

# RAWLS' LEGACY: A LIMITED POSSIBILITY OF A NON-SPECIESIST ENVIRONMENTAL JUSTICE

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## Abstract

*Publishing A Theory of Justice in 1971 John Rawls defined a conceptual realm of justice as that of a well-ordered society in which some principles of justice should be tested before seeking to apply them to distribute primary goods among co-operative representative subjects (considered as equals within the basic structure of society) and other subjects, who are not necessarily co-operative, even if they are included in the contract of justice by the representatives through the indirect moral duties theory. Representative subjects were interested in possessing and preserving – for themselves and for their descendants – all kinds of goods: natural, primary, social and public ones. They are interested in maintaining economic and social distinctions obtained by fair work distribution, as well. In explaining his theory of a fair distribution of primary social goods, John Rawls does not include, at least explicitly, the kind of goods I am suggesting in this paper to be called natural environmental goods, the kind of goods which are indispensable to secure, with no exception, the survival of all organisms subjected to basic needs, including human needs. Natural environmental goods seems to have been forgotten by Rawls, or at least considered as not implicated in his model of a fair institutional distribution of primary social goods. Following what Michael S. PRITCHARD, Wade L. ROBISON, Russ MANNING, Brent A. SINGER, Daniel P. THERO and Troy W. HARTLEY have critically pointed in some of their articles, I am going firstly to show the lack of the concept of natural environmental goods in Rawls' Theory of Justice, and secondly, I suggest considering natural environmental goods as part of a non-speciesist theory of justice. So, I hope to contribute to extend the philosophical legacy of A Theory of Justice, in order to include in our moral consideration needs and interests of all living beings. In other words, I will try to consider the issue of justice not just as a question of rationality but of reasonability.*

**Keywords:** *Intergenerational justice, Environmental Justice, Animals, Natural Environmental Goods, John Rawls.*

## Introduction

In these paper I will show how Rawl's theory of justice is limited if we are aiming to construct a not *speciesist*<sup>1</sup> environmental theory of justice. In *A Theory of Justice*, published in 1971, Rawls conceived two kinds of goods: *primary goods* (natural and social ones) and *public goods*.<sup>2</sup> To develop an environmental not *speciesist* theory of justice or to order our social, political and economical institutions upon the knowledge of a general biological condition, including within our moral consideration not only humans and great apes or mammals, we have to consider behind the *veil of ignorance* in the *original position*, something else besides our rational needs.

Besides need for rational liberties and fair opportunity to conceive and follow *a rational plan of life*, reasonable subjects have to consider, behind the veil of ignorance, something more basic: their biological condition, even if their nature were not to be reduced to the fact of having got a body. Humans, even while developing a rational nature, can not help living in or as human organisms. Therefore, rational subjects, being humans, have to consider the satisfaction of *basic needs* as dependent on a fair

distribution of *basic goods*. Rational subjects, in the *original position* have to locate the *veil of ignorance* at a different point, maybe not merely in terms of anthropocentric interests, or at least, not just considering that humans have only rational interests and no bodily interests to be satisfied.

Regarding it as a moral and political duty to respect equally *basic needs* of humans, mammals, animals of all other kinds, plants and even the needs of the whole biological community of interacting organisms in their physical environment or ecosystems, imposes a revision of our anthropocentric point of view of ethics and justice.

Having rational power to order the distribution of basic goods, but disrespecting the need to satisfy vital fundamental interests of other living beings, we cannot speak about our sense of justice, as Aristotle reminds us, making the distinction between the virtue of *justice* and *pleonexia*. A theory of justice, if reduced to a commercial contract signed by rational subjects looking for mutual benefits, indifferent to their basic natural condition, cannot accomplish with a reasonable theory of justice, something it is expected to do.

*A Theory of Justice* is very selective. Rawls neither considers any kind of interests nor all subjects potentially or indirectly affected by his concept of justice. Even so – even if Rawls' model were only able to order with justice the distribution of *primary social* and *public goods* between rational, free and co-operative subjects, seeking to edify a rational plan of life and able to recognise similar interests of other rational subjects –, we are challenged to show whether or not his conception of justice can be expanded to consider interests of beings lacking rationality, such as mentally defeated people and or other sentient living beings.

Rawls declares that his theory of justice is intended for interests of rational subjects capable of a *sense of justice*. So, if we are interested in developing an *environmental non-speciesist theory of justice*, apparently we have nothing else to search for there. Basic needs, pain and suffer resulting from lack of basic goods, such bodily experiences that were similar to all sensitive conscious living beings, are not challenging any contractarian political theory of justice. It seems as if representative rational subjects were not alive in a bodily condition but somewhere in an abstract realm, by Rawls and other contractarians, as well.

Notwithstanding, Rawls also declares in *A Theory of Justice*, by indicating the *problems of extension* and its respective subjects, who were initially excluded from his proposal of justice, that, if his model applies to order interests of rational, free and co-operative subjects seeking to live a rational plan of life, it would probably apply, with some adaptations of course, to the consideration of a more extensive project of justice, as well.<sup>3</sup>

Such *extension*, if we are able to demonstrate the plausibility of the conception of justice that sets out to order rational interests, should then involve other kinds of interests, for instance, those that cannot be put into contracts. In that case, a theory of justice would be able to consider interests of beings incapable of a sense of justice. In other words, interests of subjects impaired in their moral personality.

These are, in my opinion, the limits and the possibility of Rawls' legacy. Pointing the realm and limits of his theory of justice, Rawls indicates the pathways to follow in order to continue to develop our own sense of justice, exempting it from *pleonexia*, it means, from all kind of prejudice that have been cultivated for centuries by rational subjects, bias that prevent them from conceiving a model of justice that includes interests of non- rational living beings.

By determining explicitly a possibility of expanding his model, in order to consider interests of beings incapable of a sense of justice, suggested as the *problem of extension* of his theory of justice, Rawls legates us the duty of looking into his concepts in order to select those that were useful to construct a renewed theory of justice apt to consider *basic needs*, *basic goods*, and a necessity to order fairly their distribution, a need common to humans and non-humans, not only to rational beings.

I am trying to do my part in extending Rawls' propounding of justice in order to range, besides rational interests – usually declared by contractarians to be the only deserving respect and a direct duty of justice –, the interests of other living beings traditionally considered as not worthy of being taken into account by contractarian theories of justice.

I am convinced – being from a country where basic needs are not considered worthy of any consideration in a political theory of justice, specially if the need for basic goods are of non-human beings, like the need of ecosystems and non-human animals for healthy nutrients –, that a philosophical project of justice, which seeks to construct an ethical conception of justice improving exclusively interests of subjects capable of moral personality fails, if it disregards the urgency of a fair distribution basic goods which both humans and non-humans need to satisfy basic needs, common to all living beings, because we have essentially the same bodily nature.

Basic bodily needs and suffering resulting from lack of basic goods are not exclusive experiences of rational beings. They are the most fundamental experiences of life, for all living being, at least for those who are able to distinguish different experiences, like that of having got and lacking things needed to satisfy bodily claims.

### **The Scope of a Theory of Justice**

*A Theory of Justice* is not conceived to solve unfair distribution of goods in societies in which religious or other political traditions have founded an unequal, hierarchical or non- democratic constitutional order. Grounded upon the principle of equal liberty and fair equality of opportunities, with a fair distribution of primary social and public goods, a society has been found to recognise, at least, three different things: 1.) institutions that build the basic structure of that society are to be ordered after an ideal of justice; 2.) Primary social goods are to be accessed equally by all representative subjects of justice; 3.) Economic and social inequalities are legitimated only if resulting from a rational plan of life by which citizens, acting freely, get distinct public functions compatible with their interests and qualifications, both equally accessible to all subjects.

Members of society who do not take part in the co-operative producers' group, and living beings of all kinds, like animals and ecosystems, who have in common with us the same environment, are not to be directly considered as destined to share fairly any kind of goods, primary social, public or natural environmental ones. Caring for other living beings' interest requires other principles, like the utilitarian one (the consideration of the duty not to inflict pain or suffering) or the natural virtue (the duty to assist, protect or not to kill). To sum it up, Rawls' principles of justice are to be applied to benefit exclusively those beings able to develop a moral personality: the rational ones, or persons.

As said above, this paper intends to open new pathways for the contractarian model of justice. In order to do so, I consider seriously what Rawls called the *problem of extension* of his theory: 1.) environmental issues; 2.) interests and goods of non-human animals; and 3.) intergenerational justice. In some regards such limits of Rawls' theory of justice force us to reconsider the criticism that has been made since the eighties against Rawls' exclusion of non-rational beings from the realm of justice. Some liberties and a certain principle of equality should be considered in relation to the possibility of accessing natural environmental goods, not only by self-conscious humans, but by non-human beings, as well.

If we are speaking about environmental ethics or environmental justice, concepts usually silenced both by environmentalists and contractarians, we have to consider, in addition to humans, at least two different interests around the planet: animal interests and other living beings' interests. Even if those others are neither conscious nor self-conscious, they are alive, a sufficient condition for them to have urgent needs. That is what rational, sensitive, self-conscious human beings should consider in their decisions and actions, when such actions affect partially or wholly the system of natural environmental goods.

If we do not consider the human responsibility not to take lives without a moral justification, we risk losing our limits in relation to any kind of life. In that case, we can no longer talk about constructing ethics and justice.<sup>4</sup> Opposing to *justice*, *pleonexia* means ordering the distribution of goods so as to accumulate the greatest amount of wealth, refusing to distribute it to those who really need it for their subsistence.

Considering ethical a principle that benefits moral agents who have the moral power to decide what is or is not ethical, while denying moral patients who are in a unfavourable condition, the benefits open to the first, limits the realm of morality to a kind of egocentrism of rational morally empowered subjects, and facilitates the justification of all kind of disrespect to non human interests. If we do not demonstrate rationally, that to destroy the possibilities of others' lives is something rational and reasonable, that this is of great interest to rational beings, our arguments are in debt to universalizability, generality and impartiality that moral arguments should achieve.

There is a central question we have to face as philosophers, if we are reasoning about environmental justice: should rational subjects be allowed to *destroy natural environmental goods*, if such goods are essential to sustain all kinds of life in the present and in the future, as well? In other

words, should rational subjects, interested in constructing a fair model of justice for all generations be indifferent to the fate of natural environmental goods, or to the expropriation of them by private enterprises, if these enterprises pose a threat to human and non-human life in the present and future?

Rawls' theory of justice does not consider as a direct duty of justice to respect humans and non-humans incapable of establishing co-operatively any contracts to secure mutual benefits. In such excluded group we have to include non-paradigmatic humans, sentient animals, plants and ecosystems. All these beings, except non-paradigmatic humans, seem to occupy the same place in Rawls' conception of justice: to serve as means to fulfil the needs of rational human subjects, because they are capable of a sense of justice, presumably, subjects interested in maintaining a production' system, free to expropriate natural sources unrestrictedly, in other words, without considering general needs for natural environmental goods all living beings have in common to stay alive.

Rawls refused to apply his conception to order the distribution of economic goods internationally. Instead of defending a fair distribution of wealth around the world, Rawls declares, in *The Law of Peoples* (1999), released twenty eight years after his first book, *A Theory of Justice* (1971), that each nation has got its own history, and the wealth accumulated by the most wealthy countries results from its own efforts and investments. So, the wealthiest nations do not owe any justice to the less empowered, only charity.<sup>5</sup> By the same token, empowered humans do not owe any consideration regarding less empowered living beings, because each one have got specific environmental resources, natural environmental goods ready to be expropriated by those who arrived first or are strong enough in their social arrangements to expropriate others of those environmental goods.

### **Realm of “the Sense of Justice”**

The sense of justice refereed to by Rawls relates only to the expectations of subjects capable of producing primary goods, without which a rational subject cannot accomplish his/her rational plan of life. Justice, conceived to serve rational plans of life of subjects capable of *co-operation* (rational ones) and *reciprocity* (reasonable ones), shall not depend on friendship or mutual confidence.<sup>6</sup> Established by reason, principles are to be applied to all institutions on which rational subjects depend to get their liberty to access primary goods, equally available to others in a similar condition, in other words, fair and equitable liberty of opportunity open to all to access primary goods. Therefore, the duty of justice applies only to beings capable of a sense of justice,<sup>7</sup> a moral sense revealed by feelings, such as *resentment* and *indignation*.<sup>8</sup>

Assented to the contractarian model, which is found upon the principle of reciprocity, the theory of justice does not include, in its original position, the position in which the principles of justice were established by representative subjects, interests of beings incapable of reciprocity. Therefore, non-rational beings are not included in the consideration of Rawls' model of justice. Minerals, plants and animals are considered as environmental resources of goods, open to be explored and not to be protected by rational beings, unless they serve to enhance their benefits.

The contractarian doctrine does not apologise either for cruelty to animals or for the destruction of mineral and vegetable resources. Such practices destroy natural resources needed by private rational enterprises for accumulating wealth. Excluding animals from consideration of any right to basic goods is easy, since Rawls establishes the moral personality, or the capacity to distinguish between just and unjust as a “necessary and sufficient condition”<sup>9</sup> to get into a political community and, therefore, to be considered within the realm of any political conception of justice.

As a result of that requirement, as Michael Pritchard and Wade Robison have shown, the duty of treating others respecting their dignity just if they were our equals can accustom our sense of justice to tolerating some kind of moral perversions in relation to “the rest of the sentient world”,<sup>10</sup> as well.

To prevent such perversion, we have to improve seriously both our sense of moral duty and our political sense of justice. In this case, even beings incapable of a sense of justice or to contracting would be respected in their limitations. We would find some difficulties in holding to the notion of a moral duty to do that, because this notion has no coercive power, that kind of power able to force rational subjects to respect what does not seem to serve their own interests, always considered as rational. Their reason should be challenged to convert their *wiliness*, usually managed to accumulate benefits by expropriating it from natural sources, into *carefulness*,<sup>11</sup> destined to protect, for instance, all sentient life. To accomplish with the most basic interests of all sentient beings, the utilitarian principle of minimisation of pain should always apply before any other principle of justice, if our actions are related to sensitive and self-conscious beings. Such a principle applies to order our actions if affecting interests of sentient human beings.

On the other hand, it is important to distinguish such capabilities that enable one person to sign a contract with another person, from capabilities that make someone apt to suffer any kind of losses as result of actions that benefit any subject at the cost of others' well being, especially when the latter cannot help themselves but to stay in their miserable condition. Supposedly, rational subjects are able to establish universal principles of justice that are both *general* and *impartial*. Rational subjects are supposed to be able to judge case by case, whether established principles of justice are to be applied or not. That is what constitutes essentially the power of a *moral personality*.

Moral patients, on the other hand, are somewhat vulnerable members of a moral community, able to be negatively or positively affected by decisions and actions of moral subjects. In that sense, animals, babies, children, old people, mentally disabled people, inanimate kinds of life like natural landscapes, still unborn living beings of any kind, and even such subjects capable of contracts, who were no longer in good health, have in common such a condition: they can suffer consequences of an unfair distribution of rights, though they are not able to protect their own interests. If they are not considered as subject of justice, because they are temporarily or permanently impaired in their moral capability to defend themselves against empowered rational subjects able to disrespect their needs and interests, they easily become victims of such rationally established exploration.

Rawls model of justice does not distinguish the existence of *moral agents* and *moral patients*. It ignores the fact that in our interactions we are not always empowered moral agents. Because of our bodily, emotional, biological or social condition we are, in each particular circumstance of our life, either able to act as a moral agent or as a moral patient. In the first case, when we are able to act rationally, we are empowered, by our bodily, mental and environmental (social or natural) resources. In the second case, when we act without moral powers, we can suffer the consequences of actions or decisions of others we are not in empowered to command. In nearly all circumstances of our lives we belong together with animals and other living beings to that second case. We are dependent on fair principles of justice that provide us with that kind of freedom needed by all living sentient beings to access basic goods, in order to satisfy basic needs. We live together in an environmental world where empowered rational subjects have come to control almost all natural resources.

There are no differences between our bodily vulnerability and the vulnerability of other living beings, equally subjected to our economical rules and institutionalised forms of accessing basic goods, even if they are distributed according to ethical principles of justice.

Therefore, in the original position, rational subjects should be reminded to consider the fragility of our bodily condition, and similarities between our needs and the needs of all living beings. Unfortunately, Rawls' theory of justice does not predicate in favour of rational beings' interests, if for any reasons, such subjects are impaired in their moral personality. We are, therefore, challenged to overcome such a legacy.

### ***Natural Environmental Goods – From Lacking a Concept to Splitting a Good Conception***

Rawls does not offer a metaphysical conception of the status of human life within the broader scope of all living species. Rawls does not attribute any moral worth to other kinds of life or any “intrinsic value” to Nature. The environment referred to by Rawls in many passages of his theory always appears as a source of natural resources,<sup>12</sup> and therefore, as something with instrumental value, in other words, something that serves the purposes of rational beings. The term “use of natural resources”<sup>13</sup> has been used casually by Rawls to refer certain practices, from the use of air, water, land and other living beings, to the occupation of land, pollution and consumption of energy. Such references were analysed by Russ Manning, regarding the duty to preserve natural environmental goods to provide for the well being of present and future generations. The political, economic and social institutions in any democratic society are responsible for degrading the natural environment and for expropriating natural resources to the point of exhaustion. Another responsibility should be added to political and economical institutions: to remain indifferent to such expropriation of natural resources and hiding such destruction behind the argument of progress in order to stimulate people to consume goods they do not need. Pollution and depletion of natural resources result, in Manning's opinion, from overpopulation, industrialisation and waste. Political institutions and legislative power are responsible for controlling the impact over natural resources on the present generation, at least for two reasons: 1<sup>a</sup>.) Because pollution

destroys not only Nature but also human health; and 2<sup>a</sup>.) Because the shortage of natural resources reduces, for all living beings equally, the opportunity to subsist.

Following Manning's criticism of Rawls, I agree with his thesis that all goods originated by the natural environment – what I am terming here *natural environmental goods*<sup>14</sup> – should be considered in any egalitarian contract of justice. The impact of pollution and shortage of resources on environmental conditions of life reduces both individual freedom and the possibility of keeping healthy.

Health constitutes one of primary natural goods common to all living species. Within the scope of a democratic theory of justice, social, economic and political institutions should, therefore, be declared responsible for ordering the distribution of natural environmental goods equally, and for protecting living beings against the risk that such goods may no longer be available, due to unfair exploitation, in order to secure the development of each individual, both human and non-human.<sup>15</sup>

Rawls recognised health as a *natural good*. But, I insist on reminding contractarians that health depends on *natural environmental goods*, such as unpolluted water, air and food, fertile land, freedom to move in order to access basic goods, bodily freedom to establish social relations and to choose companionship. *Natural environmental goods* are, in my opinion, much more than just simple natural goods, which Rawls called natural resources.

The adjective *environmental* added to *natural goods* shows human interference and disposition of goods, originally available to all living beings directly by Nature. *Environment* means natural things being manipulated by human institutions before humans and animals can access it. That concept of basic goods should be added to Rawls' conception of goods, if we want to construct a non-speciesist environmental theory of justice.

Rawls gives little attention to what he called *primary natural goods* – health, vigour, disposition, intelligence, imagination etc. Actually, the initial endowment of such *natural goods*, in his opinion, cannot be controlled by social *institutions*. Because he does not consider the fact that economic, political and social institutions even if they cannot “guarantee” to all individuals intelligence, vigour, imagination, the disposition to live happily, they are responsible for establishing public policies that improve or reduce opportunities for survival, or for exhausting limited natural resources that should be consumed to preserve health, vigour and the disposition for Happiness. All living beings need such goods. A democratic theory of justice should no longer ignore this a fact.

In other words, although it is true that those institutions are not capable of endowing these natural goods individually, on the other hand such institutions, through their public policies, are able to foment or annihilate environmental resources (natural and social ones) by which those *natural goods* are well developed in a rational plan of life or remain definitely underdeveloped.

In some regards, but not in its original format, asserts Thero, Rawls' ethic could be used very well to defend environment. He states that adding to Rawls' conception of justice some other concepts, like these I am emphasising here, we would be able to think about issues we have been ignoring in Rawls' theory of justice, which has conceptual resources that permit us to think about, and to defend,



interests that are basically the same for all living beings. Over a long period of time, Rawls' model should certainly be rewritten in order to make possible a non-speciesist environmental theory of justice. We are aware of the existence of non-rational interests that have to be satisfied fairly by all living beings.<sup>16</sup>

The same lack affecting Rawls' model of justice affects other environmental theories. Troy W. Hartley lists at least seven environmental doctrines disputed around the world, in which questions of environmental justice have never been touched. Defending natural environment is something common to all of them. To these theorists, such an ethical approach of a just distribution of *natural environmental goods* does not constitute a moral issue.<sup>17</sup>

Therefore, a simple defence of Nature preserves at least the same lack we criticise in contractarian tradition, since it is limited to defending just interests of rational egocentric subjects. Actually, environmental theories have not developed a theory of environmental justice, considering for instance, the need to meet all basic needs, regardless of the biological Nature of individuals. Life itself requires basic goods. All forms of life require basic goods. They are the same for all kinds of life, as we have shown above in this paper. The question is how to distribute such basic goods among all forms of life, without privileging any particular living being.

To sum up what we are learning by criticising anthropocentric contractarianism suggested by Rawls to order with justice the distribution of primary social and public goods, we could state that to defend either reason or Nature does not bring us to the point we are seeking: to a conception of justice without any kind of discrimination relating to basic needs and to rules adopted to assure free access to them by all beings in need. I will insist a little more searching into Rawls' theory of justice, in order to determine whether or not it provides a basis for a non-speciesist environmental theory of justice.

### **The Possibility of Including Non-rational Interests in the Contract of Justice**

According to Manning, there are in Rawls' conception of justice at least eight elements that make it possible to establish a relation between two concepts: justice and environmental Ethics. These arguments are: 1°.) Justice has to be defined by a contract, not according to individual or private interests, feelings or impulses;<sup>18</sup> 2°.) Both the impartiality supposed by the fiction of the veil of ignorance and mutual consent constitute fundamental grounds of the original position which define principles of justice;<sup>19</sup> 3°.) Behind the veil, nobody knows his/her place in society, not even what sex, generation, species, race or territoriality s/he belongs to; 4°.) To belong to one or to other generation does not assure any privileges to a certain subject;<sup>20</sup> 5°.) Future generation have a just claim to get natural resources of our planet;<sup>21</sup> 6°.) To take care of one's own interests is accepted as something expected to by all individuals, therefore, recognised as constitutive of our Nature, which results in mutual indifference, relevant to the original position;<sup>22</sup> 7°.) A good life, with quality, is something accepted as relevant by all representatives; therefore, principles of justice, such as equal liberty, equitable opportunities and the

difference principle are presented definitely by the original position;<sup>23</sup> 8) The difference principle does not allow privileges by attempting to satisfy any kind of interest in name of time preferences.

In Rawls, as we have seen above, there are three kinds of goods: primary, public and natural ones. A rational subject has to manage to get a rational plan of life in order to keep and develop these goods with the aim of being happy.<sup>24</sup> Inasmuch as liberties are not negotiated to obtain any kind of economic benefit, we should not allow any particular interest to make any commercial expropriation of *natural environmental goods* unless it is necessary to assure equitable access of all interested subjects to basic goods. There is no justice as long as many subjects have to live in need without fundamental environmental goods “... regular access to drinking water, ungifted food etc...”.<sup>25</sup>

In that sense, principles of justice should be established in order to guarantee that no economic interest overrides natural basic interests of all living beings. As Brent Singer suggests, we should extend the rawlsian's list of primary goods in order to be able to include such things as “access to drinking water and unpolluted air to breathe”,<sup>26</sup> some of which I call *natural environmental goods*. I suggest, adding something to what Brent Singer has done, to extend justice in distributing such goods to all forms of living beings.

### **Expanding Rawls' Model of Distributive Justice**

Pritchard and Robison suggest adding two different things to Rawls' theory of justice, if we would like to construct an environmental one: 1.<sup>a</sup>) We have not only to define what we mean by justice, but what kind of moral world we intend to build in applying such a conception of justice. This question would not sufficiently assured by propounding the principle of reciprocity in terms of what contractarian theorists like Rawls have been trying to do, claiming that all subjects benefited by a certain contract have to be able to sign and sustain it;<sup>27</sup> 2.<sup>a</sup>) To abandon the belief that contractors always have just one thing in mind: to satisfy exclusively rational interests ignoring interests of all other nature.

The just savings principle makes it possible to include, without any difficulty, the duty to refrain from using vast natural resources in the present generation, in order to preserve them for future generations, something protected by Rawls in establishing the difference principle, the principle that assures priority to the least favoured.<sup>28</sup> The original position presupposes that the same principles are to be respected in our decisions affecting subjects, both in present and future generation. The mutual indifference expressed by respect for others' interests, even if these “others” belong to a generation we do not belong to, substitutes the virtue of “generosity”, uncertain in moments when resources are scarce and cannot be ordered by any universal principle, like the “justice” principle.<sup>29</sup> Making such a substitution we can determine the measure of just distribution, its regularity and the objective application of its rules, three things we cannot regulate in others' generous action.

Thero suggest three modifications in Rawls' theory to assure necessary grounds to a not speciesist environmental Ethics: 1.<sup>a</sup>) To consider health a primary social good;<sup>30</sup> 2.<sup>a</sup>) To consider an arbitrary contingency as belonging to a specific generation;<sup>31</sup> and 3.<sup>a</sup>) To recognise that animals have in

common with us interest in accessing primary goods, therefore, should be benefited, albeit indirectly by our contract of justice.<sup>32</sup>

To the objection that only rational subjects should be respected as subjects with some *moral* status because only rational subjects can sign and sustain contracts, Brent Singer replies: it is true that just rational subjects are able to make contracts. Notwithstanding, this does not mean that all contracts they make serve merely to benefit their private interests. Rational subjects, allowed by their own reason, can sign and sustain contracts to guarantee other than their own rational interests and also the rational interests of beings incapable of drawing up contracts.<sup>33</sup>

In order to include non-rational interests or interests of non-rational beings into the plan of justice constructed by Rawls, permitting the construction of an ethical environmental theory of justice. We have to add *natural environmental goods* to that kind of goods Rawls thought should be distributed according to principles of justice. Therefore, we guarantee to other beings equitable access to those goods.<sup>34</sup> Rational and non-rational subjects, as well as other kinds of living beings devoid of reason but needing such goods to improve their subsistence would be perfectly protected by justice, a legacy Rawls put into our hands to give it concrete expression.<sup>35</sup>

The inclusion of animals in a theory of justice, the imputation to reason of the responsibility for respecting needs and goods of subjects unable to reason or to protect themselves, the adoption of impartiality considering equally interests that are common to all kind of animals and other living beings, and proposing to treat equally interests common to rational and sentient beings - are in all proposals capable of refining the sense of justice presumed by Rawls as limited exclusively to respecting the interests of rational beings. I see no reason for believing that adopting such an environmental Ethics is not yet possible.

There are no reasons to delay the approach of practical Ethics relating to environmental issues.<sup>36</sup> It is urgent to establish a just criteria of distribution and access to primary goods, especially free access to natural environmental goods, in order to avoid, for the overall well-being, the negative results of exhausting sources of such goods we cannot live well without. No sacrifices were claimed for rational subjects respecting limits to the exploitation of natural resources.

Only tyrannical and wily reason would believe that the only way to get what is necessary to satisfy ones need is to take goods that others need. Sovereign reason, which is diligent and responsible, recognises the universality of needs and the necessity of ordering them according to some principles of justice in its distribution. Considering needs as an experience that is common to all living beings, reason would apply the principle of equality to order to act with justice actions towards all subjects interested in having their basic goods met.

Certain primary goods, such as health, food, air, water and natural environment are common to humans, animals and plants, as well. Therefore, moral agents, empowered by their rational capability are not authorised by their own reason to construct theories of justice that deny their own bodily constitution, as something non-rational. It is not true that in the original position self-interested subjects

are not capable of choosing some principles of justice that allows for an equal distribution of natural environmental goods to all living beings, recognising beyond the distinction placed by reason, the need for bodily subsistence. Such a distinction can be just of a matter of degrees, not an essential one, as Darwin clearly put it two centuries ago. We are irrational if we deny that we have some interests not regulated by reason but by our bodily condition. These interests are of exactly the same Nature as similar interests affecting non-rational beings.<sup>37</sup>

Finally, we have to consider the interest of all forms of life in natural expression beyond any argument of utility. Eventually humans, animals and ecosystems could be said to share this interest equally. Nature as a whole should be declared as *a social environmental good*, to be preserved for its own reason, independent of any value we are able to impute to it – aesthetic, historic, scientific or ethical.<sup>38</sup>

Regardless of any moral perspective claimed as a basis for an environmental theory of justice, only one principle should be claimed by all rational subjects: “... equal environmental quality and equal environmental protection”.<sup>39</sup> Particular criteria are to be chosen, case by case, to follow this principle explained above. But all in all, the principle of *equal environmental protection* results in abolition of all privileges traditionally reserved to allow private interests to be put above general ones when animals, plants and ecosystems are destroyed in name of human well-being.<sup>40</sup>

## Notes

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<sup>1</sup> *Speciesism* means a prejudice humans usually have in considering interests of non-human animals, because they are not born like us, as *Homo sapiens*. Such kind of prejudice was termed in 1975 by Richard D. Ryder to refer to a bias humans show in any circumstances when they consider animals just as means to benefit human interests, instead of considering them as equals in their needs, sentience and capability to live their own kind of life, to feel pain and suffer. Cf. RYDER, Richard D. *Speciesism*. In: *Victims of Science; the Use of Animals in Research*. London: National Anti-Vivisection Society, 1975, p. 1-14

<sup>2</sup> Primary social goods are: rights, liberties, powers, opportunities, income, wealth and self-respect. health, vigor, intelligence and imagination are natural goods. See *A Theory of Justice*, Oxford University Press, 1971, § 1, p. 62.

<sup>3</sup> See Rawls, *A Theory of Justice*, § 2.

<sup>4</sup> Cf. REGAN, Tom. The Nature and Possibility of an Environmental Ethic. In: *Environmental Ethics; an Interdisciplinary Journal dedicated to the philosophical aspects of Environmental Problems*. University of New Mexico, v.3, n. 1, p. 19-20, Spring 1981.

<sup>5</sup> Cf. FELIPE, Sônia T. Direitos Humanos. Vias e vieses da política internacional em The Law of Peoples de Rawls. In: OLIVEIRA, Nythamar Fernandes de; SOUZA, Draiton Gonzaga (Orgs.) *Justiça e Política*. Porto Alegre, EDIPUCRS, 2003, p. 133-156; see also FELIPE, Sônia T. Liberais e Fundamentalistas. In: CIRNE-LIMA, Carlos; ALMEIDA, Custódio (Orgs.) *Nós e o Absoluto*. Festschrift em Homenagem a Manfredo Araújo de Oliveira. São Paulo: Loyola, 2001, p. 387-406; and FELIPE, Sônia T. Rawls: uma teoria ético-política da justiça. In: OLIVEIRA, Manfredo Araújo de (Org.) *Correntes Fundamentais da Ética Contemporânea*. Petrópolis: Vozes, 2000, p. 133-162.

<sup>6</sup> Cf. RAWLS, John. The Sense of Justice. In: *Collected Papers*. Ed. by Samuel Freeman. Harvard University Press, 1999, p. 111.

<sup>7</sup> Cf. PRITCHARD, Michael S. and ROBISON, Wade L. Justice and the Treatment of Animals: A Critique of Rawls. In: *Environmental Ethics* University of New Mexico, v.3, n. 1, p. 55-61, Spring 1981 [Doravante citado: JTA, In: *EE*, 3(1):p.].

<sup>8</sup> "... To say that the sense of justice is sufficient is to say, then, that the duty of justice is to those who could participate in the contract situation of the original position and act on it." RAWLS, John. TSJ. In: *CP*, p. 113. Rawls establishes a necessary and universal link between the capacity for a sense of justice and the language. "... It is plausible to suppose that any being capable of language is capable of the intellectual performances required to have a sense of justice; and, given these intellectual powers, the capacity for the natural attitudes of love and affection, faith and mutual trust, appears to be universal." *Ibid.*, p. 114.

<sup>9</sup> "... But lack of a sense of justice would undermine our capacity to identify ourselves with and to care about a society of such persons, if such a society could exist. (...) The capacity for a sense of justice is, then, necessary and sufficient for the duty of justice to be attributed to a person – that is, for a person to be regarded as holding an initial position of equal liberty. This means that one's conduct in relation to him must be regulated by the principles of justice or, more generally, by the principles which rational and self-interested persons could acknowledge before one another in such a position." RAWLS, John. TSJ. In: *CP*, p. 116.

<sup>10</sup> PRITCHARD, Michael S. and ROBISON, Wade L. JTA, In: *EE*, 3(1): 58. Animal defenders, like Peter Singer, Richard D. Ryder, Tom Regan, naming just the most important ones, alert us to the risk in adopting such criteria, because it excludes, either temporarily or permanently, nearly all humans. Almost all humans, including ourselves, are sometimes incapable of any moral judgement or of any sense of justice, or simply to establish the distinction between right and wrong. Developing another theory, like the potential power of rational beings, to overlapping the difficulty does not solve the problem, because the potentiality can sometimes stay underdeveloped. We have to distinguish two different things in moral philosophy. Firstly, moral agents or moral subjects who have the duty to follow moral principles. Secondly, the moral patients or subjected to actions practised by the first. Therefore, the capability to morally requires subjects being morally apt to respond for their actions. On the other hand, to have the right to be morally respected only requires being able to suffer with others' actions. Moral patients do not have to be rational or able to act rationally to oblige moral agents to respect them. Rationality is a criterion with which moral agents have to be able to act in accordance, if they want to act morally. But rationality is not a criterion which moral patients have to be able show, in order to deserve moral respect from others. If that were true, babies and comatose are beings moral agents should treat without any consideration, since they were not able to act rationally. In other words, in any contract we are able to establish some limits to our liberties in order to preserve the integrity of others, if they are not able to impose limits to avoid our aggressions. Reason tells us, in these cases, that there are values that not

necessarily imposed by it. Disrespecting such non-moral values risks losses we are not able to accept, because they threaten the integrity of our body and the well-being our emotional states, both important even to non-rational living beings.

<sup>11</sup> In latin *diligentia*, means care in attending to details.

<sup>12</sup> MANNING, Russ. *Environmental Ethics and John Rawls' Theory of Justice*. In: *Environmental Ethics*. University of New Mexico, v. 3, n. 2, p. 158, Sommer 1981. [Up to now: MANNING, Russ. *EEJRTJ*, In: *EE*, 3(2):p.].

<sup>13</sup> Cf. RAWLS, John. *TSJ*. In: *CP*, p. 115.

<sup>14</sup> I suggest, at this point, the adoption of the concept *natural environmental goods*, not present in Rawls' work, but necessary to be able to continue the reflection concerning the just distribution of goods and the place of each kind of goods within the scope of an ethical theory of environmental justice. Rawls employs three concepts of primary social goods: or basic goods, natural goods and public goods. With the concept of natural goods, on the contrary of what it might seem at first sight, Rawls is not referring to the natural weakth of the planet, but to the organic gains, conditions given by birth, something that today one used means thinking about the concept of genetic endowment. Intelligence, rapid reasoning, imagination, readiness, vigour, are some those natural goods, in the conception of Rawls. To take into account the extension of the theory of justice regarding a fair distribution of the goods of nature, and so as not to confuse it with the concept of natural goods mentioned above, I propose the concept of *natural environmental goods*, referring, then, to what is usually known as *enviroment*, that is, those natural goods necessary for a life of dignity, including in this category those that guarantee the health of the human individual and of the collectivity that covers the forms of life in which s/he is also a natural member. *Natural enviromental goods* must be included in the conception of goods, for their value to humans and animals. Some of them, such as water, for example, must be considered in the condition of public goods. See, FELIPE, Sônia T. & SARTOR, Vicente Volnei de Bona. *Bens Primários em John Rawls*. In: *Phronesis*. Campinas, SP, Vol. I, n.º 3, set./dez. 1998, p. 11-32; SARTOR, Vicente Volnei de Bona; FELIPE, Sônia T.; SCHEIBE, Luiz Fernando. *Os Princípios da Justiça*. In: FELIPE, Sônia T. and others. *Estudos Interdisciplinares em Ciências Humanas*. Florianópolis: Cidade Futura, 2003, p. 125-212.

<sup>15</sup> MANNING, Russ. *EEJRTJ*, In: *EE*, 3(2): 158.

<sup>16</sup> *Idem*, *Ibid.*, p. 106.

<sup>17</sup> They are: "... (1) Judeo-Christian stewardship; (2) deep ecology and related value systems; (3) transformationist/transcendentalism; (4) constrained economics; (5) scientific naturalism; (6) ecofeminism; and (7) pluralism/pragmatism." HARTLEY, Troy W. *Environmental Justice: An Environmental Civil Rights Value Acceptable to All World Views*. In: *Environmental Ethics*. University of New Mexico, v. 17, n. 3, p. 286, Fall 1995. [Up to now: HARTLEY, Troy W. *EJ*, In: *EE*, 17(3):p.].

<sup>18</sup> *Ibid.*, p. 163.

<sup>19</sup> *Ibid.*, p. 156.

<sup>20</sup> Cf. *Ibid.*, p. 163.

<sup>21</sup> *Ibid.*, p. 156.

<sup>22</sup> Cf. *Ibid.*

<sup>23</sup> Cf. *Ibid.*, p. 157.

<sup>24</sup> *Idem*, *Ibid.*, p. 219.

<sup>25</sup> *Ibid.*, p. 220.

<sup>26</sup> *Ibid.*, p. 221.

<sup>27</sup> *Idem*, *Ibid.*, p. 60.

<sup>28</sup> *Natural environmental goods* were *public goods*, to be distributed following the *difference principle*. Cf. MANNING, Russ. *EEJRTJ*, In: *EE*, 3(2):165.

<sup>29</sup> *Ibid.*, p. 162.

<sup>30</sup> Cf. THERO, P. Daniel. *REE*, In: *EE*, 17(1):96.

<sup>31</sup> Thero considers the inclusion of future generation in the present contract of justice suggested by Manning generous, instead of conceding to future generation only a part of just savings as thought by Rawls, who asserts a kind of time preference, refraining the present generation of to be sacrificed to benefit the future. Rawls admits we are not obliged to save anything in favour of future generations, if these savings represent any sacrifice of the concept of justice relating the present generation. The maximin rule and the difference principle do not accept the concept of sacrifice. Cf. *Ibid.*, p. 97-98.

<sup>32</sup> *Ibid.*, p. 106.

<sup>33</sup> *Ibid.*, p. 224.

<sup>34</sup> The inclusion of animals in the theory of justice has been defended by Brent Singer and Peter S. Wenz. See their book *Environmental Justice*, SUNY 1988. See also THERO, P. Daniel. *REE*, In: *EE*, v. 17, n. 1, p. 99.

<sup>35</sup> *Ibid.*, p. 102.

<sup>36</sup> HARTLEY, Troy W. *EJ*, In: *EE*, 17(3):289.

<sup>37</sup> SINGER, Brent A.. *AERTJEE*, In: *EE*, 10(3):226.

<sup>38</sup> *Ibid.*, p. 227.

<sup>39</sup> HARTLEY, Troy W. *EJ*, In: *EE*, 17(3):287.

<sup>40</sup> *Ibid.*, p. 288.

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