

## **Book Review**

### **Zabyelina, Yuliya's '*Between Immunity and Impunity: External Accountability of Political Elites for Transnational Crime*'**

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## **Abstract**

In *Between Immunity and Impunity*, Dr. Yuliya Zabyelina, Associate Professor in the Department of Criminology and Criminal Justice at The University of Alabama, examines the challenges associated with holding accountable profit-driven transnational crimes that destabilise the global order. She provides a compelling account of the nature of these crimes and the impact that immunity has on victims' ability to seek justice. By relying on a wide array of literature, jurisprudence, and governmental and non-governmental reports, Dr. Zabyelina both makes the case for the need for accountability and introduces the reader to various external accountability mechanisms. This book lays the groundwork for future research, particularly in terms of policy considerations for immunity exceptions and the theorisation of how legal and political structures contribute to impunity for criminal elites.

This work critically analyses the bounds of diplomatic immunity as it relates to accountability for profit-driven transnational crimes perpetrated by public officials. Dr Zabyelina starts by providing a theoretical and practical overview of immunity for public officials, and then narrows in on transnational crimes that are financially motivated, relying on the theoretical concept of elite deviance to provide the backdrop for the following three chapters.<sup>1711</sup>

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<sup>1710</sup> Miles Ratcliffe and Caroline McKenna both graduated from the Criminal Law and Criminal Justice LLM programme at the University of Edinburgh in 2024.

<sup>1711</sup> Yuliya Zabyelina, *Between Immunity and Impunity: External Accountability of Political Elites for Transnational Crime* (Cambridge University Press, 2023), 4.

Dr. Zabyelina then explores diplomatic immunity as it relates to three specific areas of transnational crime: trafficking of diplomatic household workers, corruption and money laundering, and drug trafficking. She spends the first part of each chapter introducing the nature and context of the crime, providing examples that demonstrate a clear need for accountability. She then takes the reader through domestic and international jurisprudence, comparing not only different results but different analyses courts have taken regarding immunity arguments, for example, exceptions to immunity for grave human rights abuses.<sup>1712</sup> The rest of each chapter is used to explore possible avenues for accountability, which include creative ideas inside and outside of court processes, as well as recommended actions for both sending and receiving states. Dr. Zabyelina takes an interdisciplinary approach to address these “economic crimes that occur at the nexus of power, privilege, and impunity”.<sup>1713</sup>

The main thrust of this book is to explore the additional layer of difficulty that foreign official immunity provides to how national jurisdictions tackle crimes which ultimately destabilise the international order.<sup>1714</sup> In the opening chapter, Dr. Zabyelina artfully explains the lack of a principled framework for approaching immunity in the context of transnational or international crimes, noting that in the absence of real certainty, only those who seek to exploit the system benefit.<sup>1715</sup> As a result, she takes the position that exploring the inherent tension between state immunity and the need for accountability would be the appropriate intellectual leap to resolve such a pressing issue.<sup>1716</sup>

This issue of limitation and legitimacy has long been present in literature concerning transnational crime. Christensen, for example, posits that transnational frameworks seek to legitimate themselves by respecting the “monopoly on power” that nation-states hold.<sup>1717</sup> The key focus, therefore, is to rely on local legitimacy and expertise to punish crimes which are of international concern.<sup>1718</sup> Furthermore, Lord contends that

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<sup>1712</sup> Zabyelina, *Between*, 102.

<sup>1713</sup> Zabyelina, *Between*, 248.

<sup>1714</sup> Zabyelina, *Between*, 15.

<sup>1715</sup> Zabyelina, *Between*, 83.

<sup>1716</sup> Zabyelina, *Between*, 85.

<sup>1717</sup> Mikkel Jarle Christensen and Neil Boister, “New Perspectives on the Structure of Transnational Criminal Justice,” *Transnational Crime* 3 (2017), 6.

<sup>1718</sup> Christensen and Boister, *New Perspectives*, 8.

due to the fragmented implementation of these frameworks, there remains no agreed-upon basis upon which we can legitimately punish rule-breaking global elites.<sup>1719</sup> As a practical example of this, Dr. Zabyelina refers to how difficult it can be to get around immunity rules when kleptocrats have used their home state's legal powers to gain access to illicit wealth, giving them access to forms of state immunity.<sup>1720</sup> In other words, the issue appears to be the ability of states to enforce transnational justice when elites benefit from legal frameworks that prevent them from being held accountable. Dr. Zabyelina's achievement with this work lies in demonstrating the additional layer of immunity that contributes to this significant limitation.

Dr. Zabyelina discusses this issue and looks into how courts and policymakers have sought to address immunity in this context. Of particular interest was the focus in Chapter 2 on domestic workers who are victims of labour trafficking by those with foreign official immunity.<sup>1721</sup> As an issue, it perfectly demonstrates how immunity adds a layer of vulnerability to victims in addition to the social isolation they experience and the socioeconomic power of their employers.<sup>1722</sup> Meanwhile, deliberations over the "commercial exception" contained within the Vienna Convention on Diplomatic Relations have long reflected a balancing act between ensuring diplomats can fulfil their duties, while sanctioning certain types of criminal behaviour.<sup>1723</sup> In the United States, the approach of the courts has been to retain a strict construction out of deference to diplomatic difficulties potentially posed to the executive branch of government.<sup>1724</sup> For Bergmar, accepting this broader interpretation of immunity amounts to tacitly accepting the exploitation of foreign domestic workers.<sup>1725</sup> Meanwhile, the wider understanding of the commercial exception developing in the United Kingdom can be seen as a shift towards ensuring there might be some accountability for an issue like this going forward, which some have described as a

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<sup>1719</sup> Nicholas Lord, "Establishing enforcement legitimacy in the pursuit of rule-breaking 'global elites': The case of transnational corporate bribery," *Theoretical Criminology* 20, no. 3 (2016), 390.

<sup>1720</sup> Zabyelina, *Between*, 176.

<sup>1721</sup> Zabyelina, *Between*, 91.

<sup>1722</sup> Zabyelina, *Between*.

<sup>1723</sup> Vienna Convention on Diplomatic Relations (signed 1961), Article 31(1)(c), *Basfar v Wong* [2022] UKSC 20, para 102.

<sup>1724</sup> Nina Maja Bergmar, "Demanding Accountability Where Accountability is Due: A Functional Necessity Approach to Diplomatic Immunity under the Vienna Convention," *Vanderbilt Journal of Transnational Law* 47 (2014), 519.

<sup>1725</sup> Bergmar, *Demanding*, 524.

“historic break” from a deference for immunity.<sup>1726</sup>

Dr. Zabyelina explores these points of interpretation, which demonstrate how this work synthesises the enforcement of transnational justice with tackling jurisdictional issues around immunity.<sup>1727</sup> Her contribution is to examine the issue of immunity and labour trafficking holistically, exploring the nuances of how courts and policymakers have sought to circumvent immunity and foster some form of accountability. These solutions vary from potentially holding both sending and receiving states liable for these abuses,<sup>1728</sup> to active preventative policy in the receiving state, such as registration and record keeping.<sup>1729</sup> Dr. Zabyelina recognises the limitations if the sending states do not waive immunity.<sup>1730</sup> However, she essentially calls out both sending and receiving states to treat these incidents as violations of criminal law and human rights protections, which can be addressed through domestic legislation and prosecution.<sup>1731</sup> Moreover, she offers alternative solutions, such as out-of-court civil settlements, as well as waiting until diplomatic terms are resolved and the residual immunity is lessened. Importantly, she also recommends preventative measures that would serve to diminish occurrences of such transnational crimes.<sup>1732</sup> This holistic approach puts all states on notice that diplomatic immunity does not inevitably have to lead to impunity.

The result is that the author, in each chapter, demonstrates how the issue of focus, whether labour trafficking in Chapter 2, money laundering in Chapter 3, or drug trafficking in Chapter 4, is complicated by the issue and nature of immunity. The contribution to the field is to provide a greater understanding of these issues and the benefits and limitations of any workable legal or policy solutions.

Dr. Zabyelina’s analysis and arguments are developed mainly through the academic

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<sup>1726</sup> Sophie Ryan, “Modern Slavery and the Commercial Activity Exception to Diplomatic Immunity from Civil Jurisdiction: The UK Supreme Court’s Decision in *Basfar v Wong*,” *Modern Law Review* 87, no. 1 (2024), 202, 204 & 216.

<sup>1727</sup> Zabyelina, *Between*, 117.

<sup>1728</sup> Zabyelina, *Between*, 126 & 130.

<sup>1729</sup> Zabyelina, *Between*, 137 & 138.

<sup>1730</sup> Zabyelina, *Between*, 140.

<sup>1731</sup> Zabyelina, *Between*, 137.

<sup>1732</sup> Zabyelina, *Between*, 132-134.

fields of international law and international criminal justice.<sup>1733</sup> In the first chapter, she relies upon a combination of secondary literature, jurisprudence, and reports to provide a background on diplomatic immunity, including its legal framework as well as its conceptual, doctrinal, and theoretical foundations.<sup>1734</sup> In chapters 2, 3, and 4, she largely relies on jurisprudence of domestic and international courts, governmental and non-governmental reports, and court filings to guide the reader through the types of situations that result in public officials committing transnational crimes, cases that have been litigated, and other avenues for accountability.

Dr. Zabyelina's exploration of these topics is characterised by a unique style of writing, ranging from a storytelling narrative to a textbook-style technicality. Chapter 1 is highly technical and legally dense, as Dr. Zabyelina guides the reader through the immunities of public officials under international law. This is contrasted with the first sections of the following three chapters, which provide an introduction to each set of crimes in an easy-to-read narrative. The remainder of those chapters falls somewhere in the middle in terms of technicality of writing. The benefit of this writing style is that it gives the reader variety, which is engaging. However, a drawback may be that someone with more expertise in this area wants more technical writing and less narrative, while someone with less knowledge in the area may take the opposite view.

The concluding chapter touches upon several areas that are all ripe for further research. This includes eliminating the profit motive of such crimes, the power imbalances of different countries in terms of political influence on public officials' immunity, and the possibility of a standalone Transnational Criminal Court.<sup>1735</sup> For example, when discussing the waiver of immunity, one cannot ignore the global political reality that some countries will have significantly more influence in persuading another country to waive immunity. The book offers various avenues for exceptions to immunity or as alternatives to court proceedings. However, further arguments regarding the likelihood of success of these potential accountability mechanisms need to be considered.

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<sup>1733</sup> Zabyelina, *Between*, 19.

<sup>1734</sup> Zabyelina, *Between*, 24.

<sup>1735</sup> Zabyelina, *Between*, 252, 254, and 256.

This book lays the groundwork for several areas of future research, including further examination of the concept of elite deviance and its application to the doctrinal analysis presented by the author. Elite deviance, as a theoretical framework, details how the legal and political influence of elites leads to this form of criminality being pervasive throughout structures of power.<sup>1736</sup> Dr. Zabyelina's references to the concept in the introductory chapter were incredibly apt, and any future research on how policy can overcome this issue must be rooted in a framework which understands how legal and institutional structures facilitate this sort of behaviour.<sup>1737</sup> These observations are crucial for laying the groundwork for future research to understand how these power structures operate in the context of immunity and for developing effective policy solutions going forward.

Furthermore, the limitations of this scholarship, as acknowledged by the author, mainly involve the over-representation of some jurisdictions with primary sources.<sup>1738</sup> This was not by choice of the author, but rather, the publicly available court files, as well as the willingness and ability of states to investigate and prosecute such offences.<sup>1739</sup> This limitation is particularly recognised in transnational enforcement scholarship, with some contention that this is also the impact of the traditional dominance of major economic powers such as the United States and a resulting "clublike" network of governance.<sup>1740</sup> While future scholarship, which mainly relies on primary sources, may be bound by this limitation, those engaging in more theoretical scholarship may wish to consider in depth how this applies beyond the Global North.<sup>1741</sup>

Finally, while the argument against immunity for these profit-driven transnational crimes seems obvious, future research could build on this book by further critically analysing the theoretical and moral bases for providing exceptions to immunity when it comes to these types of crimes, as well as the policy argument when it comes to the external avenues of accountability. Dr. Zabyelina herself takes a more policy-focused

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<sup>1736</sup> David R. Simon, *Elite Deviance* (Routledge, 2018), 28.

<sup>1737</sup> Edwin Sutherland, "White Collar Criminality," *Yearbook* 138 (1940): 150.

<sup>1738</sup> Sutherland, *White*, 20.

<sup>1739</sup> Sutherland, *White*, 20.

<sup>1740</sup> Bruce Zagaris, *International White Collar Crime: Cases and Materials* (Cambridge University Press, 2015): 14.

<sup>1741</sup> Danielle Watson et al, "Crime and Governance in the Global South" *Annual Review of Criminology* (2025): 301.

approach in a separate article, where she considers the ongoing debates about immunity as it relates to international and transnational crimes.<sup>1742</sup>

This book would be an appropriate read for those interested in the nuances of both international diplomatic law and transnational law enforcement. Dr. Zabyelina contributes to the literature in both of these fields by demonstrating the additional layer of complexity that foreign official immunity adds to the issue of enforcing transnational law against global elites. While the book is doctrinally focused, it lays the groundwork for any additional theoretical work which could be undertaken in this area. The author references explicitly elite deviance in the introductory chapter, which provides a theoretical explanation for why global elites tend to avoid accountability. This presents an exciting opportunity for future research into how this additional layer of practical difficulty fits into the theorisation of how legal and political structures contribute to impunity for criminal elites.

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<sup>1742</sup> Yuliya Zabyelina, "Revisiting the Concept of Organized Crime Through the Disciplinary Lens of Economic Criminology," *Journal of Economic Criminology* 1 (2023).

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