Towards the end of the twentieth century, the global human rights movement embarked on a major shift in its agenda and priorities. From the mid-1970s through the late 1980s, human rights groups tended to direct their advocacy in opposition to State criminalization of political activity and abuses within domestic criminal justice systems. The primary tactic was naming and shaming; the principal target was the State. From at least the early 1990s, however, the human rights movement underwent a “criminal turn,” increasingly directing its resources towards the promotion of criminal prosecution as an indispensable requirement for securing justice, peace and truth in the aftermath of mass atrocity situations. Under the banner of “ending impunity,” the primary tactic became the promotion of criminal accountability before domestic and international courts; the principal target was the individual.

Now, almost two decades into the twenty-first century, the correspondence between criminal prosecution and human rights has become so entrenched that to be anti-criminal prosecution is increasingly viewed as anti-human rights.

It is this turn towards an anti-impunity norm that forms the focus of a stimulating new collection co-edited by Karen Engle, Zinaida Miller and D.M. Davis: Anti-Impunity and the Human Rights Agenda. Arriving at a time when the international criminal justice project is increasingly under scrutiny and a surge in divisive and isolationist populism has put many in the human rights community on the
This collection offers a timely problematization of the anti-impunity agenda that has come to dominate human rights thinking over the past two decades. Bringing together some of the most prominent and engaged scholars in the field, the collection comprises ten chapters divided into three parts.

Part I contains three chapters—authored by Karen Engle, Samuel Moyn, and Vasuki Nesiah, respectively—that define and trace the development of the anti-impunity norm amongst human rights advocates, scholars and practitioners. While Engle and Moyn offer critical accounts of the genealogy and rhetoric of the anti-impunity turn, Nesiah examines how moments of anti-impunity against perpetrators of international crimes have simultaneously constituted moments of impunity for more powerful actors and injustices caused by systemic inequality.

Part II turns to examine and critique anti-impunity struggles within five specific contexts. D.M. Davis offers a close reading of the Constitutional Court case that rejected a legal challenge to South Africa’s transitional amnesty process, revealing how the reasoning and outcome of the case were politically contingent on the conditions confronting South Africa at the time. Zinaida Miller examines the multi-layered anti-impunity struggle that took place within post-genocide Rwanda, illuminating how local and international elites instrumentalised the struggle for different political ends. Fabia Fernandes Carvalho Veçoso recounts the transitional experience in Brazil to offer a critical reading of the U.S. Alien Tort Statute case, Filártiga v. Peña-Irala, revealing how a combination of legal constraints and the judicial need for legitimation in exercising an extraordinary form of jurisdiction led to the production of an impoverished historical account of the use of torture in Paraguay.

Completing the collection, Part III contains two chapters—authored by Dianne Otto and Mahmood Mamdani—that explore alternatives to the struggle against impunity. Albeit in different ways—Otto by examining people’s tribunals, and Mamdani by bringing renewed attention to the political process that facilitated the transition in South Africa—these chapters manage to successfully carve out space for discussing thicker and more diverse conceptions of justice beyond those that fit neatly within the narrow frame of conventional anti-impunity thinking.

As this brief overview suggests, the collection traverses an impressive range of issues, balancing general critiques of the anti-impunity agenda with more particularized insights that emerge from the examination of specific contexts. Given the volume’s breadth and richness, this review is restricted to discussing a few of its most thought-provoking insights in an effort to continue the important conversation ignited by its contributors.

Unraveling the Meaning and Trajectory of the Struggle Against Impunity

A natural starting point for many contributors in the collection is the precise meaning of impunity and the struggle against it. Most chapters define anti-impunity as an embrace of criminal prosecution as a necessary antidote to episodes of mass violence. Beyond a turn to criminal prosecution, however, the collection also examines anti-impunity as a particular set of assumptions. Mahmood
Mamdani, for example, defines the struggle against impunity as an embrace by the contemporary human rights movement of “the logic of Nuremberg” (Mamdani, p.352). To follow this logic is to understand mass violence through the static categories of victims and perpetrators, and to examine responsibility for its commission through the prism of individual agency. Mamdani’s conceptualization is useful because it resists the temptation to narrowly equate anti-impunity with criminal courts. Indeed, several chapters in the collection examine non-criminal justice mechanisms, such as South Africa’s Truth and Reconciliation Commission (Davis; Mamdani), the U.S. Alien Tort Statute (Davidson) and the post-genocide Rwandan gacaca proceedings (Miller), all of which have nonetheless ended up mimicking aspects of the logic of Nuremberg in practice. One of the strengths of the collection is the range of human rights and transitional justice mechanisms that it is able to traverse by examining anti-impunity as a set of assumptions.

Beyond questions of definition, several chapters also seek to understand how the anti-impunity agenda rose to prominence over the course of the past few decades. Addressing this issue directly, Karen Engle situates the turn to anti-impunity within a range of overlapping currents, including the rise of post-Cold War neoliberalism and its reliance on a strong punitive State, as well as the jurisprudence of the Inter-American Court of Human Rights concerning State accountability for the action of non-state actors and the invalidity of amnesty laws (Engle, pp.18–39). Complementing Engle’s analysis, Samuel Moyn’s chapter demonstrates how the anti-impunity turn has been sustained by a promotional discourse that deploys reverential and celebratory praise for anti-impunity institutions, a professionalizing discourse that renders the field an attractive site for the advancement of respectable careers, and a preservationist discourse that tactically shelters anti-impunity institutions from scrutiny on the ground that they require greater time and space to prove their worth (Moyn, pp.75-81). While several studies have already attempted to demystify the emergence of international criminal justice institutions on the international stage, these contributions stand out as relatively rare attempts to contextualize and understand how the contemporary human rights movement has come to embrace and sustain an anti-impunity discourse in practice.

Unveiling the Politics of the Anti-Impunity Turn

One of the most striking traits of the struggle against impunity has been its self-portrayal as a movement operating both beyond and against the realm of politics. As Zinaida Miller explains in her chapter on post-genocide Rwanda, anti-impunity has generally been invoked by the human rights movement “as a barricade against a violent and chaotic domestic politics that might infect the international rule of law” (Miller, p.159). Such a perspective depicts politics in reductive terms as a realm of uncontrolled violence that must be assimilated to the serene rationality of an impartial legal process.

Seeking to move away from this depoliticized depiction of the struggle against impunity, the editors explain that one of their shared aims in compiling the collection was “to bring back to the fore the national and global political contexts and stakes that have often been backgrounded by the turn to criminal law, whether in practice or rhetoric” (Engle, Miller and Davis, p.12). Building on a growing critical literature in the field of international criminal justice, the contributors convincingly fulfill this ambition, illuminating the different means by which the struggle against impunity has implicated the human rights
movement in the politics of global and domestic governance, legitimating particular relations of domination through its selective and exclusionary practices.

Resisting a singular definition of “the political,” the collection unveils a number of different strands of the politics of struggle against impunity, including: *the politics of selecting targets for prosecution*, which tends to be limited by and a reflection of the hierarchical interstate order in which anti-impunity institutions inescapably operate (Nesiah; Moyn); *the politics of hierarchy between international law and domestic politics*, which concerns the watchdog function of international courts that monitor and sometimes undermine domestically struck peace agreements and amnesties on the basis of decontextualized doctrinal judgments that prioritize a narrow conception of justice as criminal accountability (Veçoso; García and Engle); *the politics of partisanship*, which concerns opposing domestic political actors’ deployment of anti-impunity rhetoric to defend their particular agendas and interests (García and Engle); *the politics of legal interpretation*, which concerns the interpretative choices confronted by international and domestic judges in mediating competing conceptions of and tensions between justice, peace and truth in particular domestic contexts (Engle; Davis); and *the politics of structural exclusion*, which concerns the ways in which anti-impunity efforts focused on the criminal responsibility of individual perpetrators for particular exceptional acts of violence can mask and obscure the structural causes of mass atrocity situations and normalize systematic and ordinary forms of slow violence (Engle; Nesiah; Miller; Davidson; García and Engle; Otto; Mamdani).

The collection’s wide-ranging analyses of these issues are compelling. By unveiling the politics of the anti-impunity turn, the collection convincingly demonstrates that the struggle against impunity should invite “not mindless allegiance, but exploration of what it is trying to do and actually achieving, compared with hypothetical alternatives with which it competes or which it even rules out” (Moyn, pp.87–88).

However, while I found myself in accord with the vast majority of the collection’s insights, at times it seemed as if the collection attributed too much weight to the ability of the struggle against impunity to divert attention from particular agendas and injustices. For instance, although few would disagree with the contention that structural injustice and structural forms of violence have fallen beyond the purview of the struggle against impunity, less clear is the extent to which this unresponsiveness has influenced a more general neglect of such issues during moments of transition. Padraig McAuliffe, for example, has recently argued that the marginalization of structural injustice during periods of transition is more likely to have been influenced by domestic political-economic factors that inhibit genuinely transformative approaches, including the entrenched influence of informal actors from below and international financial institutions from above. Moreover, it is arguable that anti-impunity institutions can sometimes help keep particular conflicts in the public eye and even provide a discursive beginning for broader conversations beyond the courtroom concerning both structural causes of violence as well as the involvement and responsibility of collective actors such as States and private business entities. These lines of thought should at the very least give pause to those who place particular weight on the diversionary power of anti-impunity rhetoric and practices.

**Alternatives to Anti-Impunity**

Given that many critical collections are limited to unveiling the politics of a particular legal field, revealing its blind
spots and subjecting its assumptions to scrutiny, *Anti-Impunity and the Human Rights Agenda* stands out for its exploration of alternatives to the anti-impunity agenda. While it is certainly not the duty of critical scholars to identify and propose alternatives—and many would consider it anathema to their scholarly function—if one agrees with Karen Engle that scholarly critiques of the anti-impunity movement have struggled to influence the field to a significant extent (Engle, p.42), perhaps critical engagement with alternatives could offer a fruitful avenue for bridging the divide that sometimes exists between critical scholars and human rights advocates in practice.

As noted earlier in this review, the collection devotes two chapters to the examination of alternatives to anti-impunity: Diane Otto’s chapter on people’s tribunals and Mahmood Mamdani’s on the political process that assisted South Africa’s transition from apartheid.

By “people’s tribunals,” Otto refers to tribunals organized by individuals, NGOs and social movement activists, which look to realize conceptions of justice that extend beyond the confines of State-authorized practices of legal justice. Although some people’s tribunals have adopted the rhetoric of anti-impunity, particularly where they have sought to highlight the failure of existing legal institutions to hold powerful actors to account, others have fastened their attention on responding to structural injustices either by articulating a more inclusive and liberatory people’s law or by seeking to extricate law and conceptions of justice from the control of States. For Otto, it is the latter tribunals in particular that present a compelling challenge to the existing anti-impunity agenda by reminding us of “the infinity of possible claims for justice and the need for expansive ideas of responsibility for injustice, both within and beyond the confines of the law” (Otto, p.317).

Whereas Otto’s analysis illuminates alternative possibilities for justice beyond the confines of the State, Mahmood Mamdani’s chapter examines an alternative conception of justice within such confines. Specifically, Mamdani focuses on the political process known as Convention for a Democratic South Africa (CODESA) that helped facilitate South Africa’s transition away from apartheid. Typically dismissed as little more than hard-nosed pragmatism, CODESA was a process premised on the dual acknowledgement that there was little prospect of ending the conflict in South Africa in the short run and that those involved in the conflict would have to find a way to live together in its aftermath. The result was what Mamdani describes as “a radically new way of thinking about justice” (Mamdani, p.336). Rejecting the logic of the anti-impunity paradigm, CODESA prioritized political justice through an inclusive process whose object was “reform of the political community in which yesterday’s victims, perpetrators, bystanders and beneficiaries may participate as today’s survivors” (Mamdani, p.554). For Mamdani, a CODESA-style political process offers a more suitable way forward for many conflict-ridden African countries than the logic of Nuremberg, one that understands episodes of mass violence as driven primarily by political constituencies and recognizes that victims and perpetrators in civil wars often trade places in ongoing cycles of violence.

While both Otto and Mamdani illuminate many of the advantages of these alternative platforms and processes, it is notable that neither author shies away from acknowledging their limitations. Specifically, Otto exposes a tension between legalist and politico-ethicist aspirations in the work of people’s tribunals while Mamdani acknowledges the failure of CODESA to open up a public conversation about social justice in post-apartheid South Africa. In light of these insights, upon finishing the collection I was left with a sense of the inevitable
incompleteness and inadequacy of all responses to episodes of mass violence. Any response, it seems, will be subject to particular constellations of power that exclude some interests and prioritize others.

Ultimately, therefore, *Anti-Impunity and the Human Rights Agenda* is less an argument in favor of or against any particular way of doing justice and more a challenge to the human rights movement to recognize that justice holds no singular definition and “to imagine a world in which the culture of impunity is not their principal opponent” (Engle, p.49). At a time when the struggle against impunity is increasingly under threat, this call for self-reflexivity is as urgent as it is important.