues to underpin this exploitation and plundering is in fact used against itself in order to protect the lives of those attempting to make a life in the colonial metropole. In other words, rather than being turned away from, this colonial-legal heritage is employed against itself. And this is all the more so with respect to the status of the individual author-witness, as discussed above, which we must also consider in relation to copyright and author's rights. As Eva Weinmayr writes, the legal definition of copyright combines authorship, originality and property and is a specifically modern formation of property rights that emerged from marketplace economics and possessive individualism.⁷⁴ As such, 'the author in copyright law is unequivocally postulated in terms of liberal and neoliberal values.' And therefore copyright, it can be argued with reference to a multitude of examples, is destroying collective creative practices. Weinmayr paraphrases feminist legal scholar Carys Craig, for whom 'copyright law and the concept of authorship it supports fail to adequately recognise the essential *social nature* of human creativity. It chooses relationships qua private property instead of recognising the author as necessarily social [*sic*] situated and therefore

⁷³ Vandana Shiva, 'Biodiversity, Intellectual Property Rights, and Globalization' in *Another Knowledge is Possible: Beyond Northern Epistemologies*, ed. Boaventura de Sousa Santos (London: Verso, 2007), pp. 272–87, at p. 273, available at [http://www.boaventuradesousasantos.pt/media/Chapter%2010\(2\).pdf](http://www.boaventuradesousasantos.pt/media/Chapter%2010(2).pdf).

⁷⁴ Eva Weinmayr, 'Confronting Authorship, Constructing Practices (How Copyright is Destroying Collective Practices)' in *Whose Book is it Anyway? A View from Elsewhere on Publishing, Copyright and Creativity*, ed. Janis Jefferies and Sarah Kember (Cambridge, UK: Open Book Publishers, 2019), pp. 267–307, at p. 268. Weinmayr is a member of The Piracy Project, which 'questions common sense assumptions about ownership, authorship and the implications policy development has had on the current debate around knowledge production and intellectual property'. See <http://andpublishing.org/the-piracy-project/>.

creating (works) within a network of social relations.⁷⁵ In the *Exercises*, however, the manner in which the French legal framework of rights of the author is creatively placed in conversation with asylum law paradoxically works in the name of protecting the social relations—the co-dependency—that make up this collective body (with ‘body’ also understood here quite literally with respect to the safety of the Bureau’s members) as well as the creative act of jurisprudence that the members’ lives, taken together, attempt to make. (This is also addressed through the publication of the scripts online under copyleft, the framework of which attempts an alternative model of authorship that is co-dependent.) As such, copyright law is used as a speculative tool.

Looking back in retrospect (Covid vaccines were not yet available at the time of the performance in October 2020) we can see how at stake across both of the two areas of law (asylum law and intellectual property rights) being brought together within the performance is the sanctity of life itself (or what you call ‘liveable lives’): on the one hand, the safety, livelihoods and quality of life of individual migrants resisting deportation;⁷⁶ and on the other hand, the privatisation and commercialisation of knowledge, or research and development (R&D), in the form of patenting—the controversy of which has reached a peak in discussions around ‘vaccine apartheid’, ‘vaccine nationalism’ or ‘pharmaceutical Empire’⁷⁷—a global patenting war that brings into sharp relief continuing unequal relations between global north and global south.⁷⁸

Taking leave from art

SS: Throughout the performance, the Bureau speaks of the shortcomings of existing justice,

⁷⁵ Weinmayr, ‘Confronting Authorship’, op cit, p. 268.

⁷⁶ Let us not forget here the liberal spin of France’s naturalization gesture for migrants willing to sacrifice the sanctity of their lives for the care of French citizens. See Sofya Aptekar and Miriam Ticktin, ‘Must immigrants sacrifice themselves to COVID-19 for basic rights?’, *openDemocracy*, 6 February 2021, https://www.opendemocracy.net/en/must-immigrants-sacrifice-themselves-covid-19-basic-rights/?fbclid=IwAR281bQks-KOKV8VXbFmZZqX4L98_tCRe802VhyZ9p4ceiTDJ3mx0KhoXQY.

⁷⁷ Regarding ‘pharmaceutical empire’, see Melinda Cooper, *Life as Surplus: Biotechnology and Capitalism in the Neoliberal Era* (Seattle: University of Washington Press, 2008).

⁷⁸ See Fatima Bhutto, ‘The world’s richest countries are hoarding vaccines. This is morally indefensible’, *Guardian*, 17 March 2021, <https://www.theguardian.com/commentisfree/2021/mar/17/rich-countries-hoarding-vaccines-us-eu-africa>. There have been calls from many organisations, as well as countries of the Global South, for the World Trade Organisation to support the suspension of Covid-19 vaccine patents. See for instance, Ann Danaiya Usher, ‘South Africa and India push for COVID-19 patents ban’, *The Lancet*, 5 December 2020, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)32581-2/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)32581-2/fulltext); Global Justice Now, ‘379 organisations call on WTO to support Covid-19 patent suspension’, 15 October 2020, <https://www.globaljustice.org.uk/news/379-organisations-call-wto-support-covid-19-patent-suspension/>. Importantly, this call has also been made through tools for access to knowledge (A2K) such as Creative Commons. See ‘Creative Commons’ Response to COVID-19’, no date, <https://creativecommons.org/creative-commons-response-to-covid-19/> (last accessed 20 March 2021). For a longer history of the A2K movement’s struggle for access to medicines, notably AIDS medicines, and hence for ‘distributive justice’, see Krikorian and Kapczynski, eds., *Access to Knowledge in the Age of Intellectual Property*, op cit.

which we can here read as hegemonic (Eurocentric or ‘northern’) conceptions of justice, and of their attempt to enact an alternative form of justice, with and beyond institutional justice—one which transforms their relations and living conditions. One might of course read this in resonance with critiques of the supposed universality of rights and justice or, more specifically, with discourses around ‘justice from below’ (a field of human rights that critiques top-down promotions of justice). But if we are to consider such schemas in terms of ‘southern’ epistemologies or representational frameworks then the power structures often fall short. Returning to what I was saying above regarding testimony and the tendency of humanitarian workers or human rights advocates to step in and speak for undocumented migrants from a position of expertise and indeed power, this is also the case for proponents of ‘justice from below’ insofar as, in the words of legal scholar Tshepo Madlingozi, ‘transitional justice experts’ professional advancement is based on being able to “speak about” and “speak for” victims.⁷⁹ In the *Exercises*, however, this spokesperson is absent. Madlingozi goes so far as to name this expert figure the ‘transitional justice entrepreneur’⁸⁰ (and we can also think here of the human capital accrued by the ‘native informant’ of whom Spivak writes).⁸¹ I imagine that you might have something to say about this entrepreneurial role—one which capitalises upon ‘southern’ or subaltern experiences—in the contemporary art world.

OM: Yes, based on what I was saying earlier, one might of course ask: then why present such a particular gesture in a contemporary art centre? Because that is where the means to do it exist, to pay for the work. It is as simple as that and we must never forget to acknowledge what the field of art allows us to do more or less secretly.

Presenting the performance in this place obviously underlines the fact that means accumulate in places where performances are made as much as they lack in places where justice should be done. But here too there is a paradoxical need to legitimize concerning which I would like to

⁷⁹ Tshepo Madlingozi, ‘On Transitional Justice Entrepreneurs and the Production of Victims’, *The Journal of Human Rights Practice*, vol. 2, no. 2 (2010), pp. 208–28. Cited in Patel, ‘The Role of Testimony’, op cit, pp. 247, 257.

⁸⁰ ‘[W]e must [...] assert that the transitional justice entrepreneur gets to be the speaker or representative on behalf of victims, not because the latter invited and gave her a mandate but because the entrepreneur sought the victim out, categorized her, defined her, theorized her, packaged her, and disseminated her on the world stage. Having “mined” the story in order to use it in the First World – a practice others aptly refer to as cultural imperialism – the entrepreneur reinforces her status as the authoritative knower who is ordained to teach, civilize and rescue the benighted, hapless victim. Despite writing critically and passionately about the situation of the victim, the victim is not only left in the same position but this encounter could be an act of further violence and dispossession.’ Madlingozi, ‘On Transitional Justice Entrepreneurs’, op cit, pp. 210–11.

⁸¹ See Spivak, ‘Can the Subaltern Speak?’, op cit.

engage other thoughts and possible paths. For the legitimacy of the Bureau's propositions in the domain of justice to be recognized, their work of art must also find legitimacy in the eyes of professionals, and in particular public institutions, of which the FRAC is part. The demand for recognition of subaltern lives is always a return towards established power—and a reinforcement of it—while speculative justice relies on a capacity to place this power at a distance, to establish a gap by manipulating the resources of power through ruse.

If it is also necessary to accompany this struggle from the perspective of art, it seems important to me to establish, at the same time as this new way of doing justice that the Bureau proposes, new methods of legitimacy for an art that fabricates the possibility of a life, a form of living, without owner. The defence of the Bureau's work rests on a vision of a speculative ecology of art rather than on the world of art *as it is*. This is why it is appropriate to defend the *Exercices in Speculative Justice* as the work of a desirable field of art that remains for the most to come, *from* which we may glimpse vanishing points in the direction of the living, in rupture with markets, which only see in art a tool for the production of value through the extraction of knowledge and the exhaustion of lives.

Plaidoirie pour une jurisprudence. X et Y c/Préfet de... is a work that offers certain critical tools for the Bureau des Dépôts' exercises in speculative justice. As I noted earlier, the Bureau's performance produces on its own account something different: a place for and made by minority speech, which dismantles the display of confessions and reinvents the form of polyphonic and elusive deposition. If it uses certain elements of the original arguments, *Exercices in Speculative Justice* also produces a number of displacements that interest us here. These allow us to rethink, in the present moment, a political practice of art as a space for rehearsal, preparation and prototype, tending towards a future.

One of these movements from the original argument is to rethink the site of enunciation as coming from bodies and lives that for the most part are exposed to the violence of the judicial system. This new situation has several consequences and the first is probably to reposition the artistic gesture in a vaster circulation from a living under threat towards another living, one of liveable lives. Which modifies the position of the field of art so that it becomes a point of passage and not a space of owned accumulation. For *Plaidoirie pour une jurisprudence* is a work of critical art which draws its value in the field of contemporary art—in the name of copyright law—and will participate in the augmentation of the symbolic and material capital of its authors. We could emphasize that *Exercices in Speculative Justice*, even as it attains some of these same values, will add others which permit the work to go beyond the economy of art, extending towards a politics of the living.

In this respect the proposition of the Bureau des Dépôts seems to depart from a critical postcolonial heritage—a critique of differences of rights, of the production of laws and frontiers—and to head towards a properly decolonial gesture, with the sense here of the practice of deconstruction of infrastructures of representation themselves through the tentative production of a commons, of living without owner, of a possibility of new life. Thus, as you said, we must understand the usage of copyright law here no longer in the perspective of a right to ownership, but as a right to being, to be in relation, an avowal of co-dependence that is produced at the expense of no one, a right to be an indivisible part of a world, which is the only right that can truly oppose practices of extraction.

Police scenes of confessions

OM: Here I'd like to continue what you were saying about testimony, reframing this in terms of confession and storytelling. I call 'police scenes' all the scenes where minorities are required to speak, to confess, to recount their supposed lives—potentially criminal. And this police interrogation also includes artistic and cultural scenes, the world of the documentary where speech is reclaimed like a new fetish. What is particularly interesting with the *Exercises in Speculative Justice* work is that most of the members of the Bureau des Dépôts are in exile from Guinea. This means that each one of these people must produce an origin story that has a very particular function: justifying the individual's right to remain on French territory. To make a deposition. The possibility for life is thus relative here to the capacity to produce a story whose most important quality is to correspond to expectation and, it must be said, to police projections. It is in this regard that the performance of justice is also a way to deconstruct one form of story(telling) in order to produce another.

We could also say, a way of moving from a story without rights towards a story—of rights—of the co-author. Beyond the Bureau's strategic skill of manipulating the use of copyright that you outlined, there is also a question of defending the possibility of emerging from a certain category of lives—lives that some want to make into documentary objects—towards lives imagined by and for themselves, lives that elude an imagination that is not theirs, to the assignments of a certain *real*. And this, as we have tried to emphasize throughout this text, is not only a question that touches on the content of the story, but also the mastery of certain physical parameters concerning orality: frequency, rhythm, volume and saturation. The totality of these variations allows for the formation, beyond the discourse itself, of its place of apparition, persistence and disappearance.

SS: Continuing what you said about criminality and an alternative framework of justice to be taken hold of, in the resumé of an earlier performance, the *Angle de transformations des politiques migratoires capitalistes et imperialistes* of 2018, the Bureau state the following:

We are not clandestine, we resist the criminality of the nation-states, and by our resistance we transform them. The Bureau of Depositions reopens, unblocks, what is blocked. The letters written must be in the sight of the press, of the citizens, of those who decide in our name. We say to them as others have said before us: ‘not in our name’. Our statements are written and come to oppose the arguments of states. They are weapons wielded in legitimate self-defence.⁸²

When we transpose this to the *Exercises*, we clearly see a form of resistance—what we are here naming as a decolonial intervention—that consists of opposition, as a legitimate form of self-defence, but that also goes beyond ‘mere’ opposition. In a Fanonian sense, one might read the gestures of the Bureau as an attempt to break free of a *reactional* cycle of opposition, based upon *ressentiment*, to (nowadays neo-)colonial systems of oppression—be these in their legal, epistemological or capitalist forms—and to instead create and claim an alternative conception of justice.⁸³

On my part, as someone who is immersed in theory but who also aims to provide a pedagogical space in which students of postcolonial studies are able to *make use* of or mobilise theory in order to understand and intervene in the various scenes of our colonial present, the work of the Bureau is refreshing and inspiring. Unlike other artist collectives, the work of the Bureau (or rather, the work *that is* the Bureau) does not arise out of theoretical pontification or a pessimistic desire to outwit the art world, even if what the Bureau produces does provide highly original material for those who think about what theory can *do*, and even if one can interpret the claims and propositions made by the work as theoretical gestures.⁸⁴ Rather, the Bureau and its speculative work arises out of practical necessity; as you suggest, it arises, quite literally, out of the urgent matter of life and death.

⁸² Bureau des dépositions. Angle de transformation des politiques migratoires et des Etats-Nations capitalistes’, <https://halshs.archives-ouvertes.fr/halshs-01853732>. My translation.

⁸³ See Frantz Fanon, *Black Skin, White Masks*, trans. C L. Markmann (London: Verso, 2008 [1967]); Frantz Fanon, “On Violence,” in *The Wretched of the Earth*, trans. R Philcox (New York: Grove Press, 2004 [1963]), pp. 1–62. For illuminating readings of the cycle of *ressentiment* diagnosed by Fanon with respect to resisting colonial oppression (be this material or psychological violence), see Howard Caygill, *On Resistance: A Philosophy of Defiance* (London: Bloomsbury, 2013) and Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).

⁸⁴ This latter comment is inspired by the following words of anthropologist Elizabeth A. Povinelli: ‘to care for others is to make a claim; it is to make a small theoretical gesture. To care is to embody an argument about what a good life is and how such a good life comes into being. Thus the arts of caring for others always emerge from and are a reflection on broader historical material conditions and institutional arrangements.’ Elizabeth A. Povinelli, *Economies of Abandonment: Social Belonging and Endurance in Late Liberalism* (Durham and London: Duke University Press, 2011), p. 160.

A performance of justice

OM: The objective of *Exercises in Speculative Justice* is not only to ameliorate justice in Fortress Europe, but to create a way to critique its mechanisms and deadly epistemologies in order to invent another justice in favour of the living. Rendering justice then means inventing a ritual that welcomes and re-composes a scene by weaving together all voices, those of the living and those of the dead, voices that have the right and those that do not, supposedly dangerous and criminal voices too. It is an invitation to experiment with other possible sociabilities from the starting point of the return of speech *outside* of police scenes in a place that does not turn dissensus into a risk or danger. A place where discord is acceptable and where agreeing is not a horizon of alliance, but merely a moment. A place where justice is endlessly replayed as an act of reparation for the cacophony of the diverse.

As I tried to underline earlier, *Exercises in Speculative Justice* is thus not simply built on the argument of the depositions. If these latter try to widen the scope of what can be used to judge the situation of lives under threat and produced as criminal—the corruption of states, colonial continuity, the economy of undocumented work...—the performance of justice also indicates another place of equality—provisional, unstable, uncomfortable, from fragments of conversations that disperse. It also allows us a taste of a place to-come, a hint of its perfume. It is in this regard that it is literally a work of speculative narrative.⁸⁵ This ‘reparative’ justice is the invitation to move towards this new place for the living, but it requires us to first engage in collectively sharing the risk of death that hovers over certain lives more than others.

The Bureau thus not only exposes evidence but also proposes a performance of liberation through speech in order to take care of lives that are produced as criminal. This action could be seen as rebutting some demands of justice to the extent that it considers criminal lives as good lives, starting from the principle that they were produced as criminal for unfair reasons which are in opposition to life. To a pragmatic strategy of justice, the Bureau adds a politics of the living, of the liveable, by asking this simple question: What tends in the direction of life? Let us be clear, this doesn’t concern a moral proposition but a performance of critique that affirms the living against the politics of death and ownership, by conjointly addressing justice and art and by

⁸⁵ Regarding speculative narrative in the work of Alfred North Whitehead, Gilles Deleuze, Isabelle Stengers and Donna Haraway, see Irina Guimbretière, “Narration speculative”: entretien avec Fabrizio Terranova’, January 2014, <http://www.arpla.fr/mu/lebourdon/2014/01/25/narration-speculative-entretien-avec-fabrizio-terranova/#:~:text=La%20fabulation%20ou%20la%20Narration,les%20probabilités%20qui%20hantent%20chaque>.

speculating on their possible future. From a work of art, at once prototypical and a simulacrum of justice, the Bureau develops a performative practice of justice, by activating a particular knowledge, the ruse of people who understand themselves to be under threat and produced as criminals and who must in consequence redouble their attention and apply themselves to the task of playing the masquerade. In other words, to know what is expected of them and yet at the same time to lean towards another place. To be present and to flee, which remains for me the most paradoxical and also the most concrete definition of a decolonial gesture from a minority situation.⁸⁶ Taking the performance seriously, because it is a possible regime for life and not just a spectacle. In other words, a regime of possible lives partly hidden behind a spectacle. A life that we could see, far away, a life that does not come towards you. A call.

Translated in part from French by Liz Young.

⁸⁶ See Olivier Marboeuf, 'To decolonise is to be present, to decolonise is to flee: marronage from toxic hospitality and alliances in the mangroves' in *Décolonisons les arts!*, ed. Leila Cukierman, Gerty Dambury et Françoise Vergès (Paris: Arché, 2018), available at <https://olivier-marboeuf.com/2019/02/18/decoloniser-cest-etre-la-decoloniser-cest-fuir/>.