

## **A Theory of Environmental Justice**

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*“The environment does not exist as a sphere separate from human actions, ambitions and needs, and attempts to defend it in isolation from human concerns have given the word “environment” a connotation of naivety in some political circles (...) But the environment is where we live.”*

- the Brundtland Report

**Abstract**

The way humankind has changed the environment has been of grave concern in recent years. The call for environmental rights and justice for the environment has grown as a consequence. However, political theories for environmental justice has fallen short until now. The Rawlsian framework seems promising, due to its full methodology and the large body of literature Rawls has written on the subject; however, Rawlsian justice is not without problems when scaled up to include the problem of environmental change. Rawlsian justice is necessarily anthropocentric and is based on rational maximisation. Within this thesis, the question will be posed as to whether a less anthropocentric, non-speciesist theory of environmental justice can be formulated within the Rawlsian framework. This has been done by integrating the difference principle posited in *A Theory of Justice* with the proxy-entities proposed in *The Law of Peoples*. With a small extension of the definition of proxy-entitiy, the desires of non-human species could be taken into account within the original position, which will require a fair conception of justice to take the environment into account. When considering Rawlsian justice as inclusive of non-human species, the original position in addition to the difference principle will provide ample grounds for a more full environmental justice. While it will be requiring from current society, this will be necessary when the current destruction of the environment is to be mitigated.

**Table of contents**

Title page .....	1
Abstract .....	2
Table of contents .....	3
Introduction: A Rawlsian Environment .....	4
1. A Look at Rawlsian Justice.....	5
1.1. An Ideal World .....	5
1.2. A Global Justice .....	6
2. Is a Rawlsian Account of Environmental Justice Possible?.....	8
2.1. Thomas Schramme: Is Rawlsian Justice Bad for the Environment? .....	8
2.2. Stephen Gardiner: Rawls and Climate Change: does Rawlsian political philosophy pass the global test? .....	9
3. An Environmental Theory of Justice .....	12
3.1. The Environment .....	12
3.2. The Argument for Rawlsian Environmental Justice.....	13
4. Conclusion: How could a Rawlsian Theory of Environmental Justice be formed?.....	15
5. References .....	16

## Introduction: the Necessity for Environmental Justice

The news of a changing environment is shown to us each day. It is nigh impossible to turn on the television or read the newspaper without seeing the environmental crisis that is currently happening. Excessive agriculture causes desertification<sup>1</sup>, the forest fires running rampant in Australia were the most destructive ever seen and raged for months, with unprecedented results<sup>2</sup> and the bleaching of coral reefs caused by acidification of the ocean wreak havoc in marine ecosystems<sup>3</sup>. This is, without a doubt, due to human action. The current era has been called the anthropocene<sup>4</sup>, which denotes a time in which human influence is the single largest driver of environmental change. It is human agency, not the natural world, which decides which species go extinct and which survive, which area is denoted as natural park and which area is converted into an agricultural area. This power puts immense responsibility into human hands. It requires humanity to realise the long-term consequences of their actions, to weigh the value of different natural resources against one another and to act as more than simply a rational egoist. This is an issue that humanity has historically struggled with.

Philosophically, climate change is an interesting subject. The science regarding a changing climate is relatively clear-cut: we need to limit our greenhouse gas emissions, change to renewable fuels and limit consumption<sup>5</sup>. These are all calculable changes that have to be made if the crisis that climate change brings is to be averted; however, the reason as to why this is necessary is difficult. The value we see in nature is more often instrumental than intrinsic. For climate change to be averted, the intrinsic value of nature has to be seen; nature will have to obtain certain rights that limit the exploitation of the natural resources within it. Attempts to create such a theory of rights for nature have been made, with a strong case being made for linking climate rights to human rights<sup>6</sup>. I believe that it is not solely rights that we are dealing with when considering climate change; rather, I believe that it is within the realm of justice. It is not solely a certain right that has to be given to the environment, the environment should be taken into account when considering what is just.

When considering climate change as an issue of justice, an attractive account to base the theory of climate justice on will be the Rawlsian framework. Since publishing *A Theory of Justice*<sup>7</sup>, Rawls has been on the forefront of justice theories. His philosophy is full and structured, and shows how just institutions can and should arise from cooperation between entities. He states that Justice is Fairness; hence, the distribution of goods should be done in as fair a manner as possible. Rawlsian justice is, however, distinctly anthropocentric. This thesis discusses the possibility of a Rawlsian Theory of Environmental Justice. This will be done by first discussing classic Rawlsian Justice Theory. The principles that Rawls posits are discussed, in particular the difference principle, the original position and the proxy-entities. The second chapter shows issues that classic Rawlsian theory has when environmental justice is considered. Multiple critiques and possible solutions will be discussed. Finally, I will give an account on how I think an integrative approach of both *A Theory of Justice* and *The Law of Peoples* can lead to an environmental theory of Justice based on Rawlsian principles that is satisfactory on most accounts.

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<sup>1</sup> Okin, G.S. et al., 2009

<sup>2</sup> Boer, M.M. et al., 2020

<sup>3</sup> Sully, S. et al., 2019

<sup>4</sup> Crutzen, P.J., 2006

<sup>5</sup> Brundtland et al., 1987

<sup>6</sup> Caney, S. 2008

<sup>7</sup> Rawls, J. 1971

## 1. A Look at Rawlsian Justice

Justice is a quintessentially philosophical concept. Justice relates to the nature and outcome of interpersonal relationships; actions that enhance the wellbeing of the individual while not harming your own are intuitively just. Perhaps the common person is better acquainted with the antithesis of justice, or injustice. From a young age we intuitively notice when an action is unjust; for example, if two individuals receive different pay, *ceteris paribus*, it is often agreed upon that this difference in salary is unjust. While injustice is intuitive and relatively easy to reduce to a concept like unfair, unequal or undeserved, the positive concept of justice poses a larger issue. Within this thesis, the Rawlsian concept of Justice will be held. In this regard, this thesis will regard justice as meaning Social Justice or Distributive Justice.

### 1.1 *An ideal world*

The Rawlsian concept of Justice starts with stating that justice is the first virtue of institutions<sup>8</sup>. Justice is the realm of laws and regulations, not the realm of individual actions. A law or regulation cannot be of value if it is in any way unjust, disregarding the possible efficiency and attractiveness of the given theory. This shows the primacy of justice as an institutional virtue. True justice can solely be obtained when informed, non-coerced entities will agree on the principles that a law mandates. The general agreement is necessary for a fair consideration of each individual interests; any given society has individual interests, yet social cooperation yields better results<sup>9</sup>. The question arises as to how the individual interests could righteously be considered in a manner that each individual accepts the outcome. This is the role of distributive justice. For an institution to be just, each entity affected by the institution should concur with the institution when uncoerced and informed. This fair consideration of each entity's individual interests, reduces the concept of Justice to the concept of Fairness. By defining justice as Fairness, institutions can test their justness by seeing whether they maintain the fairness threshold.

Nevertheless, fairness does not equate to radical equality. Rawls is by most accounts a liberal egalitarian, meaning his substantive doctrine is not measured by the collective good it produces, but by the tendency with which it counteracts the general inequalities present in the world. The 'Good' is measured in a restricted set of benefits to individuals: personal and political liberty, economic and social advantages and self-respect<sup>10</sup>. Rawls' theory asserts that it is not maximum utility that should be respected; rather, he puts forth the maximin principle<sup>11</sup>. This principle asserts that societal inequalities can be just if and only if it is to the benefit of the least well-off member of the society. The principle is naturally extracted from the restricted set of benefits Rawls sets: institutions cannot intrude upon the individual rights of people. While Rawlsian justice is an equalitarian position, it adheres to the equality of opportunity. Justice according to Rawls is an institutional value; institutions solely have the responsibility to provide an equal opportunity to all entities they have institutional claim over. The outcome of such opportunities is outside the scope of Justice's range. Rawls' ideal society is one in which equality solely exists for the betterment of the whole society; one where institutions allow each entity underneath it as much freedom as possible; and one where individuals are respected. A society where each entity gets their fair share. As such, Rawlsian justice is often referred to as Justice as Fairness, which Rawls coined himself<sup>12</sup>.

As the ideal society has been explained, the enterprise on how to reach such a fair society will have to be elucidated. Rawls adheres to the contractarian school of distributive justice, in which each entity in society enters a social contract with each other entity within the same society for matters to do with cooperation. This social contract can be either explicit or implicit; while the agreement not to murder one another usually does not require an explicit social contract, the implementation of a social security system most likely does. Each entity within a bound society will have to act according to the contracts they agreed upon; however, during the arrangement of such contracts, the entities discussing the contract are often affected with conflicted interests. Conducting the enterprise of entering a just social contract requires the abstraction of interests; individual interests should be accounted for; however, these should not be biased in either direction. Removing the personal bias inherent in every entity requires a disengagement from the entities personal

<sup>8</sup> Rawls, J., 1971. p. 3

<sup>9</sup> Alexander, 1974; Rawls, 1971. Both papers show, through both a scientific and a philosophical framework, that cooperation is preferable to competition in human beings.

<sup>10</sup> Nagel, T., 1973. p. 222

<sup>11</sup> Rawls, J., 1971.

<sup>12</sup> Rawls, J., 1971.

form. This leads to the method developed by Rawls, which consists of two principles: the *veil of ignorance* and the *original position*.

The decision making process should begin from the point of view of the original position. Within this position, the entities taking part in the decision will be positioned behind the veil of ignorance. To elucidate, the veil of ignorance is the taking the position that is required to reach unbiased social contracts; it consists of the entities 'pulling the veil over their eyes', i.e. they are unaware of their surroundings. The entities behind the veil of ignorance will not be aware of any morally significant detail of their lives. They will be wholly ignorant to their social status, their race, their class in society, etc. Entering the point of view that entities behind the veil of ignorance have will allow a total removal of personal biases these entities may have<sup>13</sup>. When the entities are behind this veil of ignorance, they are able to make the unbiased decisions that are necessary to create just institutions. This position behind the veil of ignorance is what is called the *original position*<sup>14</sup>. In this position, the entities are most likely to consider the position of the least well off the strongest, as the chance of the entities being in this least well off part of society is equal among all. This will most likely result in a fair and unbiased conclusion. The judgment of fairness is up to the entities, their intuitions and the agreements that come from this original position. Rawls is an intuitionist, and sees that there is no generally recognised correct method of precise solution for social problems; however, he sees that the problem created with social interactions can be solved by a conjunction of reliable intuitions and rational thought<sup>15</sup>. Hereby Rawls creates the *reflective equilibrium*, which is the constant flux between rational thought and reliable intuitions. When our rational thought and our intuitions correspond with one another on the topic of an institution, this institution is thought to be just.

Rawls states three rules which institutions must abide to in order to be just. The first is that institutions must maintain the fair value of political liberties, so that persons similarly motivated and endowed have equal chance to gain political office, regardless of their social and political class. The second principle requires that institutions maintain a fair equality of opportunity, so that equally talented and motivated individuals have equal chances to obtain good education and professional opportunity irrespective of their social class. The third requires that, insofar they generate social or economic inequalities, social institutions must be designed to the maximum benefit for the people at the bottom of the aforementioned inequalities<sup>16</sup>. Rawls later uses these principles of justice to ascertain that current social institutions are often unjust; ample examples can be found for offending all three principles.

## 1.2. A Global Justice

In the Theory of Justice, Rawls explains the Justice as Fairness theory on a domestic level; entities in one state tend to have more shared interests and require a larger and more complex scheme of social institutions; however, in a later book, *The Law of Peoples*<sup>17</sup>, he extends the necessity for just institutions to international justice as well. For international justice to hold, however, solely entities within a liberal and decent peoples should be taken into account. Rawlsian justice can solely occur in uncoerced, informed entities after all. The original position is dependent on the possibility for rational judgement by each constituent taking part in the decision making process. Rawls believes that a liberal democracy that fully coheres with the reflective equilibrium of each citizen is the ideal world; these are the fair peoples. Yet decent people should also be taken into account when considering international deliberative justice. A decent regime can fall short of a liberal one in one of three ways: It may allow social and economic inequalities that liberals would reject as excessive to a certain degree; it may be pursuant to a state religion and thus impose greater and more unequal restrictions on freedom of expression; or it may be undemocratic, as a decent regime may fall short of a true democracy in favour of a consultational hierarchy<sup>18</sup>. When considering the social justice of international societies, the original position is excessively complex, and the decisions will have to be made by the proxies of each state. Not every citizen of the state can be expected to take part in the decision making process, yet the states as a whole can be considered as an entity capable of rational thought, as well as having national interest. Each state can then, by proxy, be taken into account in the original position. This will allow the ori-

<sup>13</sup> Rawls, J., 1971

<sup>14</sup> Ibid.

<sup>15</sup> Nagel, T., 1973. p. 220

<sup>16</sup> Pogge, T.W., 1994. p. 195

<sup>17</sup> Rawls, J. 1999

<sup>18</sup> Pogge, T.W., 2001. p. 247

ginal position to yield just institutions on an international level. The proxy-entities are derived from a concept that Rawls calls the *peoples*<sup>19</sup>, which are groups of individuals from a shared ideology. Rawls states that the ideals and interests of the individual entities with the people align with regards to international justice. Therefore, a proxy-entity could be created.

The usage of proxy-entities in the creation of international institutions is that which will be used to create an argument for an ecocentric usage of the original position. Given that states are not in themselves entities, but proxy-entities have to be made to consider the states national interests within the enterprise of creating international institutions, then it stands to reason that a similar proxy entity could be imagined when considering the environment. The environment cannot ever make rational decisions or be fully informed; however, neither can total nations. When considering the environment, Rawls unequivocally claimed that nature could be taken into account within the original position; however, this could only ever be because of nature's use to mankind. This anthropocentric view of justice is incoherent with his theory of international justice, as shown above. Nevertheless, Rawlsian justice, when using a proxy-entity to consider the non-human environment, could provide a strong basis for a theory of environmental justice that could be considered a social contract between human and non-human nature.

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<sup>19</sup> Rawls, J. 1993, p. 20

## 2. Is a Rawlsian account of Environmental Justice possible?

Rawlsian justice has been of monumental importance in contemporary political thought. As the issue of climate change and global environmental justice has grown, the possibility for Rawlsian justice has grown with it. The possibility for a theory of environmental justice based on Rawls has been critiqued numerous times. Additionally, theories for environmental justice based on Rawlsian thought have emerged as well. Within this chapter, two of these will be discussed. First, Thomas Schramme's critique on Rawlsian environmental justice will be discussed. It shows issues inherent in the Rawlsian theory of Justice when common action problems, and specifically the environment, are concerned. Subsequently, Stephen Gardiner's poses the question whether Rawlsian justice passes the 'global test', which he states is the possibility to create a system of justice that spans globally. Gardiner considers multiple extensions and alterations proposed, but shows a problem in each of them. He concludes by positing the direction in which a global Rawlsian justice could be found.

### 2.1. *Thomas Schramme: Is Rawlsian Justice Bad for the Environment?*

Humanity survives thanks to the natural resources available to them. Prehistorically, the natural resources were simply the berries and lumber that grew wild and that we could harvest unproblematically. More recently, the natural resources we most depend on are fossil fuels and large areas of land used for agriculture and lumber. A Rawlsian account of distributive justice claims that these natural resources should be divided fairly. That is the the claim of the theory of Justice as Fairness. Available resources are divided in a manner that the division provides an equality of opportunity for all those involved<sup>20</sup>. Rawls proposes that each individual is entitled to their maximal share of these available goods. As is known, using this maximum share often has detrimental effects on the natural environment. Overuse of natural resources is the main driver for for example desertification<sup>21</sup>. Schramme proposes that this claim to the maximal share of available resources makes Rawlsian justice inherently unsuited for a theory of climate justice, as this will inevitably lead to the overuse of natural resources when human populations grow<sup>22</sup>.

Schramme claims that within the Rawlsian theory of justice, the top-down discourse that is inherent in the institutional justice proposed within the theory of justice there is no space to ask individuals what they need, absolutely speaking. What is done, according to Schramme, is simply distributing the available goods in such manner that each individual has their fair share — with what exactly a fair share means being decided by the party handing out such resources. Schramme believes that this approach makes Rawlsian justice inherently bad for the environment, and that instead of simply handing out all available resources, individual needs should be taken into account<sup>23</sup>.

A critique that could be pointed at at this point is that natural resources do not seem to fit as social primary goods; however, Schramme disagrees. He states that natural resources are the 'most primary of primary goods'<sup>24</sup>. He states that without resources like clean water, air and fuel we could not survive. Additionally, these resources are all controlled by social institutions, if not directly then through taxes and changing market prizes. Natural resources are also sought after by all human beings, and as such, all rational human beings ought to want them. He concludes by stating that natural resources are to be divided through the original position within Rawlsian theory. Subsequently, two concepts are introduced that problematise the maximising concept used.

First, Schramme introduces the concept of satisficing<sup>25</sup>. Satisficing is different to maximising in that it is in that it does not seem to lay claim on the maximum available resources when the possibility presents itself, but solely the amount necessary for the satisfaction of an individuals desires. Maximisation can be rejected from a moral point of view. It does not consider what is comparatively best for each individual in a society, but what is good enough to satisfy this individual; however, what could be meant by good enough? If good enough means 'good enough to suit a particular persons interests', then it can be an incredibly taxing endeavour not worth taking. Yet Schramme proposes that good enough will have to be taken as a good en-

<sup>20</sup> Schramme, T. 2006, p. 146

<sup>21</sup> Le Hou  rou, H.N., 1996

<sup>22</sup> Schramme, T., 2006, p. 147

<sup>23</sup> Ibid, p. 148

<sup>24</sup> Ibid, p. 149

<sup>25</sup> Schramme, T. 2006, p. 149



ough result measured according to a non-subjective standard, e.g. a standard of basic human needs<sup>26</sup>. While this could still be seen as a maximising strategy, seeing as though the whole to be shared could simply be seen to be smaller, this objection is moot. It is distinctly different from the conception of maximisation a rational person is assumed to adopt within Rawlsian theory. Yet the difference between satisficing and maximising is only evident when the goods are in high supply. Scarcity seems to equalise the terms; when good enough and the maximum are one and the same, Schramme's argument is moot.

Schramme concedes that within times of scarcity, a maximising strategy does seem to be the most rational path. However, he states, the argument that primary goods *can* be scarce already implies the prima facie justification of individual claims to as much as possible<sup>27</sup>. Schramme claims that the legitimacy of rational maximising in times of scarcity is justified by a vicious circle argument. He posits the question whether scarcity does actually mean a good that is scarce in the objective term, or in the relational concept. Goods are only scarce for someone to do something. Scarcity hence depends on the desire for the object. He concludes the scarcity argument by claiming that a normative conception of scarcity has to be conceived. A theory of legitimate demand has to be created, rather than a simple reliance on the rational ideal of egocentric maximisation<sup>28</sup>.

Schramme concludes by stating that the maximisation assumption seems to be a problem for more than solely Rawlsian egalitarian theory. The endorsement of maximising inherently has implications for the task of safe-guarding the environment. Natural resources will be desired in perpetuity, which is why a subsequent claim can be made that it implies a prima facie claim on exploiting these natural resources to equally satisfy each individual as much as possible. Nevertheless, Schramme states that this maximisation is not a necessary aspect of distributive justice and will eventually harm the environment. He therefore denotes Rawlsian justice as not valuable for a theory of environmental justice.

## 2.2. *Rawls and Climate Change: does Rawlsian political philosophy pass the global test?*

Stephen Gardiner is a contemporary philosopher whose writing on climate change and climate ethics have gained a large following. The name of the subchapter is the name of his influential paper on Rawlsian climate philosophy. He starts from the position given by the Perspective of Humanity<sup>29</sup>, which is a concept created by Gardiner in which he states that 'The basic position of human individuals is that of members of a recently-evolved species on a small planet in an otherwise inhospitable solar system, amidst a vast, and currently unreachable universe. At present, the only viable home for the human species and for all (known) others is the planet on which we reside. But humans have attained unprecedented power over the planet, and now have the ability to influence profoundly the basic physical and ecological systems that support life as we know it.' He claims that this is the current situation and that it captures fundamental facts about our situation that must be taken into account by ethical and political theories. Subsequently, he claims that Rawls gives attractive tools to handle the situation given in the perspective of humanity. 'Rawls has a fundamental methodological commitment to realism that resonates with the perspective of humanity'<sup>30</sup>. Rawlsian methodology provides a realistic utopia that resonates well with the issue of global climate change and the necessary political movements.

Second, Rawlsian theory is attractive especially because Rawls provided a framework to solve issues regarding Justice within a society. Extrapolating this theory to account for the problems of extension Rawls himself already noted. The problems of extension, such as climate justice and justice for people with disability, are those that can be solved without a significant change to Rawls' fundamental theory. In other words, the main direction of influence is from the fundamental theory of justice to the extended areas. The question is then posited: does Rawls' theory pass the test of climate change? Lastly, Rawlsian theory is attractive because of the lexical priority given to certain accounts. The preconstitutional is decided on prior to and independent of the constitutional. A similar structure is posited with the constitutional and the judicial. This lexical structure makes Rawlsian justice clear and removes the possibility for a opacity critique. Additionally, this structure implies that certain policies and areas of justice are of higher importance than others, which is exactly what is necessary for a theory of climate justice. Climate change will need primacy within the theory of environmental justice.

<sup>26</sup> Schramme, T. 2006, p. 150

<sup>27</sup> Ibid, p. 151

<sup>28</sup> Ibid, p. 153

<sup>29</sup> Gardiner, S.M. 2011, p. 126

<sup>30</sup> *ibid.* p. 133

An issue posed when extending the Rawlsian justice principle to be inclusive of climate change is on the one hand the global nature of climate change, on the other the intergenerational aspect is inherent in a conception of climate justice<sup>31</sup>. To apply Rawlsian theory to climate change justice, certain variables within the theory will have to be extended to include not solely the citizens of a liberal society, but also include later generations and most preferably the non-human environment. Gardiner gives a few such extensions that are contenders to solve the issues paining a Rawlsian global justice. These extensions can be divided into two separate classes: The Internal Modifications and the External Interventions<sup>32</sup>. Within this paper we will remain within the realm of internal modifications, as the goal of this thesis is to investigate whether Rawlsian theory can be extended to include environmental justice. Gardiner states that most current Rawlsians have attempted to modify an internal concept. He states a proposed modification in the concept of social primary goods<sup>33</sup>, the basic needs principle<sup>34</sup> and the territorial obligations<sup>35</sup>. These are all core concepts within Rawlsian theory and all limit the possibilities Rawlsian justice has on a global stage.

An extension of the concept of social primary goods is appealing, and an attempt has been made by Russ Manning<sup>36</sup>. He proposes that health is added to the list of social primary goods, that this is linked to the equality of opportunity and that both are subsequently linked to a concern for environmental resources. While this proposal is interesting, Gardiner gives three points for concern. First, the idea that environmental security falls under fair equality of opportunity is questionable. Environmental justice seems to have some primacy over the equality of opportunity, after all, subverting a hurricane seems more important than equal education. Second, the idea that our environmental concerns stem from health concerns is unlikely. The reason humanity is worried for the environment is not solely due to humanities health concerns. It stems mainly from our interest in the planet as it is. This should be taken into account when considering such theory. Third, an extension of social primary goods in general seems to step away from Rawlsian theory. Rawls specifically states that his account of primary goods is embedded within a specifically liberal conception of society<sup>37</sup>. This means that changing such concept will not solve a global crisis, solely a national one.

Second is a revision to the basic needs principle. This stems from the critique written by Clark Wolf<sup>38</sup>, in which he states that the basic needs are a precondition for the significance of the equal liberty principle and the value of rights and liberties it guarantees. To quote Wolf: "Without a prior needs principle, the second principle of justice would protect rights and liberties that might be valueless to those who protect the rights and liberties that might be valueless to those who possess them but who lack any ability to exercise or understand them"<sup>39</sup>. From this quote can be concluded that a justice proposed by Rawls can solely be gained when prior, true primary needs have been satisfied. Wolf claims that Rawls is therefore necessarily committed to a basic needs principle which has primacy over what Rawls usually calls the first principle of justice. He then concludes by claiming this is of importance within the climate change debate.

While this is a promising theory, it is doubtful that this can be seen as an extension of Rawlsian theory. A revision to the first principle, instead making it the second principle, the entirety of Rawlsian justice seems to be undermined. With a precondition for the first principle, the entirety of Rawlsian theory might be shaped differently. While it is a possible theory of justice, it can hardly be called an extension of Rawlsian justice.

Third is an extension of territorial obligations. The previous two options were limited by the purview of liberal societies, but since climate change is a truly global problem, it is natural to look to Rawls's international theory to overcome this. This is an approach taken by Hartzell<sup>40</sup>, who attempts to highlight Rawls' imposed duty on people to preserve the environmental integrity of their own territory. She states that it is the

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<sup>31</sup> Gardiner, S.M., 2011, p. 130

<sup>32</sup> Ibid. p. 132 - 145

<sup>33</sup> Ibid. p. 132

<sup>34</sup> Ibid. p. 133

<sup>35</sup> Ibid. p. 134

<sup>36</sup> Manning, R. 1981, p.160

<sup>37</sup> Rawls, J. 1973, p. 386

<sup>38</sup> Wolf, C. 2009

<sup>39</sup> Ibid. p. 354

<sup>40</sup> Hartzell, L. 2006

role of the government, regardless of whether this government is liberal or not, to maintain the environmental integrity the nation claims as its territory. It is the peoples' task to maintain the integrity of their land, and the rational agents that Rawls claims people to be will do so. However, Rawls' rationale for assigning territorial integrity to peoples seems inadequate. Rawls assigns property rights to definite agents in the hopes that these people will protect their property due to the cost of its deterioration. When climate change is concerned, this is not enough.

The problem with Rawlsian theory in this regard is that he assumes that people will care for their territory in perpetuity. When climate change is concerned, one of the main issues is the intergenerationality of it. It is not outside of the realm of imagination to think that the current generation will make use of its temporal advantage to enrich itself while the environment deteriorates for next generations. Additionally, as climate change is a genuinely global problem, a domestic duty to care for the inhabited territory does not seem widespread enough<sup>41</sup>.

Gardiner concludes by posing the problem with Rawlsian environmental justice. He states that Rawls does not yet solve the problem of global environmental issues within his primary texts and that simple extensions of his theory are unlikely to solve these issues. Second, he states that the most promising solutions have not been explored yet. Third, he states that Rawls' own views on the issues are largely underdeveloped and are limited within his primary texts. It is therefore unlikely that we can create a true Rawlsian theory of environmental justice according to Gardiner, as he did not pose these questions. A possible route to take is to formulate an integrative approach, in which multiple of Rawls' principles will be taken together<sup>42</sup>. This route is the one that will be taken in chapter 3, by integrating the difference principle and the proxy-entities.

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<sup>41</sup> Gardiner, S.M. 2009, p. 134-135

<sup>42</sup> Ibid. p. 146

### 3. An Environmental theory of Justice

As noted in the introduction, within the realm of the theory of justice the environment was an entity that was second to more anthropocentric concerns. Rawlsian justice is mostly, if not wholly, based on the ability to reason with the other entities within your society, which mean animals, plants and other natural entities will be necessarily removed from the consideration within the original position; however, the anthropocentrism within Rawlsian justice seems to be an unnecessary part within his theory of justice. He claims to weigh personal desires of multiple entities against each other; it is not solely humans that have desires. The distinction between humanity and non-humanity is drawn on the basis of their ability to think rationally and make decisions based on the ability to enter into social contracts. Rawls assumes that without a rational faculty, it will be impossible to enter into such a social contract. I must concede that point to him. A social contract is an imagined reality, an entity with no real origin in the world. A social contract is an entity that humans make with one another in order to live a more stable life, with no material body in the world; however, within this chapter I will give a reason as to why the concept of Rawlsian justice could and should be extended to the environment. First, I will explain the definition of non-human nature and the environment that will be used henceforth. Second, an argument will be made for how the original position could be used to devise just rights for the environment. Subsequently, the argument for a non-human theory of justice is made. The argument will rely on two principle present within Rawls's own theories: the maximin principle and the possibility for proxy-entities to take part in the original position, both explained in chapter 1. When Rawlsian Justice is considered as such, the environment is not only a possible participant in the original position, but it should be taken into account in any case. The chapter will be concluded by considering whether such an original position would still satisfy the criteria set for the original position as posited in the Theory of Justice.

#### 3.1. *The environment*

The concept of environment is often ambiguous. We can speak of the environment as everything that isn't the individual, i.e. the environment around the individual<sup>43</sup>. The concept of the environment when used in this manner consequently forms a subject-community relationship, since it formulates the individual within its surroundings or environment. When used in such context, the term environment can be used to mean anything other than the subject. However, within environmental ethics, the term *environment* tends to denote anything that is not human<sup>44</sup>. Environmental sciences often use the term environment to denote nature or wilderness. The environment is a key concept that eludes a clear definition, as it solely provides a distinction between what is and what is not considered the protagonist in the argument. The term *environment* simply denotes a subject/non-subject relationship. Yet, there seems to be a key difference between the concept of environment and a similar concept, surroundings. The term environment tends to have an increased scope, it tends to denote not solely that which is in direct contact with the subject, but that which is anything but the subject itself. The ambiguity within the concept of the environment poses an issue for environmental ethics, as it will create an innate uncertainty when conceiving the issues at hand.

Therefore, within this thesis, the definition of environment will be the same as the one used in the Brundtland report<sup>45</sup>. This report, published in 1987 by the United Nations, is one of the first and most important international documents clearly stating the deterioration of humanity by human hand. The Brundtland Commission Report recognised that human resource development in the form of poverty reduction, gender equity and wealth distribution was crucial to formulate strategies for environmental conservation. It was also the first to officially claim that ecological limits to economic growth were necessary. As such, it is still widely seen as one of the most important reports on within environmental science to date<sup>46</sup>. Within the report, it is stated that *'the environment does not exist as a sphere separate from human actions, ambitions and needs, and attempts to defend it in isolation from human concerns have given the word "environment" a connotation of naivety in some political circles (...). But the environment is where we live'*<sup>47</sup>. The environment is everything non-human, but is also necessarily connected to humanity. To use the terms of the quote, the environment is where we (humanity) live. The word is therefore by nature anthropocentric, given that we define the environment by first defining humanity. This concern will be addressed later in this chapter. The environment is everything everything that is devoid of direct human influence. This is to say, human activity has

<sup>43</sup> Mason & Langenheim, 1957. p. 329

<sup>44</sup> Brennan, A., & Lo, Y.S., 2002, p. 1

<sup>45</sup> Brundtland et al., 1987

<sup>46</sup> Ibid, p. 19

<sup>47</sup> Keeble, B.R., 1988. p. 10

touched upon every square kilometer of the earth; the usage of fossil fuels and the resultant air pollution currently affects every place on earth<sup>48</sup>. However, this air pollution is incidental. The air pollution is not an intentional artefact. The concept of *environment* used in this chapter will be that which has not directly been influenced by humanity. As such, wolf-dog hybrids, while possibly within the scope of animal rights movements, will be out of the scope of the term environment as defined here. Moreover, the Amazon rainforest, the Mississippi river and the Sahara desert will all be considered as the environment.

### 3.2. *The argument for Rawlsian Environmental Justice*

Given that the terminology of the environment has been defined, an argument for the necessity of a Rawlsian consideration for the environment will be made. This argument will rely on two key principles inherent in Rawlsian theory: the maximin principle given in the Theory of Justice and the proxy-entities described in The Law of Peoples.

The first step is the addition of the concept of the environment given above into the consideration for just institutions. Rawlsian justice is based on a social contract which is agreed upon through the rational process of entering the original position and rationally finding the just option. The just option, Rawls states, is the one which creates the the fairest option; that is, unless an unequal society will be more beneficial for even the least benefited member<sup>49</sup>; i.e. inequality is just if and only if the the lowest echelon of society is better off in the unequal situation than they otherwise would be. The maximin principle is based on the fact that humans have similar needs and desires, which are approximately equal amongst all of humankind. When considering the needs and desires of an imagined individual from within the original position, rational beings can, by compromise, decide which option is the fairest one and that one will be agreed upon. The environment can work in a similar manner. For the environment to be considered within the original position, it is simply necessary to understand what the needs and possible desires of the environment are. As most of the environment lacks sentience, we shall leave the debate of whether the animals and other entities within the environment can have desires; however, the needs of the environment can be defined. The main need of the environment is relatively simple: it needs to survive. The entirety of biology, including human biology, is based on the need to survive. Every species lives to survive as a species. When considering the environment within the original position, we should take into account the need for survival of the environment of this world.

A consideration as such is not unprecedented. Within the original position, the decision of what constitutes as a just society also necessarily considers less intelligent and even mentally deficient individuals within society. These individuals lack the ability for rational thought and usually seem to lack any need other than the need for sustenance, i.e. the need for survival. The difference between these mentally deficient individuals and the environment, or at least the living environment, is slim to none. A Rawlsian should either concede that the mentally deficient should not be considered within the calculation of just institutions, or the living environment should enjoy a similar privilege. It may seem counterintuitive to give animals and mentally deficient humans the same moral status, but when Rawlsian justice is considered, they should be considered the same. . Whether or not this argument is agreed with, the counterintuitive nature of such a statement shows an inherent anthropocentrism within the realm of justice theories.

In line with the Rawlsian tradition, Shlosberg<sup>50</sup> claims that environmental justice does not solely entail an equity in distribution; leaving the remainder of oil buried beneath the soil does not solve the environmental crisis, and neither does carbon storing. A certain equity in environmental risk is necessary. The difference in how societies are affected is measurable at present, and this disparity in environmental risk is expected to increase as more damage is done to the environment, for example regarding food security<sup>51</sup>, natural disasters<sup>52</sup> and the loss of housing<sup>53</sup>. This disparity in risk taken by mainly individuals in third world countries shows the type of inequality Rawlsian justice attempts to eliminate. Second, Shlosberg states that a recognition of the diversity of the participants is necessary, both in the communities and in the perceived experiences. This directly relates to the scope of the issue at hand; climate change is a global problem. Third is a necessary equality in political processes which shape and manage environmental policy.

<sup>48</sup> Halpern, B.S. et al., 2008

<sup>49</sup> Rawls, J. 1971, p. 23

<sup>50</sup> Shlosberg, D. 2017. p. 523

<sup>51</sup> Kii, M. et al., 2013

<sup>52</sup> Sauerborn, R. & Ebi, K., 2012

<sup>53</sup> Brouwer, R. et al., 2007

While Shlosberg's theories remain within the realm of anthropocentrism, especially the second point shows a respect to diversity in communities. Shlosberg clearly aims for a certain respect to different human cultures and the importance of a respect to this diversity when creating environmental policy; more often than not, environmental policy is mostly or wholly a top-down regulated process and individual cultures are expected to yield to the climate change solutions, according to Shlosberg. Yet this point can be taken in a different direction. A recognition of diversity of participants can be taken on a species level rather than a cultural level, and when this position is assumed, a respect to diversity creates an opportunity to take into account the probable desires of non-human species.

In a similar vein, Mohai et al<sup>54</sup> speak of environmental racism, which has been shown multiple times in the United States of America. It was shown that dump sites of wastage were often positioned close to areas inhabited by mostly African Americans, as well as a seeming lack of consideration for non-white races in environmental policy making. The term was coined by Benjamin Chavis, who claimed that "Environmental racism is racial discrimination in environmental policy making, the enforcement of regulations and laws, the deliberate targeting of communities of color for toxic waste facilities, the official sanctioning of the life-threatening presence of poisons and pollutants in our communities, and the history of excluding people of color from leadership of the ecology movements"<sup>55</sup>. This shows that discrimination is a known phenomenon when environmental justice is concerned. The endangerment of one society in favour of another on an arbitrary basis cannot be just in the sense that Rawlsian justice is concerned. In a similar vein, the term *Environmental Speciesism* can be coined. The term speciesism was first given by Peter Singer<sup>56</sup>. Speciesism in the practice of treating one or more species as morally more important than members of other species, with the belief that this practice is justified. Environmental speciesism is then widespread; the pollution of natural areas is done on a daily basis and is justified by claiming the moral importance of human lives. While Singer directly disagrees with the Rawlsian concept of Justice and is a firm utilitarian himself, I will borrow the term speciesism due to the widespread meaning it has. Similar to environmental racism, environmental speciesism is morally unfounded. Returning to the initial argument within the Rawlsian framework, the lack of consideration for the non-human environment shows an inherent bias founded solely on the human-ness of the entities involved. It shows that the Rawlsian framework can provide a possible answer to the issue of environmental inequalities, both within human societies and on a greater scale.

To conclude, Rawlsian theory can and should provide a basis for environmental justice. This can be done by extrapolating the proxy-entities that are proposed in The Law of Peoples to apply to non-human entities. While the desires of non-human entities cannot be vocally proposed, the desire for survival can safely be assumed. At least this desire should be taken into account when considering a just society from the Original Position. The environmental speciesism that is currently the norm shows a grave injustice that cannot be accepted from a purely Rawlsian point of view.

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<sup>54</sup> Mohai, P. et al., 2009

<sup>55</sup> Mohai, P., et al., 2009. p. 407

<sup>56</sup> Singer, P., (1973)

#### 4. Conclusion. How can a Rawlsian theory of Justice be formed?

Within this thesis, the possibility for a Rawlsian theory of environmental justice has been researched. Multiple previous extensions to the primary theory have been investigated, but all seem lacking. An environmental theory of justice based solely on the rationality of humanity and their desires seems to inherently cause maximising behaviour, which in turn will cause an exploitation of the environment. This critique posited by Thomas Schramme shows one of the main issues Rawlsian theory has when an extension is made to include the environment. Yet in chapter three it is shown that it is not impossible to create A Theory of Justice that also includes non-human entities. This can be done by creating an integrative theory based on concepts introduced in both the Theory of Justice and The Law of Peoples. When the desires of non-human entities are taken into account within the original position, the Rawlsian procedure can be used to create a fair distribution of goods to even non-human entities. While this may seem obvious, the addition of non-human entities within a concept based on human rationality such as the original position will encounter resistance. It is impossible for humankind to truly know what non-human entities will truly want; however, it is possible to infer the basic needs non-human entities have. For the sake of brevity, we can assume that non-human entities at least desire to exist. If this assumption is taken as true, which I assume none can deny, this can be taken into account when entities posit themselves within the original position.

Rawlsian theory is inherently anthropocentric. It is a theory that deals with the desires, rights and needs of humankind. It deals specifically with human societies, and Rawls himself stated that issues related to the environment could be solved by extending his own theories. However, other than claiming that his theory could encompass the environment and other global issues, Rawls himself has not written extensively regarding global, intergenerational and environmental justice. This thesis has attempted to reconcile Rawlsian justice theory with the necessity for an environmental justice. The resultant hybrid justice theory lacks the anthropocentrism inherent in Rawlsian theory, but the method for producing just institutions will still be a human endeavour. Yet the integration of proxy-entities that show the desires non-human entities have, such as the desire to exist and the desire to limit pain, will allow non-human entities to have at least their basic needs met when a just society is decided on through the original position.

Finally, this topic is not yet finished. The need for environmental ethics and environmental justice is one of the core topics within current practical philosophy, and with ample reason. The need for an intergenerational and environmental justice theory grows larger with every act that damages the environment. While this thesis provides a possibility for the Rawlsian theory of Justice to be formulated into a justification for environmental rights, the critiques posed by Gardiner and Schramme are still valid. Rawlsian justice, with its inherent maximisation, creates a society pained by scarce goods. The extension proposed in this thesis hope to limit the damage done to the environment when these scarce goods are to be distributed; however, this does not limit humankind from driving species to extinction. Environmental philosophy will still have a long road ahead, though I am hopeful that the current surge of environmental philosophy will result in an accepted theory of environmental justice and a generally accepted environmental ethic.

## 5. References

- Adams, T. B. (2007). Rawls' Theory of Justice and International Environmental Law: A Philosophical Perspective. *Pac. McGeorge Global Bus. & Dev. LJ*, 20, 1.
- Alexander, R. D. (1974). The evolution of social behavior. *Annual review of ecology and systematics*, 5(1), 325-383.
- Boer, M. M., de Dios, V. R., & Bradstock, R. A. (2020). Unprecedented burn area of Australian mega forest fires. *Nature Climate Change*, 10(3), 171-172.
- Brennan, A., & Lo, Y. S. (2002). Environmental ethics.
- Brouwer, R., Akter, S., Brander, L., & Haque, E. (2007). Socioeconomic vulnerability and adaptation to environmental risk: a case study of climate change and flooding in Bangladesh. *Risk Analysis: An International Journal*, 27(2), 313-326.
- Brundtland, G. H., Khalid, M., Agnelli, S., Al-Athel, S., & Chidzero, B. (1987). Our common future. *New York*, 8.
- Caney, S. (2008). Human rights, climate change, and discounting. *Environmental politics*, 17(4), 536-555.
- Crutzen, P. J. (2006). The "anthropocene". In *Earth system science in the anthropocene* (pp. 13-18). Springer, Berlin, Heidelberg.
- Gardiner, S. M. (2011). Rawls and climate change: does Rawlsian political philosophy pass the global test?. *Critical Review of International Social and Political Philosophy*, 14(2), 125-151.
- Halpern, B. S., Walbridge, S., Selkoe, K. A., Kappel, C. V., Micheli, F., D'Agrosa, C., ... & Fujita, R. (2008). A global map of human impact on marine ecosystems. *Science*, 319(5865), 948-952.
- Hartzell, L. (2006, May). Climate Change and Global Justice: Extending Rawls 'Law of Peoples. In *International Society for Environmental Ethics and International Association for Environmental Philosophy (ISEE/IAEP) Conference Future Trends in Environmental Philosophy, May*.
- Keeble, B. R. (1988). The Brundtland report: 'Our common future'. *Medicine and War*, 4(1), 17-25.
- Kii, M., Akimoto, K., & Hayashi, A. (2013). Risk of hunger under climate change, social disparity, and agroproductivity scenarios. *Environmental Modeling & Assessment*, 18(3), 299-317.
- Le Houérou, H. N. (1996). Climate change, drought and desertification. *Journal of arid Environments*, 34(2), 133-185.
- Mason, H. L., & Langenheim, J. H. (1957). Language Analysis and the Concept "Environment". *Ecology*, 38(2), 325-340.
- Manning, R. (1981). Environmental ethics and Rawls' theory of justice. *Environmental Ethics*, 3(2), 155-165.
- Mohai, P., Pellow, D., Timmons Roberts, J., (2009) Annual Review of Environment and Resources 34:1, 405-430
- Nagel, T. (1973). Rawls on justice. *The Philosophical Review*, 82(2), 220-234.
- Okin, G. S., Parsons, A. J., Wainwright, J., Herrick, J. E., Bestelmeyer, B. T., Peters, D. C., & Fredrickson, E. L. (2009). Do changes in connectivity explain desertification?. *BioScience*, 59(3), 237-244.
- Pogge, T. W. (1994). An egalitarian law of peoples. *Philosophy & public affairs*, 23(3), 195-224.
- Pogge, T. W. (2001). Rawls on international justice.
- Rawls, J. (1971). *A Theory of Justice*. Harvard university press.
- Rawls, J. (1993). The Law of Peoples. *Critical Inquiry*, 20(1), 36-68.
- Sauerborn, R., & Ebi, K. (2012). Climate change and natural disasters—integrating science and practice to protect health. *Global Health Action*, 5(1), 19295
- Schlosberg, D. (2004) Reconceiving Environmental Justice: Global Movements And Political Theories, *Environmental Politics*, 13:3, 517-540.
- Schramme, T. (2006). Is rawlsian justice bad for the environment?. *Analyse & Kritik*, 28(2), 146-157.
- Sully, S., Burkepile, D. E., Donovan, M. K., Hodgson, G., & Van Woesik, R. (2019). A global analysis of coral bleaching over the past two decades. *Nature communications*, 10(1), 1-5.
- Wolf, C. (2012). Ethics, future generations and environmental law. *The Routledge Companion to Philosophy of Law*, 397.