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## Mass Violence, Environmental Harm, and the Limits of Transitional Justice

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# Mass Violence, Environmental Harm, and the Limits of Transitional Justice

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## Introduction

The relationship between environmental degradation and periods of mass violence is complex and multi-faceted. Environmental degradation can destabilize societies and cause conflict; attacks on the environment can be a means of harming targeted groups; and both mass violence and subsequent transitions can leave damaging environmental legacies.<sup>1</sup> The connections between environmental degradation and mass violence have received increased recognition in international law and policy. This has been exemplified by the work of the International Committee of the Red Cross (ICRC)<sup>2</sup> and the International Law Commission on protecting the environment during conflict,<sup>3</sup> and the growth of environmental peacebuilding.<sup>4</sup> Despite this growing recognition, the environment-conflict nexus has often been under-explored and under-theorized within transitional justice.<sup>5</sup> In this article, we interrogate this inattention and explore the limitations and possibilities of transitional justice responses to the environmental harms associated with mass violence.

By transitional justice, we mean both “that set of practices, mechanisms and concerns that arise during a period of conflict, civil strife or repression,”<sup>6</sup> and the distinctive field of academic knowledge<sup>7</sup> that seeks to provide “legal, political, philosophical or moral concepts that back the practice of transitional justice.”<sup>8</sup> Since emerging in response to the downfall of

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<sup>1</sup> Explored below.

<sup>2</sup> International Committee of the Red Cross, *Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict*, endorsed by UN GA Res. 49/50 (Geneva: ICRC, 1994, updated 2021).

<sup>3</sup> Michael Bothe, “The ILC’s Special Rapporteur’s Preliminary Report on the Protection of the Environment in Relation to Armed Conflict: An Important Step in the Right Direction,” in *International Law and the Protection of Humanity. Essays in Honor of Flavia Latanzi*, ed. Pia Acconci et al. (Leiden: Brill, 2017).

<sup>4</sup> See, for example, Carl Bruch et al., *Governance, Natural Resources, and Post-Conflict Peacebuilding* (London: Earthscan, 2016); Päivi Lujala and Siri Aas Rustad, *High-Value Natural Resources and Post-Conflict Peacebuilding* (London: Earthscan, 2011); Ashok Swain and Joakim Öjendal, *Routledge Handbook of Environmental Conflict and Peacebuilding* (London: Routledge, 2020); Helen Young and Lisa Goldman, *Livelihoods, Natural Resources, and Post-Conflict Peacebuilding* (London: Routledge, 2015).

<sup>5</sup> See, for example, Janine Natalya Clark, “Are there ‘Greener’ Ways of Doing Transitional Justice? Some Reflections on Srebrenica, Nature and Memorialisation,” *International Journal of Human Rights* 20, no. 8 (2016); Lieselotte Viaene et al., “Call for Papers for 2023 Special Issue, Transitional Justice and Nature: A Curious Silence,” *International Journal of Transitional Justice*, accessed September 21, 2021, [https://academic.oup.com/ijtj/pages/call\\_for\\_papers](https://academic.oup.com/ijtj/pages/call_for_papers).

<sup>6</sup> Naomi Roht-Arriaza, “The New Landscape of Transitional Justice,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariecurrena (New York: Cambridge University Press, 2006), 2.

<sup>7</sup> Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field,’” *International Journal of Transitional Justice* 3, no. 1 (2009).

<sup>8</sup> Hannah Franzki and Maria Carolina Olarte, “Understanding the Political Economy of Transitional Justice: A Critical Theory Perspective,” in *Transitional Justice Theories*, ed. Susanne Buckley-Zistel et al. (London: Routledge, 2013), 203.

communist regimes in the 1980s,<sup>9</sup> transitional justice has shown itself to be a field capable of significant change and expansion.<sup>10</sup> A multi-disciplinary body of scholarship now plays a crucial role in envisioning a “broader and more holistic project.”<sup>11</sup> While the field is increasingly diverse and contested, transitional justice remains centered around two assumptions: that transitions to liberal democracy are a good thing, and that mechanisms such as truth commissions, trials, institutional reforms, and reparations can contribute to democratic rule of law and societal reconciliation in the aftermath of violence.<sup>12</sup>

Although environmental concerns have yet to enter the mainstream of transitional justice discourse, emergent literature indicates an increased willingness to engage with environmental harm. This has been evident in scholarship exploring, for example, the connections between natural resources and conflicts,<sup>13</sup> the relationships between victims and their environments,<sup>14</sup> and the harmful impacts of colonialism, land expropriation, and large-scale environmental degradation.<sup>15</sup> Others have explored the expansion of the situations to which transitional justice applies to include natural disasters<sup>16</sup> and climate change.<sup>17</sup> Arguments that international criminal law should do more to prosecute environmental harm have gathered momentum,<sup>18</sup> while others have considered whether there are “greener” ways to implement reparative mechanisms.<sup>19</sup> It has even been argued that centering environmental justice in

<sup>9</sup> Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (2009).

<sup>10</sup> Ruti G. Teitel, “Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16 (2003).

<sup>11</sup> Dustin N. Sharp, “What Would Satisfy Us? Taking Stock of Critical Approaches to Transitional Justice,” *International Journal of Transitional Justice* 13, no. 3 (2019), 571. For a critique of “holistic” transitional justice, see Mariam Salehi, “Trying Just Enough or Promising Too Much? The Problem-Capacity-Nexus in Tunisia’s Transitional Justice Process,” *Journal of Intervention and Statebuilding* 16, no. 1 (2021), accessed February 26, 2021. <https://doi.org/10.1080/17502977.2021.1882756>.

<sup>12</sup> Franzki and Olarte, *Political Economy*, 203.

<sup>13</sup> Sandra S. Nichols, “Reimagining Transitional Justice for an Enduring Peace. Accounting for Natural Resources in Conflict,” in *Justice and Economic Violence in Transition*, ed. Dustin N. Sharp (San Diego: Springer, 2014); Emily E. Harwell and Philippe Le Billon, “Natural Connections: Linking Transitional Justice and Development Through a Focus on Natural Resources,” in *Transitional Justice and Development: Making Connections*, ed. Pablo De Greiff and Roger Duthie (New York: Social Science Research Council, 2009).

<sup>14</sup> Janine Natalya Clark, “Re-Thinking Memory and Transitional Justice: A Novel Application of Ecological Memory,” *Memory Studies* 14, no. 4 (2020), 12.

<sup>15</sup> M. Brinton Lykes and Hugo Van Der Merwe, “Exploring/Expanding the Reach of Transitional Justice,” *International Journal of Transitional Justice* 11, no. 3 (2017); Belkis Izquierdo and Lieselotte Viaene, “Decolonizing Transitional Justice from Indigenous Territories,” *Peace in Progress* 34 (2018); Esme G. Murdock, “‘Storied with Land: ‘Transitional Justice’ on Indigenous Lands,” *Journal of Global Ethics* 14, no. 2 (2018).

<sup>16</sup> Megan Bradley, “More than Misfortune: Recognizing Natural Disasters as a Concern for Transitional Justice,” *International Journal of Transitional Justice* 11, no. 3 (2017), 400.

<sup>17</sup> Sonya Klinsky and Jasmina Brankovic, *The Global Climate Regime and Transitional Justice* (London: Routledge, 2019).

<sup>18</sup> See, for example, Matthew Gillett, “Eco-Struggles,” in *Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles, and Practices*, ed. Carsten Stahn et al. (Oxford: Oxford University Press, 2017); Polly Higgins, *Eradicating Ecocide: Laws and Governance to Stop the Destruction of the Planet* (London: Shephard-Walwyn, 2010); Frédéric Mégret, “The Problem of an International Criminal Law of the Environment,” *Columbia Journal of Environment Law* 36, no. 2 (2011); Bronwyn Lay et al., “Timely and Necessary: Ecocide Law as Urgent and Emerging,” *Journal of Jurisprudence* 28 (2015); “Top International Lawyers to Draft Definition of ‘Ecocide,’” *Stop Ecocide*, November 17, 2020, accessed February 26, 2021, <https://www.stopecocide.earth/press-releases-summary/top-international-lawyers-to-draft-definition-of-ecocide>.

<sup>19</sup> Eliana Cusato, “Back to the Future? Confronting the Role(s) of Natural Resources in Armed Conflict Through the Lenses of Truth and Reconciliation Commissions,” *International Community Law Review* 19, no. 4–5 (2017); Clark, “Greener Transitional Justice?; Andrew R. Iloff, “Root and Branch: Discourses of ‘Tradition’ in Grassroots Transitional Justice,” *International Journal of Transitional Justice* 6, no. 2 (2012), 253–273; Saleem Hassan Ali, *Peace Parks: Conservation and Conflict Resolution* (Massachusetts: MIT Press, 2007); Lyn S. Graybill, “Traditional Practices and Reconciliation in Sierra Leone: The Effectiveness of Fambul Tok,” *Conflict Trends* 3 (2010); Rachel Killean “Imagining Reparations for Environmental Destruction,” in *Futures of International Criminal Justice*, ed. Emma Palmer et al. (London: Routledge, 2021).

transitional justice could reduce the risk of ethnic tensions continuing after violence has ceased.<sup>20</sup>

This nascent literature can be situated against a broader critical scholarship that seeks to interrogate transitional justice's limitations and blind spots.<sup>21</sup> In this article, we bring this scholarship into conversation with bodies of literature long preoccupied with environmental harm, including green criminology and victimology, environmental justice scholarship, sociology, and Indigenous studies. By doing so, we aim to explore the limitations and underlying assumptions that impede transitional justice's ability to respond to environmental harm. Drawing from this multi-disciplinary literature, we make four key arguments. First, we argue that the dominance of anthropocentric legal frameworks has often resulted in the exclusion of environmental harm and victimhood from transitional justice's remit. Second, we contend that transitional justice's neo-colonial tendency has excluded worldviews that might offer greater consideration of environmental harm. Third, we explore how a lack of redress for structural inequalities can leave pre-existing environmental injustices intact following the cessation of mass violence. And fourth, we propose that transitional justice's "liberal imprints"<sup>22</sup> and associated sympathy for capitalism make it complicit in laying the groundwork for future environmental degradation. While this article is exploratory in nature, we also begin to map possibilities for a *greener* approach to transitional justice.<sup>23</sup> Before turning to the first of our arguments, we provide some context by outlining in greater detail the connections between mass violence and environmental degradation.

### Mass Violence and Environmental Degradation

Environmental harm can be a cause, a method, and a result of mass violence, as well as a barrier to sustainable peace. In this section we explore each of these in turn. While often interacting with other social, economic, and political dynamics,<sup>24</sup> competition over natural resources can be a significant motivator of mass atrocity.<sup>25</sup> For instance, "critical food-people-land imbalances"<sup>26</sup> and "intense inter-communal competition for land"<sup>27</sup> have been linked to genocidal violence in Rwanda, Armenia, and Eastern Anatolia.<sup>28</sup> Environmental degradation and misuse can decrease communities' welfare, exerting pressure on societies, entrenching societal divisions, and increasing the potential for violence.<sup>29</sup> The rise of neoliberal ideologies, and the related unsustainable pursuit of economic growth, facilitates over-exploitation of land, water, and

<sup>20</sup> David M. Ong, "Prospects for Transitional Environmental Justice in the Socio-Economic Reconstruction of Kosovo," *Tulane Environmental Law Journal* 30, no. 2 (2017).

<sup>21</sup> Sharp, *What Would Satisfy Us*.

<sup>22</sup> Marcus Zunino, *Justice Framed: A Genealogy of Transitional Justice* (New York: Cambridge University Press, 2019), 51–56.

<sup>23</sup> South has argued that "green issues open up a wide range of interdisciplinary work...offering the potential for collaboration between criminologists and economists, geographers, biologists, health specialists, philosophers, human rights workers, lawyers and others." See Nigel South, "A Green Field for Criminology? A Proposal for a Perspective," *Theoretical Criminology* 2, no. 2 (1998), 226.

<sup>24</sup> Daniel Schwartz and Ashbindu Singh, *Environmental Conditions, Resources, and Conflicts: An Introductory Overview and Data Collection* (Nairobi: United Nations Environment Programme, 1999).

<sup>25</sup> Merryl Lawry-White, "Victims of Environmental Harm During Conflict: The Potential for Justice," in *Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles, and Practices*, ed. Carsten Stahn et al. (Oxford: Oxford University Press, 2017), 367; Mark Levene, "Creating a Modern 'Zone of Genocide': The Impact of Nation- and State-Formation on Eastern Anatolia, 1878–1923," *Holocaust and Genocide Studies* 12, no. 3 (1998); Ernesto Verdeja, "On Situating the Study of Genocide within Political Violence," *Genocide Studies and Prevention* 7, no. 1 (2012).

<sup>26</sup> Paul J. Magnarella, "The Background and Causes of the Genocide in Rwanda," *Journal of International Criminal Justice* 3, no. 4 (2005), 817.

<sup>27</sup> Mark Levene, *Zone of Genocide*.

<sup>28</sup> Ibid; Magnarella, *Genocide in Rwanda*.

<sup>29</sup> Richard Milburn, "Mainstreaming the Environment into Postwar Recovery: The Case for 'Ecological Development,'" *International Affairs* 88, no. 5 (2012), 1085.

wildlife, with violent implications for both the ecosystems and the human communities that rely upon them.<sup>30</sup> For example, environmental degradation, unsustainable natural resource exploitation, and associated human rights violations are thought to have contributed to mass violence in the Solomon Islands<sup>31</sup> and Liberia.<sup>32</sup> Indeed, while the United Nations Environmental Programme (UNEP) has estimated that the exploitation of the natural world has contributed to at least forty percent of internal conflicts in the last sixty years,<sup>33</sup> others have suggested that most conflicts are rooted in resource competition and/or resource scarcity.<sup>34</sup>

Environmental destruction can also be a deliberate method of mass violence. There is a growing scholarship which explores acts of environmental destruction as a tactic of genocide.<sup>35</sup> For example, the Guatemalan Army's scorched-earth policy involved burning corn fields deemed sacred by the Maya, destroying a food source and committing a cultural violation.<sup>36</sup> As Lauren J. Eichler argues, the particular webs of relationships that can exist between Indigenous communities and the natural world can render environmental destruction a genocidal act that "literally eliminates, disfigures, and maims" other-than-human members of Indigenous communities.<sup>37</sup> Outside this context, environmental destruction can be a method of depriving targeted populations of resources and shelter, as exemplified by the US' use of Agent Orange in Northern Vietnam, Cambodia, and Laos.<sup>38</sup> Even when not a deliberate strategy, mass violence can cause environmental degradation. For example, in Rwanda, displacement camps and resettlement areas have impacted negatively on biodiversity due to the inhabitants' reliance on (and competition for) natural resources.<sup>39</sup> Elsewhere, landmines in both the Balkans and Cambodia<sup>40</sup> have impacted upon soil, plant, and animal life, threatening biodiversity.<sup>41</sup> More

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<sup>30</sup> Discussed further below.

<sup>31</sup> Matthew Allen et al., *Justice Delivered Locally: Systems, Challenges, and Innovations in Solomon Islands* (Washington D.C.: World Bank, Justice Delivered Locally, Research Report, August 2013).

<sup>32</sup> Republic of Liberia Truth and Reconciliation Commission, *Final Report. Volume Three: Appendices. Title III: Economic Crimes and the Conflict: Exploitation and Abuse*, June 30, 2009 (Liberia: Truth and Reconciliation Commission of Liberia).

<sup>33</sup> United Nations Environment Programme, *Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law* (Nairobi: UNEP, 2009).

<sup>34</sup> David Whyte, *Ecocide: Kill the Corporation Before it Kills Us* (Manchester: Manchester University Press, 2020).

<sup>35</sup> On the ecocide-genocide nexus see Martin Crook and Damien Short, "Marx, Lemkin and the Genocide-Ecocide Nexus," *International Journal of Human Rights* 18, no. 3, (2014); Martin Crook, et al., "Ecocide, Genocide, Capitalism and Colonialism: Consequences for Indigenous Peoples and Global Ecosystems Environments," *Theoretical Criminology* 22, no. 3 (2018).

<sup>36</sup> The Commission for Historical Clarification, *Guatemala: Memory of Silence, Report of the Commission for Historical Clarifications: Conclusions and Recommendations*, February 25, 1999, accessed March 3, 2022, <https://hrdag.org/wp-content/uploads/2013/01/CEHreport-english.pdf>; Izquierdo and Viaene, *Decolonizing Transitional Justice*.

<sup>37</sup> Lauren J. Eichler, "Ecocide is Genocide: Decolonizing the Definition of Genocide," *Genocide Studies and Prevention* 14, no. 2 (2020), 104.

<sup>38</sup> Ines Peterson, "The Natural Environment in Times of Armed Conflict: A Concern for International War Crimes Law?" *Leiden Journal of International Law* 22, no. 2 (2009), 331-332.

<sup>39</sup> Nathan Clay, "Fixing the Ecosystem: Conservation, Crisis and Capital in Rwanda's Gishwati Forest," *Environment and Planning E: Nature and Space* 2, no. 1 (2019), 36. See also Vadi Moodley, et al., "Environmental Causes and Impacts of the Genocide in Rwanda: Case Studies of the Towns of Butare and Cyangugu," *African Journal on Conflict Resolution* 10, no. 2 (2010).

<sup>40</sup> Shawn Roberts and Jody Williams, *After The Guns Fall Silent: The Enduring Legacy of Landmines* (Washington D.C.: Vietnam Veterans of America Foundation, 1995).

<sup>41</sup> Asmeret Asefaw Berhe, "The Contribution of Landmines to Land Degradation," *Land Degradation and Development* 18, no. 1 (2007).



broadly, mass violence can lead to “armed and lawless societies,” facilitating unsustainable hunting practices,<sup>42</sup> poaching,<sup>43</sup> and other incidences of harmful natural resource exploitation.<sup>44</sup>

Environmental degradation can hinder post-conflict recovery, removing potential platforms for cooperation and depleting the resources available for social reconstruction.<sup>45</sup> A failure to address underlying environmental injustices can also make a return to violence more likely. Examples include Darfur, where long-term peace is considered unlikely unless “underlying and closely linked environmental and livelihood issues” are addressed.<sup>46</sup> Indeed, in Guatemala, ongoing cycles of violence have been linked to the failure of transitional justice interventions to address the historic environmental causes of the conflict.<sup>47</sup>

Before concluding this section, it is worth noting that these connections are exacerbated by the climate crisis.<sup>48</sup> Climate change can cause environmental degradation that may ignite violence, while the carbon releases associated with armed conflict in turn contribute to climate change, making future conflicts increasingly likely.<sup>49</sup> In the longer term, mass violence can also deplete the resources communities need to withstand the effects of climate change, increasing vulnerabilities and risks of harm.<sup>50</sup>

Having highlighted some of the ways in which environmental harm and mass violence can be related, we now turn to our analysis of the limitations of transitional justice as a means of addressing this relationship. In the following section, we unpack the first of our arguments: that the dominance of anthropocentric legal frameworks has precluded adequate consideration of environmental harm within transitional justice.

### Legalism, Anthropocentrism, and Invisible Harms

Legalism can be understood as “the morality of rule following”<sup>51</sup> and in the context of transitional justice, is demonstrated by a focus on law as the means to solve social conflict.<sup>52</sup> While Wendy Lambourne has argued that transitional justice also encompasses psychosocial, socioeconomic, and political aspects of justice,<sup>53</sup> the focus on law as the “means to achieve justice has remained central.”<sup>54</sup> This “dominance of legalism”<sup>55</sup> is often discussed in the context of legalistic responses to harm. However, legalism has a broader role to play in shaping how the harms caused by mass violence are understood, creating “subjects and truths which are blind to

<sup>42</sup> U. C. Jha, *Armed Conflict and Environmental Damage* (New Delhi: Vij Books India Pvt Ltd, 2014), 103.

<sup>43</sup> United Nations Security Council (UNSC), *Interim report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, 22 May 2002, (S/2002/565), para. 52.

<sup>44</sup> United Nations Security Council (UNSC), *Report of the Panel of Experts Pursuant to Paragraph 25 of Security Council Resolution 1478 (2003) Concerning Liberia*, 28 October 2003, (S/2003/779), para. 14.

<sup>45</sup> Rosemary Rayfuse, “Introduction: Rethinking International Law and the Protection of the Environment in Relation to Armed Conflict,” in *War and the Environment. New Approaches to Protecting the Environment in Relation to Armed Conflict*, ed. Rosemary Rayfuse (Leiden: Brill, 2014), 5.

<sup>46</sup> United Nations Environment Programme, *Sudan: Post-Conflict Environmental Assessment* (Nairobi: UNEP, 2007), 8. See also Mark Levene, “David Scheffer’s ‘Genocide and Atrocity Crimes’: A Response,” *Genocide Studies and Prevention* 2, no. 1 (2007).

<sup>47</sup> Izquierdo and Viaene, *Decolonizing Transitional Justice*.

<sup>48</sup> Thor Hanson et al., “Warfare in Biodiversity Hotspots,” *Conservation Biology* 23, no. 3 (2009).

<sup>49</sup> Caitlin E. Werrell and Francesco Femia, “Climate Change Raises Conflict Concerns,” *UNESCO Courier*, accessed February 27, 2021, <https://en.unesco.org/courier/2018-2/climate-change-raises-conflict-concerns>.

<sup>50</sup> International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (Geneva: ICRC, 2019), Chapter 6.

<sup>51</sup> Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge: Harvard University Press, 1964), 87.

<sup>52</sup> Zunino, *Justice Framed*, 42–43.

<sup>53</sup> Wendy Lambourne, “Transitional Justice and Peacebuilding after Mass Violence,” *International Journal of Transitional Justice* 3, no. 1 (2009).

<sup>54</sup> Catherine Turner, “Deconstructing Transitional Justice,” *Law and Critique* 24, no. 2 (2013), 199.

<sup>55</sup> Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34, no. 4 (2007).

certain forms of injustice and harm.”<sup>56</sup> As will be examined in this section, this has implications for the ability of transitional justice to recognize environmental harm and victimhood.

Characterized by a conflation of human rights law, criminal law, and international humanitarian law,<sup>57</sup> transitional justice tends to prioritize “gross violations of civil and political rights (arbitrary or indefinite detention, severe assault, ill-treatment, etc.)” or “criminal acts (property destruction, abuse of children, etc).”<sup>58</sup> This often leads to the exclusion of socio-economic, cultural, and environmental rights.<sup>59</sup> The development of international criminal law as a means of addressing mass violence has further contributed to a tendency to view events through a “crime-driven lens.”<sup>60</sup> As noted by Arbour, the influence of criminal law on transitional justice has led to “eminently predictable” exclusions of other harms and discriminatory practices.<sup>61</sup> Critical scholarship has sought to challenge transitional justice’s dominant frameworks for “the lives they ignore, the injustices they fail to see and the patriarchal and racialized power structures that remain intact and unexamined,”<sup>62</sup> yet rarely has this encompassed environmental harm.

We argue that this exclusion can be linked to the anthropocentricity of dominant legal frameworks. Mainstream legal thought emphasizes “man” as the “central personage of both traditional philosophy and traditional law.”<sup>63</sup> As a result, law often struggles to include environmental harms, instead focusing on actions “which cause harm to the health or business of humans from a very anthropocentric and economic perspective.”<sup>64</sup> Indeed, as Michael J. Lynch et al. argue, “there is no such thing as an ecological right that is not, in the first instance, defined by some assumed association between humans and nature in which humans are the point of reference.”<sup>65</sup> This is most pronounced in the context of the rights, “particularly property rights—that the criminal law recognizes and protects.”<sup>66</sup>

This anthropocentrism is evident in transitional justice,<sup>67</sup> which is often limited by the assumption that “all forms of justice have something to do with the derivation and application of some theory or perspective on justice for humans and humans alone.”<sup>68</sup> International criminal law in particular has been critiqued for its failure to prosecute crimes against the

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<sup>56</sup> Rosemary Nagy, “Transitional Justice as Global Project: Critical Reflections,” *Third World Quarterly* 29, no. 2 (2008), 276.

<sup>57</sup> Teitel, *Transitional Justice Genealogy*, 91.

<sup>58</sup> Nagy, *Global Project*, 284.

<sup>59</sup> Zunino, *Justice Framed*, 49–51; Mark A. Drumbl, *Accountability for Property Crimes and Environmental War Crimes: Prosecution, Litigation, and Development* (New York: International Center for Transitional Justice, November 2009).

<sup>60</sup> Aldo Zammit Borda, “History in International Criminal Trials: The ‘Crime-Driven Lens’ and Its Blind Spots,” *Journal of International Criminal Justice* 18, no. 3 (2020).

<sup>61</sup> Louise Arbour, “Economic and Social Justice for Societies in Transition,” speech at New York University of Law School, 2006, 2; cited in Nagy, *Global Project*, 285.

<sup>62</sup> Eilish Rooney and Fionnuala Ní Aoláin, “Transitional Justice from the Margins: Intersections of Identities, Power and Human Rights,” *International Journal of Transitional Justice* 12, no. 1 (2018), 4.

<sup>63</sup> Mariana Valverde, “From Persons and Their Acts to Webs of Relationship: Some Theoretical Resources for Environmental Justice,” *Crime, Law and Social Change* 68, no. 5 (2017), 549.

<sup>64</sup> Reece Walters, et al., eds., *Emerging Issues in Green Criminology: Exploring Power, Justice and Harm* (Basingstoke: Palgrave Macmillan, 2013), 7.

<sup>65</sup> Michael J. Lynch, et al., eds., *Green Criminology and Green Theories of Justice: An Introduction to a Political Economic View of Eco-Justice* (Basingstoke: Palgrave Macmillan, 2019), 12.

<sup>66</sup> *Ibid.*, 11.

<sup>67</sup> Carsten Stahn et al., “Introduction,” in *Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles, and Practices*, ed. Carsten Stahn et al. (Oxford: Oxford University Press, 2017).

<sup>68</sup> Lynch, et al., *Green Theories of Justice*, 11.



environment in their own right,<sup>69</sup> as illustrated by continued calls for a crime of ecocide.<sup>70</sup> In the absence of such a crime, the environmental harms acknowledged in international criminal practice have been framed as harms against people or property.<sup>71</sup> Such framings have also emerged outside courtroom settings. For instance, the Sierra Leonean Truth and Reconciliation Commission has been critiqued for acknowledging the physical violence that resulted from resource extraction but overlooking related environmental harms,<sup>72</sup> while the Liberian Truth and Reconciliation Commission framed the environmental degradation caused by unsustainable diamond mining as a predominantly economic harm.<sup>73</sup>

Green victimological literature indicates that victims of environmental harms are highly diverse, encompassing both human and non-human animals.<sup>74</sup> However, “environmental victimization [does] not sit well with traditional models of criminal justice and, therefore, traditional modules of victimology.”<sup>75</sup> Transitional justice’s grounding in these same models<sup>76</sup> has in turn shaped understandings of victimhood,<sup>77</sup> with laws designed to address legacies of mass violence often specifically defining who can be categorized as a victim.<sup>78</sup> As a result, formulations of victimhood in transitional justice often reflect White’s observation that “human victims of environmental harm are themselves not widely recognized as victims of ‘crime’” while “the non-human entity is seldom considered worthy of attention.”<sup>79</sup> This is not always the case. For instance, Colombia’s *Jurisdicción Especial para la Paz* has recognized the territories of the Awá, Sía, and Nasa Indigenous peoples and the Black communities of Tumaco as victims of the conflict.<sup>80</sup> In Peru, the centerpiece of the memorial *El Ojo Que Lloro*, is a sculpture of the ancestral goddess *Pachamama*, to acknowledge the pain inflicted on Mother Earth by the

<sup>69</sup> See, for example, Mark A. Drumbl, “Waging War Against the World: The Need to Move from War Crimes to Environmental Crimes,” *Fordham International Law Journal* 22, no. 1 (1998); Jessica C. Lawrence and Kevin Jon Heller, “The Limits of Article 8(2)(b)(iv) of the Rome Statute, the First Ecocentric Environmental War Crime:” *Georgetown International Environmental Law Review* 20, no. 1 (2007); Tara Weinstein, “Prosecuting Attacks that Destroy the Environment: Environmental Crimes or Humanitarian Atrocities,” *Georgetown International Environmental Law Review* 17, no. 4 (2005).

<sup>70</sup> Higgins, *Eradicating Ecocide*; Polly Higgins, et al., “Protecting the Planet: A Proposal for a Law of Ecocide,” *Crime, Law and Social Change* 59, no. 3 (2013).

<sup>71</sup> Gillett, *Eco-Struggles*; Eliana Cusato, *The Ecology of War and Peace: Marginalising Slow and Structural Violence in International Law* (Cambridge: Cambridge University Press 2021).

<sup>72</sup> Cusato, *Back to the Future*.

<sup>73</sup> Republic of Liberia Truth and Reconciliation Commission, *Final Report, Volume Three: Appendices. Title III: Economic Crimes and the Conflict: Exploitation and Abuse*, 30 June 2009, (Liberia: Truth and Reconciliation Commission of Liberia), para. 197.

<sup>74</sup> Gema Varona, “Restorative Pathways after Mass Environmental Victimization: Walking in the Landscape of Past Ecocides,” *Oñati Socio-Legal Series* 10, no. 3 (2020).

<sup>75</sup> Matthew Hall, “Environmental Harm and Environmental Victims: Scoping out a ‘Green Victimology,’” *International Review of Victimology* 20, no. 1 (2014), 130.

<sup>76</sup> Lisa J. LaPlante, “Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes,” *Virginia Journal of International Law* 49, no. 4 (2009); Teitel, *Transitional Justice Genealogy*.

<sup>77</sup> Rob White, “Green Victimology and Non-Human Victims,” *International Review of Victimology* 24, no. 2 (2018), 240.

<sup>78</sup> See, for example, Jemima García-Godos and Knut Andreas O. Lid, “Transitional Justice and Victims’ Rights Before the End of a Conflict: The Unusual Case of Colombia,” *Journal of Latin American Studies* 42, no. 3 (2010); Kevin Hearty, “Legislating Hierarchies of Victimhood and Perpetrators: The Civil Service (Special Advisers) Act (Northern Ireland) 2013 and the Meta-Conflict,” *Social & Legal Studies* 25, no. 3 (2016); Luc Huyse, “Victims,” in *Reconciliation After Violent Conflict: A Handbook*, ed. David Bloomfield et al. (Stockholm: International Institute for Democracy and Electoral Assistance, 2003); Sarah Jankowitz, “The ‘Hierarchy of Victims’ in Northern Ireland: A Framework for Critical Analysis,” *International Journal of Transitional Justice* 12, no. 2 (2018); Cheryl Lawther, “The Cast of the Past: Truth Commissions and the Making and Marginalization of Identity,” *Ethnopolitics* 17, no. 2 (2018).

<sup>79</sup> White, *Green Victimology*, 240.

<sup>80</sup> Alexandra Huneus, “Territory as a Victim of Colombia’s War,” *EJIL: Talk!* (blog), May 7, 2020, accessed February 26, 2021, <https://www.ejiltalk.org/territory-as-a-victim-of-colombias-war/>; Alexandra Huneus and Pablo Rueda Sáiz, “Territory as a Victim of Armed Conflict,” *International Journal of Transitional Justice* 15, no. 1 (2021).

conflict.<sup>81</sup> However, these types of approaches remain relatively exceptional and we argue that transitional justice remains premised on harms against people and property.

The general exclusion of non-human victims is reflective of Carsten Stahn's observation that overly narrow conceptions of legal personality can render identities "invisible."<sup>82</sup> More expansive conceptualizations of legal personality might help bring environmental harm to the fore in efforts to address legacies of mass violence. It is notable that the exclusion of non-human victims is reflective of particular understandings of agency; for some Indigenous peoples, the "non-human" (for example, land, animals, plants) also has agency.<sup>83</sup> Relatedly, green criminologists and victimologists have worked to direct our gaze to the rights of nature, as well as the rights of future generations and Indigenous peoples.<sup>84</sup>

We would argue that engaging with more diverse perspectives on what constitutes harm, who constitutes a victim, and which entities can have legal personality, might constitute a crucial first step in greening transitional justice. In transitional justice processes, acquiring victim status has practical, social, and symbolic implications. The incorporation of victims' rights into transitional justice practice means that victims have become progressively recognized as protagonists capable of shaping the harms that are recognized and the forms that transitional justice takes.<sup>85</sup> Against this backdrop, *who* or *what* is recognized as a victim matters. The importance of acknowledging the validity of diverse voices and perspectives is explored further in the following section, which turns to transitional justice's neo-colonial tendency and its implications for who has the opportunity to shape the field.

### Neo-colonial Tendencies and Re-imagining Justice

Abdullahi Ahmed An-Na'im and others have noted a neo-colonial tendency in transitional justice, where "preference is given to a standard of justice that is mandated by the international community over Indigenous or 'traditional' practices that are unacceptable because they are inconsistent with 'universal' human rights norms, as proclaimed by the international community."<sup>86</sup> As a result of this neo-colonial tendency, the transitional justice programs

<sup>81</sup> Sylvanna M. Falcón, "Intersectionality and the Arts: Counterpublic Memory-Making in Postconflict Peru," *International Journal of Transitional Justice* 12, no. 1 (2018).

<sup>82</sup> Carsten Stahn, "Confronting Colonial Amnesia: Towards New Relational Engagement with Colonial Injustice and Cultural Colonial Objects," *Journal of International Criminal Justice* 18, no. 4 (2020), 812. See also Carsten Stahn, "Reckoning with Colonial Injustice: International Law as Culprit and Remedy?," *Leiden Journal of International Law* 33, no. 4 (2020).

<sup>83</sup> Linda Nash, "The Agency of Nature or the Nature of Agency?" *Environmental History* 10, no. 1 (2005); Vanessa Watts, "Indigenous Place-thought and Agency Amongst Humans and Non-Humans (First Woman and Sky Woman go on a European World Tour!)" *Decolonization: Indigeneity, Education and Society* 2, no. 1 (2013).

<sup>84</sup> The debate over rights for nature is long-standing and extends beyond the boundaries of transitional justice. See, for example, Christopher D. Stone, "Should Trees Have Standing? Towards Legal Rights for Natural Objects," *Southern California Law Review* 45 (1972). For critiques, see Kathleen Birrell and Daniel Matthews, "Re-Storying Laws for the Anthropocene: Rights, Obligations and an Ethics of Encounter," *Law and Critique* 31 (2020), 275–292; Jeff Corntassel, "Re-envisioning Resurgence: Indigenous Pathways to Decolonization and Sustainable Self-determination," *Decolonization: Indigeneity, Education and Society* 1, no. 1 (2012); Virginia Marshall, "Removing the Veil from the 'Rights of Nature': The Dichotomy between First Nations Customary Rights and Environmental Legal Personhood," *Australian Feminist Law Journal* 45, no. 2 (2019), 233–348.

<sup>85</sup> Juan E. Méndez, "Victims as Protagonists in Transitional Justice," *International Journal of Transitional Justice* 10, no. 1 (2016), 1–5. However, see Kieran McEvoy and Kirsten McConnachie, "Victims and Transitional Justice: Voice, Agency and Blame," *Social and Legal Studies* 22, no. 4 (2013), 489–513 for a critique of the gap between the rhetoric and practice of victims' rights in transitional justice.

<sup>86</sup> Abdullahi Ahmed An-Na'im, "Editorial Note: From the Neocolonial 'Transitional' to Indigenous Formations of Justice," *International Journal of Transitional Justice* 7, no. 2 (2013), 197. See also Jennifer Balint et al., "Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach," *International Journal of Transitional Justice* 8, no. 2 (2014); Augustine S. J. Park, "Settler Colonialism, Decolonization and Radicalizing Transitional Justice," *International Journal of Transitional Justice* 14, no. 2 (2020); Hugo van der Merwe and M. Brinton Lykes, "Racism and Transitional Justice," *International Journal of Transitional Justice* 14, no. 3 (2021).

implemented in the Global South are often conceived in the Global North.<sup>87</sup> This often leads to the prioritization of legal forms of individual accountability and retribution, reflecting norms characteristic of the Global North.<sup>88</sup> These “‘one-size-fits-all’, technocratic and decontextualised solutions”<sup>89</sup> are subsequently imposed on diverse transitional sites. This speaks to a “broader trend of conceptualizing the West as the locus and agent of justice and human rights that needs to respond to the conflict and abuses occurring in non-Western states.”<sup>90</sup> Similarly, transitional justice research exists “within a system of power,”<sup>91</sup> and as Padraig McAuliffe highlights, there is a “notable lack of researchers from the Global South in overall theorization of the field.”<sup>92</sup> Or, as put by Keiran McEvoy, “transitional justice remains quite white.”<sup>93</sup> This dominance of Western intellectual and legal traditions effectively silences other, equally valid, “ways of knowing” and creates a field that appears “unable or unwilling to envisage ways of knowing that surpass our own imagination.”<sup>94</sup>

One effect of this tendency is that “even the possibility of an Indigenous alternative conception of justice is not taken seriously at a theoretical or empirical level.”<sup>95</sup> Yet, excluding Indigenous perspectives can silence worldviews that conceptualize and understand environmental harm in more nuanced and sophisticated ways. For many Indigenous peoples, the relationship between humans and nature is interdependent (rather than one of human dominance); territories can speak, express feelings, suffer harm and feel pain, and harms against the environment are violations requiring redress.<sup>96</sup> However, the “harmonization with these spiritual forces...does not exist within the human rights and transitional justice fields.”<sup>97</sup> This absence has been evident in, for example, the report of the Guatemalan Truth Commission, which described the effects of the government’s “scorched earth policy,” as harm caused to persons and property.<sup>98</sup> Yet, as the “wider natural environment” is part of the “Mayan cosmivision,”<sup>99</sup> one might have expected the Commission to fully engage with the cultural significance of this harm.

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<sup>87</sup> Tshepo Madlingozi, “On Transitional Justice Entrepreneurs and the Production of Victims,” *Journal of Human Rights Practice* 2, no. 2 (2010). See also Everisto Benyera, ed., *Indigenous, Traditional, and Non-State Transitional Justice in Southern Africa: Zimbabwe and Namibia* (Lanham: Lexington Books, 2019).

<sup>88</sup> Moses Chrispus Okello et al., eds., *Where Law Meets Reality: Forging African Transitional Justice* (Oxford: Pambazuka Press, 2012).

<sup>89</sup> Nagy, *Global Project*, 275; See also Jennifer Matsunaga, “Two Faces of Transitional Justice: Theorizing the Incommensurability of Transitional Justice and Decolonization in Canada,” *Decolonization: Indigeneity, Education and Society* 5, no. 1 (2016).

<sup>90</sup> Balint et al., *Rethinking Transitional Justice*, 194–195.

<sup>91</sup> Linda Tuhiwai Smith, “Getting The Story Right—Telling The Story Well, Indigenous Activism—Indigenous Research,” in *Pacific Genes and Life Patents: Pacific Indigenous Experiences and Analysis of the Commodification and Ownership of Life*, ed. Aroha Te Pareake Mead and Steven Ratuva (Yokohama: Call of the Earth Llamado de la Tierra/The United Nations University Institute of Advanced Studies, 2007), 81.

<sup>92</sup> Padraig McAuliffe, *Transformative Transitional Justice and the Malleability of Post-Conflict States* (London: Edward Elgar, 2017), 82.

<sup>93</sup> Kieran McEvoy, “Travel, Dilemmas and Nonrecurrence: Observations on the ‘Respectabilisation’ of Transitional Justice,” *International Journal of Transitional Justice* 12, no. 2 (2018).

<sup>94</sup> Stephanie Vielle, “Transitional Justice: A Colonizing Field?,” *Amsterdam Law Forum* 4, no. 3 (2012), 67.

<sup>95</sup> An-Na’im, *Editorial Note*.

<sup>96</sup> Izquierdo and Viaene, *Decolonizing Transitional Justice*; Murdock, *Storied with Land*, 9.

<sup>97</sup> Izquierdo and Viaene, *Decolonizing Transitional Justice*.

<sup>98</sup> The Commission for Historical Clarification, *Guatemala*, 23.

<sup>99</sup> Alison Crosby and M. Brinton Lykes, “Mayan Women Survivors Speak: The Gendered Relations of Truth Telling in Postwar Guatemala,” *International Journal of Transitional Justice* 5, no. 3 (2011). The Truth Commission does refer to the symbolic value of corn, but only briefly.

There are notable examples of approaches that engage with contextual particularities and “Indigenous knowledge” (for example, the practices of Girinka and Gacaca in Rwanda).<sup>100</sup> However, dominant transitional justice approaches can often be “alien to most Indigenous worldviews,” which may be grounded in the centrality of community, the multi-generational duration of harms, and the tendency for knowledge to be shared orally rather than via written record.<sup>101</sup> Similarly, while the need to “localize” transitional justice has been emphasized in scholarship for some years,<sup>102</sup> in practice it often fails to “fully consider local meanings of justice.”<sup>103</sup> As a result, some have been skeptical of transitional justice’s ability to adapt to diverse worldviews.<sup>104</sup> While cognizant of this critique, we next make some modest suggestions as to how transitional justice might incorporate such perspectives in order to better respond to environmental harms.

There is an emerging realization within transitional justice scholarship of the need to acknowledge “discounted and disregarded voices,”<sup>105</sup> and for transitional justice efforts to be “informed by Indigenous worldviews.”<sup>106</sup> There is also a relatively well-established literature on the benefits of transitional justice “from below,”<sup>107</sup> which requires—to draw on Edward Said—that those impacted by harm are given “permission...to narrate” their experience.<sup>108</sup> Taking this as our departure point, we argue that incorporating greater environmental awareness necessitates, at a minimum, recognizing as valid local understandings of, and relationships with, the natural world. Such engagement would go beyond incorporating alternative views into transitional justice’s dominant frameworks, requiring the “hard work” of building and maintaining connections and alliances between practitioners, victims, Indigenous communities, and other lesser-heard groups.<sup>109</sup>

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<sup>100</sup> Chika Ezeanya, “Indigenous Knowledge, Economic Empowerment and Entrepreneurship in Rwanda: The Girinka Approach,” *Journal of Pan African Studies* 6, no. 10 (2014); Timothy Longman, “Justice at the Grassroots? Gacaca Trials in Rwanda,” in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006). For a critique of Gacaca, see Iloff, *Root and Branch*.

<sup>101</sup> Matsunaga, *Two Faces*.

<sup>102</sup> See for e.g. Laura Arriaza and Naomi Roht-Arriaza, “Social Repair at the Local Level: The Case of Guatemala,” in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, ed. Kieran McEvoy and Lorna McGregor (Oxford: Hart Publishing, 2008); Ellen Lutz, “Transitional Justice: Lessons Learned for the Road Ahead,” in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006); Rosalind Shaw et al. eds., *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford: Stanford University Press, 2010).

<sup>103</sup> Daniela Jara et al., “Tracing Mapuche Exclusion from Post-Dictatorial Truth Commissions in Chile: Official and Grassroots Initiatives,” *International Journal of Transitional Justice* 12, no. 3 (2018), 485. See also Mark McMillan and Sophie Rigney, “Race, Reconciliation and Justice in Australia: From Denial to Acknowledgement,” *Ethnic and Racial Studies* 41, no. 4 (2018).

<sup>104</sup> See, for example, Matsunaga, *Two Faces*.

<sup>105</sup> Rooney and Ní Aoláin, *From the Margins*, 2.

<sup>106</sup> Balint et al., *Rethinking Transitional Justice*, 215. In referring to Indigenous peoples, we recognize that this is not a monolithic identity and that Indigenous identities are complex, nuanced, and diverse (see, for example, Aman Sium et al., “Towards the ‘Tangible Unknown’: Decolonization and the Indigenous Future,” *Decolonization: Indigeneity, Education & Society* 1, no. 1 (2012)). We also note that while Indigenous peoples have received attention in genocide studies, this tends to focus on the “better-known cases” and some have called for “greater attention to be paid to the plight of all indigenous groups.” See Robert K. Hitchcock and Samuel Totton, “Editors’ Introduction,” *Genocide Studies and Prevention* 4, no. 1 (2009), 5.

<sup>107</sup> Kieran McEvoy and Lorna McGregor, “Transitional Justice from Below: An Agenda for Research, Policy and Praxis,” in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, ed. Kieran McEvoy and Lorna McGregor (Oxford: Hart Publishing, 2008).

<sup>108</sup> Edward Said, “Identity, Negation and Violence,” *New Left Review* 1, no. 171 (1988), 58. See also Gayatri Chakravorty Spivak, “Can the Subaltern Speak,” in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg (London: Macmillan, 1988).

<sup>109</sup> Sium et al., *Tangible Unknown*.



In addition to foregrounding “from below” approaches, we argue that a more fundamental shift is required in how we conceptualize and practice transitional justice. There is now an expanding body of scholarship examining the need to “decolonize” transitional justice,<sup>110</sup> and a call to direct attention “towards Indigenous visions, aspirations and aims.”<sup>111</sup> Noting the connections between Indigenous rights and environmental rights, Jennifer Matsunaga calls for transitional justice scholars to divert their “energies towards developing justice alternatives.”<sup>112</sup> Engagement with Indigenous “conceptions of the environment” and “understandings of harm and healing”<sup>113</sup> might encourage a “reimagining of human relationships to place.”<sup>114</sup> We would submit that this might contribute to the design of environmentally-inclusive forms of transitional justice more broadly. As argued by Arturo Escobar, what is needed is “a decolonization of the legal and social knowledge that informs the field of transitional justice, but, above all, the will to promote deep discussions about ‘the pluriverse of worlds’ with an open mind and a receptive heart.”<sup>115</sup> Such discussions might encourage a fundamental shift away from a “belief in abstract universals,”<sup>116</sup> and a questioning of the dominance of Global North perspectives.<sup>117</sup> They might also prompt greater engagement with long-standing environmental injustices and structural inequalities that have historically been overlooked in transitional justice. These inequalities, and the environmental implications of their exclusion from transitional justice’s view, are examined in the next section.

### Structural Inequality, Environmental Injustice, and the Limits of Transition

As discussed above, unequal access to and distribution of natural resources are often root causes of mass violence.<sup>118</sup> In the aftermath of mass violence, a failure to address these underlying environmental inequalities may leave a range of harms unaddressed, reducing the chances for a sustainable peace and planting seeds for future violence.<sup>119</sup> However, we argue that there are three key interconnected parameters which limit transitional justice’s ability to address structural inequalities. First, the above-mentioned exclusion of economic, social, and cultural rights can decontextualize atrocity, overlooking the systemic factors that often form the backdrop to periods of mass violence.<sup>120</sup> Second, the “implied temporal parameters...embedded in the words ‘transitional justice’”<sup>121</sup> can position certain harms *outside* the remit of transitional justice mechanisms.<sup>122</sup> Third, the focus on perpetrators of specific criminal acts precludes consideration of the beneficiaries of a systematically unfair system in which a more distributive

<sup>110</sup> See, for example, An-Na’im, *Editorial Note*; Balint et al., *Rethinking Transitional Justice*; Matsunaga, *Two Faces*; Park, *Settler Colonialism*; van der Merwe and Brinton Lykes, *Racism and Transitional Justice*.

<sup>111</sup> Smith, *Getting the Story Right*, 75.

<sup>112</sup> Matsunaga, *Two Faces*, 39.

<sup>113</sup> McMillan and Rigney, *Race, Reconciliation and Justice*, 774.

<sup>114</sup> Charles Sepulveda, “Our Sacred Waters: Theorizing Kuuyuam as a Decolonial Possibility,” *Decolonization: Indigeneity, Education & Society* 7, no. 1 (2018), 56.

<sup>115</sup> Arturo Escobar, “Más Allá del Desarrollo: Postdesarrollo y Transicionales Hacia el Pluriverso,” *Revista de Antropología Social* 21 (2012), cited in Izquierdo and Viaene, *Decolonizing Transitional Justice*.

<sup>116</sup> Walter D. Mignolo, “Delinking,” *Cultural Studies* 21, no. 2 (2007).

<sup>117</sup> Katja Franko Aas, “‘The Earth is One but the World is Not’: Criminological Theory and Its Geopolitical Divisions,” *Theoretical Criminology* 16, no. 1 (2012); Kerry Carrington et al., “Criminologies of the Global South: Critical Reflections,” *Critical Criminology* 27, no. 1 (2019); Crook, et al., *Ecocide, Genocide, Capitalism, Colonialism*.

<sup>118</sup> Eliana Cusato, “International Law, the Paradox of Plenty and the Making of Resource-Driven Conflict,” *Leiden Journal of International Law* 33, no. 3 (2020).

<sup>119</sup> UNEP, *Sudan*, 8; James Ahearne, “Neoliberal Economic Policies and Post-Conflict Peace-Building: A Help or Hindrance to Durable Peace?,” *POLIS Journal* 2 (2009).

<sup>120</sup> Drumbl, *Prosecution, Litigation, and Development*, 4.

<sup>121</sup> Cynthia M. Horne, “Transitional Justice and Temporal Parameter: Built-in Expiration Dates?” *International Journal of Transitional Justice* 14, no. 3 (2021), 544.

<sup>122</sup> Stahn, *Confronting Amnesia*, 796.

form of justice might be more appropriate.<sup>123</sup> We contend that these boundaries can limit the ability of transitional justice to respond to environmental harms, particularly in contexts where “violence and injustice have been experienced over generations to whole communities.”<sup>124</sup> They can also obscure the reality that for many victims, the cessation of mass violence may be followed by the continuation of or return to positions of subjugation,<sup>125</sup> which shape their ability to access, use, care for, and protect natural resources.<sup>126</sup> As a result, responses to mass violence can be seen as insufficient without the simultaneous addressing of underlying systems of land dispossession, discrimination, and oppression.<sup>127</sup>

Recognition of transitional justice’s limitations as a means of addressing structural inequalities has led to the emergence of “transformative justice” theories.<sup>128</sup> Transformative approaches seek to foreground the broader socio-economic, political, and ecological contexts of mass violence,<sup>129</sup> and propose a shift away from the “short-term nature of dominant transitional justice practice” to more long-term processes of change.<sup>130</sup> Outside the context of mass violence, similar arguments can be found within the environmental justice literature, which has worked to expose the disproportionate impacts of environmental degradation and the unequal distribution of natural resources in a wide range of contexts.<sup>131</sup> In response to these injustices, David Pellow and others have advocated for “transformative (rather than primarily reformist) approaches to realize environmental justice.”<sup>132</sup> From this perspective, environmental justice requires the interrogation and confrontation of the structural contexts in which environmental harm occurs,<sup>133</sup> and measures that pursue fundamental social change.<sup>134</sup>

Both transformative and environmental justice advocates have argued for Nancy Fraser’s trivalent framework of *redistributive justice* (to promote equal access to resources), procedural or *representative justice* (to increase marginalized voices in positions of power), and

<sup>123</sup> John Torpey, *Politics and the Past: On Repairing Historical Injustices* (New York: Rowman and Littlefield, 2003), 7–8.

<sup>124</sup> Matsunaga, *Two Faces*, 30. See also Jara et al., *Tracing Mapuche*.

<sup>125</sup> See, for example, Thomas Carothers, “The End of the Transition Paradigm,” *Journal of Democracy* 13, no. 1 (2002), 5; Turner, *Deconstructing Transitional Justice*, 193.

<sup>126</sup> Lawry-White, *Victims of Environmental Harm*, 367.

<sup>127</sup> Thomas M. Antkowiak, “A Dark Side of Virtue: The Inter-American Court and Reparations for Indigenous Peoples,” *Duke Journal of Comparative and International Law* 25, no. 1 (2014), 1; Cusato, *Back to the Future*.

<sup>128</sup> Amanda Cahill-Ripley, “Foregrounding Socio-Economic Rights in Transitional Justice: Realising Justice for Violations of Economic and Social Rights,” *Netherlands Quarterly of Human Rights* 32, no. 2 (2014), 183; Matthew Evans, “Structural Violence, Socioeconomic Rights, and Transformative Justice,” *Journal of Human Rights* 15, no. 1 (2016); Matthew Mullan, “Reassessing the Focus of Transitional Justice: The Need to Move Structural and Cultural Violence to the Centre,” *Cambridge Review of International Affairs* 28, no. 3 (2015), 462; Paul Gready and Simon Robins, *From Transitional to Transformative Justice* (Cambridge: Cambridge University Press, 2019).

<sup>129</sup> Lambourne, *Transitional Justice and Peacebuilding*.

<sup>130</sup> Klinsky and Brankovic, *Global Climate Regime*, 157.

<sup>131</sup> Robert Bullard, ed., *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* (San Francisco: Sierra Club Books, 2005); Thomas Sikor and Peter Newell, “Globalizing Environmental Justice?,” *Geoforum* 54 (July 2014); Gordon Walker, “Beyond Distribution and Proximity: Exploring the Multiple Spatialities of Environmental Justice,” *Antipode* 41, no. 4 (2009).

<sup>132</sup> David Pellow, “Toward a Critical Environmental Justice Studies,” *Du Bois Review* 13, no. 2 (2016), 224; See also Leah Temper, “Blocking Pipelines, Unsettling Environmental Justice: From Rights of Nature to Responsibility to Territory,” *Local Environmental* 24, no. 2 (2019).

<sup>133</sup> Lynch et al., *Green Criminology*.

<sup>134</sup> Rob White, “The Conceptual Contours of Green Criminology,” in *Emerging Issues in Green Criminology: Exploring Power, Justice and Harm*, ed. Reece Walters et al. (Palgrave MacMillan, 2013) 27.



*recognition* (through the designation of social and cultural standing or status).<sup>135</sup> As Fraser notes, these responses to injustice may be resolved through affirmative remedies which reduce inequalities without challenging underlying social relations, or through transformative remedies that correct “inequitable outcomes by restructuring the underlying generative framework.”<sup>136</sup> We have found that this framework, and the work of environmental activists in pursuing transformation, offers an insight into what environmentally transformative justice might necessitate in the aftermath of mass violence. For example, redistributive justice may require systemic changes to the management of energy production and natural resources,<sup>137</sup> such as the re-establishing of Indigenous or community land practices and custodianship.<sup>138</sup> Representative justice would call for engagement with the role of identity and status in shaping access to and control over natural resources.<sup>139</sup> Sensitivity to inequalities would be required to ensure that discriminatory practices of exclusion are not reproduced within transitional mechanisms,<sup>140</sup> and that the voice and agency of those facing environmental injustices is recognized. Recognition would in turn require acknowledgement of the full range of environmental harms experienced. Going further, it might extend to recognition of cultural connections and claims to environments, the historic territorial sovereignty of targeted groups, or indeed, the rights and standing of nature itself.<sup>141</sup>

It might be that the pursuit of environmentally transformative justice could facilitate a shift beyond the maintenance of unequal and harmful “human social and economic organization”<sup>142</sup> towards more egalitarian principles.<sup>143</sup> Yet, cautionary voices have called for modesty when exploring the transformative potential of transitions from mass violence, noting that “no process or set of transitional justice processes can by itself fundamentally transform a community.”<sup>144</sup> Certainly, there are limits to what transitional justice mechanisms can achieve without buy-in from those already in positions of power.<sup>145</sup> Nor can it be assumed that elites who benefitted from systems of inequality would willingly sacrifice those benefits following the cessation of violence.<sup>146</sup> As McAuliffe warns, a range of entrenched domestic social, economic,

<sup>135</sup> See, for example, Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia University Press, 2009), cited in Andrea Durbach and Louise Chappell, “Leaving Behind the Age of Impunity: Victims of Gender Violence and the Promise of Reparations,” *International Feminist Journal of Politics* 16, no. 4 (2014), 543; Nancy Fraser, “From Redistribution to Recognition? Dilemmas of Justice in a ‘Post-Socialist’ Age,” *New Left Review* 1, no. 212 (1995), cited in David Schlosberg, *Defining Environmental Justice: Theories, Movements and Nature* (Oxford: Oxford University Press, 2009).

<sup>136</sup> Fraser, *From Redistribution*, 82.

<sup>137</sup> Avi Brisman and Nigel South, “Resource Wealth, Power, Crime and Conflict,” in *Emerging Issues in Green Criminology: Exploring Power, Justice and Harm*, ed. Reece Walters et al. (Basingstoke: Palgrave MacMillan, 2013), 67; Cameron Holley et al., *The New Environmental Governance* (London: Routledge, 2012).

<sup>138</sup> For the particular challenges of applying transitional justice to settler colonial contexts, see Park, *Settler Colonialism*; Margaret Mutu, “Behind the Smoke and Mirrors of the Treaty of Waitangi Claims Settlement Process in New Zealand: No Prospect for Justice and Reconciliation for Māori without Constitutional Transformation,” *Journal of Global Ethics* 14, no. 2 (2018).

<sup>139</sup> It is worth noting that women and children are some of the most vulnerable to environmental risk and face additional barriers to meaningful voice and participation. See, for example, Karen J. Warren, *Ecofeminist Philosophy: A Western Perspective on What It Is and Why It Matters* (Oxford: Rowman and Littlefield, 2000); Vandana Shiva, *Staying Alive: Women, Ecology and Development* (New York: Southend Press, 2010).

<sup>140</sup> Durbach and Chappell, *The Age of Impunity*, 543.

<sup>141</sup> Temper, *Blocking Pipelines*, 97–98.

<sup>142</sup> Lynch et al., *Green Criminology*, 10.

<sup>143</sup> Rob White, *Environmental Harm: An Eco-Justice Perspective* (Bristol: Bristol University Press, 2013), 20.

<sup>144</sup> Colleen Murphy, “On Principled Compromise: When Does A Process of Transitional Justice Qualify as Just?,” *Proceedings of the Aristotelian Society* 120, no. 1 (2020), 57; See also McAuliffe, *Transformative Transitional Justice*.

<sup>145</sup> Lars Waldorf, “Anticipating the Past: Transitional Justice and Socio-Economic Wrongs,” *Social and Legal Studies* 21, no. 2 (2012), 179.

<sup>146</sup> McAuliffe, *Transformative Transitional Justice*, 85.

and political factors form the parameters in which change is possible.<sup>147</sup> Transitional justice's tendency to "strengthen, rather than challenge" the state<sup>148</sup> and to reinforce "existing relations of power" arguably further limits the possibilities for such transformation.<sup>149</sup>

Drawing from critical environmental justice scholarship and "from below" perspectives as explored above, we might therefore consider the value of an approach that decenters the state's role in greening transitional justice. This approach "deprives the state of the power to define the issues and their solutions," and instead encourages communities to name the issues they face and develop appropriate responses.<sup>150</sup> A bottom-up approach which encourages communities to think and act "beyond the state,"<sup>151</sup> and invokes methods and principles of "mutual engagement and shared learning," might be particularly "consonant with green ideals."<sup>152</sup> Such a decentering is all the more relevant to environmental justice, given the state's frequent positioning as one of the key actors pushing extractive projects.<sup>153</sup> Yet, we acknowledge that the transformative potential of community-driven measures is restricted not only by the continued dominance of elites, but the broader "asymmetrical global order" in which transitional justice operates.<sup>154</sup> The place of transitional justice within this order, and its unwillingness to challenge some of its underlying assumptions, form the focus of our final section.

### **"Liberal Imprints," Naturalizing Capitalism, and the Risks of Future Harm**

In this final section, we move beyond a critique of transitional justice's failure to meaningfully respond to atrocity-related environmental harm, to argue that traditional approaches to transitional justice practice can in fact facilitate further environmental harms. To do so, we critique what Marcus Zunino has termed transitional justice's "liberal imprint,"<sup>155</sup> and its resulting sympathy for capitalism.<sup>156</sup>

Transitional justice has been shaped by the historical context in which it emerged, namely the post-Cold War rise of liberal democracy, the associated decline of left-wing political movements,<sup>157</sup> and the emergence of neoliberal economic theories.<sup>158</sup> Grounded in post-authoritarian transitions to liberal market democracies, transitional justice continues to be shaped by contemporary liberal democratic theory.<sup>159</sup> This has been evidenced in the field's

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<sup>147</sup> Pdraig McAuliffe, "The Roots of Transitional Accountability: Interrogating the Justice Cascade," *International Journal of Law in Context* 9, no. 1 (2013), 106.

<sup>148</sup> Balint et al., *Rethinking Transitional Justice*, 201; See also Matsunaga, *Two Faces*.

<sup>149</sup> Lia Kent "Transitional Justice in Law, History and Anthropology," *Australian Feminist Law Journal* 42, no. 1 (2016), 2.

<sup>150</sup> Park, *Settler Colonialism*, 276.

<sup>151</sup> Pellow, *Towards a Critical*, 229.

<sup>152</sup> Brisman and South, *Power, Crime and Conflict*, 66.

<sup>153</sup> Temper, *Blocking Pipelines*, 105.

<sup>154</sup> Stahn, *Confronting Amnesia*, 823.

<sup>155</sup> Zunino, *Justice Framed*, 51.

<sup>156</sup> David Hoogenboom and Stephanie Vielle, "A Preliminary Examination of the Relationship Between Transitional Justice and the Neoliberal Discourse," Paper Prepared for the Annual Meeting of the Canadian Political Science Association, Ottawa, May 29, 2009.

<sup>157</sup> Klinsky and Brankovic, *Global Climate Regime*, 155.

<sup>158</sup> Josh Bowshe, "'Omnes et Singulatim': Establishing the Relationship between Transitional Justice and Neoliberalism," *Law and Critique* 29, no. 1 (2018).

<sup>159</sup> Kris Brown and Fionnuala Ní Aoláin, "Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change," *International Journal of Transitional Justice* 9, no. 1 (2015), 137.

endorsement of liberal peacebuilding,<sup>160</sup> political and economic liberalization,<sup>161</sup> the prioritization of civil and political rights, and the individualization of victimhood.<sup>162</sup>

Praised by some for its contributions to democracy and rule of law, liberalism has often been framed as something inherently pacifying, universalizable, and “good.”<sup>163</sup> Yet, this attachment to liberalism can also be critiqued for its relationship to free-market capitalist ideology and the associated privatization and deregulation,<sup>164</sup> both of which can cause significant environmental harm.<sup>165</sup> These risks of environmental harm have only grown as neoliberalism has come to dominate social, political, and economic life.<sup>166</sup> Centered around individualism and the pursuit of wealth and private property, neoliberalism relegates the non-human world to the status of a resource for exploitation,<sup>167</sup> laying the groundwork for extractive and environmentally harmful practices.<sup>168</sup>

The failure of dominant political and economic systems to recognize or further economic, social, and ecological interdependence has long been critiqued by critical environmental political theorists.<sup>169</sup> Political ecologists, ecosocialists, and green criminologists have emphasized capitalism’s reliance on the exploitation of nature, arguing that environmental degradation is embedded into the global political economy.<sup>170</sup> Indeed, as observed by David Whyte, it is no longer controversial “to assert that the economic growth paradigm is impossible to decouple from environmental destruction.”<sup>171</sup> Environmental justice scholars have further argued that any discussion of environmental harm and injustice must be situated within the global regimes of power that relegate “particular geopolitical places, geographies, and peoples to the bottom of our global hierarchy.”<sup>172</sup> This has been reflected in the emergence of what has been termed “the resource curse”<sup>173</sup>—a phenomenon whereby capitalist exploitation of the Global South generates unequal access to natural resources, corruption in environmental governance, polluted environments for marginalized groups, and as a result, conflict.<sup>174</sup>

<sup>160</sup> Sandra Rubi, *Transitional Justice: Justice by Bureaucratic Means?* (Basel: Swisspeace, 2012), 16, accessed February 27, 2021, <http://www.jstor.org/stable/resrep11114.1>.

<sup>161</sup> Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000), 5.

<sup>162</sup> Arthur, *Conceptual History*; Bowsher, *Omnes et Singulatin*.

<sup>163</sup> Augustine S. J. Park, “Peacebuilding, the Rule of Law and the Problem of Culture: Assimilation, Multiculturalism, Deployment,” *Journal of Intervention and Statebuilding* 4, no. 4 (2010).

<sup>164</sup> Shahar Hameiri, *Regulating Statehood: State Building and the Transformation of the Global Order* (New York: Palgrave Macmillan, 2010), 15.

<sup>165</sup> Chandra Lekha Sriram, “Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,” *Global Society* 21, no. 4 (2007).

<sup>166</sup> Pierre Darfot and Christian Laval, *The New Way of the World: On Neoliberal Society*, trans. Gregory Elliott (London: Verso Books, 2013).

<sup>167</sup> Colin Hay, “The Genealogy of Neoliberalism,” in *Neoliberalism: National and Regional Experiments with Global Ideas*, ed. Ravi K. Roy et al. (London: Routledge, 2007).

<sup>168</sup> Lily S. Mendoza, “Savage Representations in the Discourse of Modernity: Liberal Ideology and the Impossibility of Nativist Longing,” *Decolonization: Indigeneity, Education & Society* 2, no. 1 (2013).

<sup>169</sup> Robyn Eckersley, “Ecological Democracy and the Rise and Decline of Liberal Democracy: Looking Back, Looking Forward,” *Environmental Politics* 29, no. 2 (2020); Lynch et al., *Green Theories of Justice*.

<sup>170</sup> Paul Burkett, *Marxism and Ecological Economics: Toward a Red and Green Political Economy* (Chicago: Haymarket Books, 2008); Teresa Brennan, *Exhausting Modernity* (London: Routledge, 2000); John Bellamy Foster, “The Absolute General Law of Environmental Degradation Under Capitalism,” *Capitalism, Nature, Socialism* 3, no. 3 (1992).

<sup>171</sup> Whyte, *Ecocide*.

<sup>172</sup> Esme G. Murdock, “A History of Environmental Justice,” in *Environmental Justice: Key Issues*, ed. Brendan Coolsaet (London: Routledge, 2021), 13.

<sup>173</sup> For an overview of this term and its limitations as a framework, see Cusato, *Paradox of Plenty*.

<sup>174</sup> Nicholas Shaxson, *Poisoned Wells: The Dirty Politics of African Oil* (New York: Palgrave MacMillan, 2007).

As Miller notes, “in the vast majority of cases, transition occurs in conjunction with a project of economic and/or political liberalization.”<sup>175</sup> The assumption that such liberalization offers the best method for restructuring societies<sup>176</sup> means that transitions from mass violence can be as damaging to the environment as the period of violence itself, if not more so.<sup>177</sup> Natural resource extraction, deforestation, and land use conflicts can intensify during transitional periods,<sup>178</sup> while the cessation of violence can herald the emergence of new unsustainable extraction methods, environmentally harmful practices, and/or erosions of environmental protections. This is in part the result of fragile communities’ efforts to recover from the impacts of violence,<sup>179</sup> but can also be linked to the interventions of international institutions seeking to promote a “liberal peace” grounded in market economies.<sup>180</sup> While economic development has been associated with longer lasting peace,<sup>181</sup> reliance on macroeconomic growth can facilitate further victimization, social injustices, and “polarization, which looms like social and economic dynamite.”<sup>182</sup> The particular characteristics of neoliberal policies (such as a minimized state, the marketization of natural resources, the reliance on markets for core needs, and the framing of individuals as primarily economic beings) fail to repair root causes of violence and facilitate the future over-exploitation of land, water, and wildlife.<sup>183</sup> Such actions have their own violent implications, both for communities with material and spiritual connections to land,<sup>184</sup> and ultimately, entire populations.<sup>185</sup>

As capitalism’s links to environmental destruction have become increasingly undeniable,<sup>186</sup> some have argued that responses to environmental harm must be anti-capitalist.<sup>187</sup> This presents a challenge to transitional justice as a means of redressing environmental harm, given its traditional failure to challenge assumptions about the inevitability of markets.<sup>188</sup> We, of course, acknowledge the distinctions between transitional justice mechanisms and the more long-term interventions and processes used to further a

<sup>175</sup> Zinaida Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice,” *The International Journal of Transitional Justice* 2, no. 3 (2008), 270.

<sup>176</sup> Ian Taylor, “What Fit for the Liberal Peace in Africa?,” *Global Society* 21, no. 4, (2007).

<sup>177</sup> Ong, *Reconstruction of Kosovo*; Richard Milburn, “The Roots to Peace in the Democratic Republic of Congo: Conservation as a Platform for Green Development,” *International Affairs* 90, no. 4 (2014), 884.

<sup>178</sup> Andres Suarez et al., “Environmental Sustainability in Post-Conflict Countries: Insights for Rural Colombia,” *Environmental Development Sustainability* 20 (2018).

<sup>179</sup> Ong, *Reconstruction of Kosovo*.

<sup>180</sup> See, for example, Ho-Won Jeong, *Peacebuilding in Postconflict Societies: Strategy and Process* (Boulder: Lynne Rienner Publishers, 2005).

<sup>181</sup> Caroline Hartzell and Matthew Hoddie, “Institutionalising Peace: Power-sharing and Post-Civil War Conflict Management,” *American Journal of Political Science* 47, no. 2 (2003).

<sup>182</sup> Lisa J. LaPlante, “Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework,” *International Journal of Transitional Justice* 2, no. 3, (2008), 339.

<sup>183</sup> David R Goyes et al., “Genocide and Ecocide in Four Colombian Indigenous Communities: The Erosion of a Way of Life and Memory,” *British Journal of Criminology* 61, no. 4 (2021), accessed February 27, 2021, <https://doi.org/10.1093/bjc/azaa109>.

<sup>184</sup> Michael J. Lynch, et al., “Green Criminology and Native Peoples: The Treadmill of Production and the Killing of Environmental Activists,” *Theoretical Criminology* 22, no. 3, (2018); Damien Short, *Redefining Genocide: Settler Colonialism, Social Death and Ecocide* (London: Zed Books, 2016); Alexander Dunlap, “The ‘Solution’ is Now the ‘Problem’: Wind Energy, Colonisation and the ‘Genocide-Ecocide Nexus’ in the Isthmus of Tehuantepec, Oaxaca,” *International Journal of Human Rights* 22, no. 4 (2018).

<sup>185</sup> Whyte, *Ecocide*.

<sup>186</sup> See, for example, Rida Waheed, et al., “The Survey of Economic Growth, Energy Consumption and Carbon Emission,” *Energy Reports* 5 (2019).

<sup>187</sup> Michael J. Lynch and Paul B. Stretesky, “The Meaning of Green: Contrasting Criminological Perspectives,” *Theoretical Criminology* 7, no. 2 (2003).

<sup>188</sup> Makau Mutua, “A Critique of Rights in Transitional Justice: The African Experience,” in *Rethinking Transitions: Equality and Social Justice in Societies Emerging from Conflict*, eds. Gaby Oré Aguilar and Felipe Gomez Isa (Cambridge: Intersentia, 2011), 36–37.

“globally expansive liberal order.”<sup>189</sup> Nevertheless, the field has been critiqued for overlooking the role international market forces play in causing conflict,<sup>190</sup> for continuing to support “reforms to foster a growing capitalist economy,” and for producing scholarship that naturalizes capitalism.<sup>191</sup> Indeed, as Bowsher argues, one might go further and argue that transitional justice “prefigures and supports processes of neoliberalization during transition.”<sup>192</sup> Reflecting our arguments above, he notes that transitional justice’s focus on individual rights violations, and exclusion of structural violence, supplants and precludes calls for redistributive justice, which by its nature is incompatible with the neoliberal project.<sup>193</sup>

For Augustine S. J. Park, transitional justice’s allegiance to liberalism serves as a way of foreclosing and tacitly delegitimizing other futures.<sup>194</sup> Echoing his calls for a suspension of transitional justice’s “taken-for-granted assumptions,”<sup>195</sup> we suggest that proponents of a green transition might advocate for the integration of economic models and reforms that place stronger and specific emphasis on democratic control of the economy and environmental protection.<sup>196</sup> Such approaches might engage with, and incorporate, diverse models that present a challenge to dominant capitalist approaches.<sup>197</sup> These include the indigenous notion of *Buen Vivir* (good living), which prioritizes the interconnections between humans, non-humans, and the natural world,<sup>198</sup> the solidarity economy project that “envisions and enacts economies based on cooperation, sharing, and on living with enough rather than on competition, exploitation, and wealth accumulation,”<sup>199</sup> or Just Transition strategies, which focus on the shift “from an extractive economy to a regenerative economy.”<sup>200</sup> As we explored above, the ability of transitional justice alone to transform societies is limited. Nevertheless, we argue that by drawing on these and other alternative economic models, the practice of transitional justice could begin to adapt in ways that do not inevitably “naturalize capitalism,”<sup>201</sup> and thus the commodification and destruction of the natural world.

## Conclusion

In this article we have made four key arguments about the limits of transitional justice as a response to environmental harm in the context of mass violence. First, we argued that environmental harm and victimhood is often overlooked in transitional justice, due to the

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<sup>189</sup> Suthaharan Nadarajah and David Rampton, “The Limits of Hybridity and the Crisis of Liberal Peace,” *Review of International Studies* 41, no. 1 (2015) 49.

<sup>190</sup> Cusato, *Paradox of Plenty*.

<sup>191</sup> Zunino, *Justice Framed*, 55.

<sup>192</sup> Bowsher, *Omnes et Singulatim*, 83.

<sup>193</sup> *Ibid.*, 98.

<sup>194</sup> Park, *Settler Colonialism*, 266.

<sup>195</sup> *Ibid.*

<sup>196</sup> For example, Ann Pettifor, *The Case for the Green New Deal* (London: Verso Books, 2020); Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* (New York: Random House, 2017); Edward B. Barbier and Anil Markandya, *A New Blueprint for a Green Economy* (London: Routledge, 2013).

<sup>197</sup> Klinsky and Brankovic, *Global Climate Regime*, 166.

<sup>198</sup> Salvatore Monni and Massimo Pallottino, “A New Agenda for International Development Cooperation: Lessons Learnt from the Buen Vivir Experience,” *Development* 58, no. 1 (2015); Roger Merino, “An Alternative to ‘Alternative Development?’ *Buen vivir* and Human Development in Andean Countries,” *Oxford Development Studies* 44, no. 3 (2016).

<sup>199</sup> Jackie Smith and Jacqueline Patterson, “Global Climate Justice Activism: ‘The New Protagonists’ and Their Projects for a Just Transition,” in *Ecologically Unequal Exchange: Environmental Injustice in Comparative and Historical Perspective*, ed. R. Scott Frey et al. (London: Palgrave MacMillan, 2018), 259.

<sup>200</sup> Climate Justice Alliance, “Just Transition: A Framework for Change,” *Climate Justice Alliance*, n.d., accessed February 27, 2021, <https://climatejusticealliance.org/just-transition/>; On regenerative economics see Raworth, *Doughnut Economics*.

<sup>201</sup> Mark Drumbl, “Marcos Zunino. Justice Framed: A Genealogy of Transitional Justice,” *European Journal of International Law* 30, no. 4 (2019), 1453.



dominance of anthropocentric legal frameworks. Second, we examined the impact of transitional justice's neo-colonial tendency, and how this has resulted in the exclusion of worldviews that consider human-environment relationships in fundamentally different ways. Third, we considered the implications of transitional justice's failure to address structural inequalities—as a result of which pre-existing environmental injustices often return or continue. Fourth, we contended that the relationship between transitional justice and capitalism render it complicit in laying the groundwork for future environmental harms. Throughout, we have argued that the grounding of transitional justice in a narrow range of perspectives has blinkered the field to the environmental causes, methods, and effects of mass violence. Yet, like Hannah Franzki and Maria Carolina Olarte, “we hold the specific significance of transitional justice scholarship to lie in its efforts to provide legal, political, philosophical or moral concepts that back the practice of transitional justice.”<sup>202</sup> In that spirit, we have proffered some tentative suggestions as to how we might begin to counter the effects of these limitations in the context of atrocity-related environmental harm.

One central thread through our argument has been the value of transitional justice “from below.”<sup>203</sup> This approach holds the potential to expand our understandings of harm, victimization, and the particularities of the contexts in which mass violence occurs. As Kieran McEvoy and Lorna McGregor encourage, justice “from below” involves engagement with “the agentic practice and potential” of those often overlooked by formal transitional justice institutions.<sup>204</sup> In order for such an approach to effectively capture the nature and scale of environmental harm, we suggest that providing a platform for lesser heard voices is unlikely to be sufficient. As Rosemary Nagy observes, “transitional justice is a discourse and practice imbued with power” to determine “*who* is accountable for *what* and *when*.”<sup>205</sup> Noting Park's call to “radicalize” transitional justice,<sup>206</sup> the transitional justice “from below” that we envision is not (to draw on Said's words) a “giving of permission,”<sup>207</sup> but a fundamental shift in the balance of that power.

We propose embracing a “from below” approach that is not merely tokenistic, but is built on a genuine commitment to open up the practice of transitional justice.<sup>208</sup> In centering the voices of those on the ground in sites of mass violence and making space for diverse knowledges and understandings of the natural world, responses to mass violence might be built on notions of “human, ecological and species rights and broad egalitarian principles.”<sup>209</sup> While we are arguing for this approach in all incidences of mass violence, we note that such a shift is particularly important in the context of harms perpetrated against Indigenous peoples. Although often targets of mass violence (including attacks against their territories), Indigenous peoples' experiences and views are often overlooked in a transitional justice shaped by neo-colonialism. Any genuine effort at decolonizing transitional justice “demands an Indigenous starting point.”<sup>210</sup>

As we hope is clear, we are not advocating for an abandonment of transitional justice as a framework for responding to mass violence. Rather we argue that what is required is a fundamental shift in how we think about and *do* transitional justice. One of the key rationales for our continued support for the field (despite its limitations) is the power that it has to effect positive normative change. Transitions often accompany moments of rupture, creating space for

<sup>202</sup> Franzki and Olarte, *Political Economy*, 203.

<sup>203</sup> McEvoy and McGregor, *Transitional Justice from Below*.

<sup>204</sup> *Ibid.*, 4–5.

<sup>205</sup> Nagy, *Global Project*, 286.

<sup>206</sup> Park, *Settler Colonialism*.

<sup>207</sup> Said, *Identity*.

<sup>208</sup> We remain cognizant of the importance of not “romanticising community intention or capacity” as discussed in McEvoy and McGregor, *Transitional Justice from Below*, 9.

<sup>209</sup> White, *Environmental Harm*, 20.

<sup>210</sup> Sium et al., *Tangible Unknown*.



rethinking previously entrenched societal structures.<sup>211</sup> While acknowledging the limits of transitional justice as a means of transforming society, it is worth considering whether these moments of rupture may present a nexus of opportunity for “progressive change” with regards to the governance of, and relationship with, the natural world.<sup>212</sup> Indeed, transitional justice has shown itself capable of effecting profound and rapid shifts in international norms. As a result, it may be an effective vehicle for spreading environmentally conscious norms.<sup>213</sup>

The arguments made throughout this article must be placed in the context of the growing international awareness that “humanity is waging war on nature.”<sup>214</sup> Much of the harm perpetrated against the environment is carried out legally or with impunity; this reality requires more holistic responses than transitional justice alone can supply. Yet, as observed by UN Secretary General António Guterres, in such a moment in time, “it is crucial that we make peace with nature...it must be the top, top priority for everyone, everywhere.”<sup>215</sup> Transitional justice has already seen an “evolution of what justice might entail” as we recognize “that practices we see as ‘normal’ may in fact be deeply problematic and in need of repair.”<sup>216</sup> With climate change and mass extinction exacerbating the harms caused by the exploitation of natural resources and increasing the risks of future mass violence, the need to consider the possibilities of a green transitional justice has never been greater.

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<sup>211</sup> See, for example, Christine Bell and Catherine O’Rourke, “The People’s Peace? Peace Agreements, Civil Society and Participatory Democracy,” *International Political Science Review* 28, no. 3 (2007), 293; Alexandra Gheciu and Jennifer Welsh, “The Imperative to Rebuild: Assessing the Normative Case for Postconflict Reconstruction,” *Ethics and International Affairs* 23, no. 2 (2009), 121; Morten Bergsmo et al., eds., *Distributive Justice in Transitions* (Oslo: Torkel Opsahl, 2010), 2.

<sup>212</sup> Andreas Chatzidakis et al., *The Care Manifesto: The Politics of Interdependence* (London: Verso Books, 2020), 96–97.

<sup>213</sup> Klinsky and Brankovic, *Global Climate Regime*, 25.

<sup>214</sup> “UN Secretary-General: ‘Making Peace with Nature is the Defining Task of the 21st Century,’” *UN Climate Change News*, December 2, 2020, accessed February 28, 2021, <https://unfccc.int/news/un-secretary-general-making-peace-with-nature-is-the-defining-task-of-the-21st-century>.

<sup>215</sup> Ibid.

<sup>216</sup> Klinsky and Brankovic, *Global Climate Regime*, 4.

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