

ANTI-IMPUNITY AND THE HUMAN RIGHTS AGENDA

In the twenty-first century, fighting impunity has become both the rallying cry and a metric of progress for human rights. The new emphasis on criminal prosecution represents a fundamental change in the positions and priorities of students and practitioners of human rights and transitional justice: it has become almost unquestionable common sense that criminal punishment is a legal, political, and pragmatic imperative for addressing human rights violations. This book challenges that common sense. It does so by documenting and critically analyzing the trend toward an anti-impunity norm in a variety of institutional and geographical contexts, with an eye toward the interaction between practices at the global and local levels. Together, the chapters demonstrate how this laser focus on anti-impunity has created blind spots in practice and in scholarship that result in a constricted response to human rights violations, a narrowed conception of justice, and an impoverished approach to peace.

Karen Engle is Minerva House Drysdale Regents Chair in Law, and Founder & Co-Director of the Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas at Austin. She is the 2016–17 Deborah Lunder and Alan Ezekowitz Founders' Circle Member at the Institute for Advanced Study.

Zinaida Miller is Assistant Professor at the School of Diplomacy and International Relations at Seton Hall University.

D.M. Davis is Judge President of the Competition Appeal Court of South Africa, and a Judge of the High Court of Cape Town. He is Honorary Professor of Law at the University of Cape Town.

Cambridge University Press

978-1-107-07987-8 — Anti-Impunity and the Human Rights Agenda

Edited by Karen Engle , Zinaida Miller , D. M. Davis

Frontmatter

[More Information](#)

Cambridge University Press

978-1-107-07987-8 — Anti-Impunity and the Human Rights Agenda

Edited by Karen Engle, Zinaida Miller, D. M. Davis

Frontmatter

[More Information](#)

Anti-Impunity and the Human Rights Agenda

Edited by

KAREN ENGLE

University of Texas School of Law

ZINAIDA MILLER

Seton Hall University

School of Diplomacy and International Relations

D.M. DAVIS

University of Cape Town Faculty of Law



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press

978-1-107-07987-8 — Anti-Impunity and the Human Rights Agenda

Edited by Karen Engle, Zinaida Miller, D. M. Davis

Frontmatter

[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
4843/24, 2nd Floor, Ansari Road, Daryaganj, Delhi – 110002, India
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107079878

DOI: 10.1017/9781139942263

© Cambridge University Press 2016

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2016

Printed in the United States of America by Sheridan Books, Inc.

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Names: Engle, Karen, editor. | Miller, Zinaida, editor. | Davis, D. M. (Denys Mathias), editor. | Bernard and Audre Rapoport Center for Human Rights and Justice, sponsoring body. | Harvard Law School. Institute for Global Law and Policy, sponsoring body.
Title: Anti-impunity and the human rights agenda / edited by Karen Engle, University of Texas School of Law; Zinaida Miller, Seton Hall University; D. M. Davis, High Court of Cape Town.

Description: Cambridge, United Kingdom ; New York, NY, USA : Cambridge University Press, 2016. | Includes papers presented at a conference held in Spring 2013 at The Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas School of Law. | Includes bibliographical references and index.

Identifiers: LCCN 2016051951 | ISBN 9781107079878 (hardback) |

ISBN 9781107439221 (paperback)

Subjects: LCSH: Criminal liability (International law)—Congresses. | Impunity—Congresses. | BISAC: POLITICAL SCIENCE / Political Freedom & Security / Human Rights.

Classification: LCC KZ7075.A58 2016 | DDC 345/.04—dc23

LC record available at <https://lcn.loc.gov/2016051951>

ISBN 978-1-107-07987-8 Hardback

ISBN 978-1-107-43922-1 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

<i>Contributors</i>	<i>page</i> vii
<i>Acknowledgments</i>	ix
Introduction	1
<i>Karen Engle, Zinaida Miller, and D.M. Davis</i>	
PART I WHAT DOES ANTI-IMPUNITY MEAN?	13
1 A Genealogy of the Criminal Turn in Human Rights	15
<i>Karen Engle</i>	
2 Anti-Impunity as Deflection of Argument	68
<i>Samuel Moyn</i>	
3 Doing History with Impunity	95
<i>Vasuki Nesiah</i>	
PART II HOW AND WHERE DOES ANTI-IMPUNITY OPERATE?	123
4 The South African Truth Commission and the AZAPO Case: A Reflection Almost Two Decades Later	125
<i>D.M. Davis</i>	
5 Anti-Impunity Politics in Post-Genocide Rwanda	149
<i>Zinaida Miller</i>	
6 Whose Exceptionalism? Debating the Inter-American View on Amnesty and the Brazilian Case	185
<i>Fabia Fernandes Carvalho Veçoso</i>	

vi	<i>Contents</i>	
7	The Distributive Politics of Impunity and Anti-Impunity: Lessons from Four Decades of Colombian Peace Negotiations	216
	<i>Helena Alviar García and Karen Engle</i>	
8	From Political Repression to Torturer Impunity: The Narrowing of <i>Filártiga v. Peña-Irala</i>	255
	<i>Natalie R. Davidson</i>	
	PART III ARE THERE ALTERNATIVES TO ANTI-IMPUNITY?	289
9	Impunity in a Different Register: People’s Tribunals and Questions of Judgment, Law, and Responsibility	291
	<i>Dianne Otto</i>	
10	Beyond Nuremberg: The Historical Significance of the Post-Apartheid Transition in South Africa	329
	<i>Mahmood Mamdani</i>	
	<i>Index</i>	361

Contributors

Helena Alviar García

Professor and former Dean, Faculty of Law, Universidad de los Andes

Natalie R. Davidson

Postdoctoral Fellow, Minerva Center for Human Rights, Hebrew University
Jerusalem

D.M. Davis

Judge, High Court of Cape Town and Judge President, Competition Appeal
Court of Cape Town; Honorary Professor, University of Cape Town Faculty
of Law

Karen Engle

Minerva House Drysdale Regents Chair in Law and Founder & Co-Director,
Bernard and Audre Rapoport Center for Human Rights and Justice, University
of Texas at Austin

Mahmood Mamdani

Professor and Executive Director, Makerere Institute of Social Research,
Makerere University, Kampala, Uganda, and Herbert Lehman Professor of
Government and Professor of Anthropology, African Studies and Political
Science, Columbia University

Zinaida Miller

Assistant Professor, School of Diplomacy and International Relations, Seton
Hall University

Samuel Moyn

Jeremiah Smith, Jr. Professor of Law and Professor of History, Harvard
University

Cambridge University Press

978-1-107-07987-8 — Anti-Impunity and the Human Rights Agenda

Edited by Karen Engle, Zinaida Miller, D. M. Davis

Frontmatter

[More Information](#)

viii

Contributors

Vasuki Nesiah

Associate Professor of Practice, Gallatin School of Individualized Study,
New York University

Dianne Otto

Francine V. McNiff Professor in Human Rights Law and former Director,
Institute for International Law and the Humanities (IILAH), Melbourne Law
School

Fabia Fernandes Carvalho Veçoso

Assistant Professor of International Relations, Federal University of São Paulo
and Postdoctoral Fellow with the Laureate Program in International Law,
Melbourne Law School

Acknowledgments

We first thank all the authors who have contributed to this collection. We have learned a great deal from our interactions with them and their work. And we are grateful for the enormous patience they have shown in responding to our multiple requests for revisions and updates, and for their willingness to engage with each other's work as we have sought to make an argument with the book.

We also thank the people behind two institutions who have supported this work: The Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas School of Law and the Institute for Global Law and Policy (IGLP) at Harvard Law School. The collaboration began before we were aware of it, when IGLP's director, David Kennedy, invited one of us (Karen Engle) to give a lecture in June 2012 and the other two of us (D.M. Davis and Zinaida Miller) to serve as respondents. Karen presented the first version of what later became her chapter for this book, and we believed we had the beginnings of a good discussion. The Rapoport Center decided to continue that discussion at its Spring 2013 conference, "Impunity, Justice and the Human Rights Agenda." Most of the contributors to this collection attended that conference, as did several other discussants and presenters to whom we are grateful for their time and substantive contributions to this project. IGLP then invited us to "workshop" the papers at a proseminar in June of that year.

We are therefore extremely grateful to David Kennedy and his team for providing financial and logistical support for the proseminar and to the following people at the Rapoport Center: Co-Director Daniel Brinks, who has been involved in numerous discussions with us, including at the conference, encouraged us to publish this collection, and agreed to dedicate much of the Center's time to the editing and production of the volume; Assistant Director William Chandler, who has deftly coordinated everything from the conference to the work of student copy-editors and the final preparation of the

manuscript; and Rapoport Center Scholars and Fellows – Kyle Shen, Kallie Dale Ramos, Rhiannon Hamam, Cieran Good, and Helen Kerwin – who have provided the bulk of the editing support for the project.

Hani Sayed has been an invaluable interlocutor and contributor to our discussions on anti-impunity from the beginning and we are grateful for his many insights, at the initial conference, the IGLP proseminar, and beyond. We are also indebted to Fionnuala Ní Aoláin for her very useful comments on the individual papers presented at the proseminar as well as on the project as a whole.

We are appreciative of John Berger and Sharon McCann at Cambridge University Press, as well as of three anonymous peer reviewers for their thoughtful feedback. We and our readers also benefited enormously from the excellent indexing skills of Deborah Patton.

Finally, we are each grateful to our two co-editors as well as to the friends, family, and colleagues who have stood by us throughout the production of this book. It has been a long haul that has spanned more continents and years than we originally anticipated. We hope the result vindicates the wait.