

Environmental Justice and Rawlsian Social Contract Theory

Environmentální spravedlnost a rawlsiánská teorie společenské smlouvy

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Abstrakt/ Abstract

Contemporary social and political theory is not wholly sufficient for dealing with environmental issues unless it will be more informed by political theories of justice. I present the view that environmental justice can be fruitfully approached from the point of view of contemporary social contract theory, mainly the one inspired by the work of John Rawls. Healthy natural environment is indispensable for many reasons for every human society; however, nature possesses also value going beyond pure instrumentality for human beings. Because humans can have great impact on natural environment in either positive or negative way, this entails duties on their part. Society's dealings with the environment are regulated by laws and other public measures, which in turn have their deeper justification in general theory of justice of that particular society. The article tries to show that contemporary social contract theory can fruitfully grasp principles of environmental justice, which could lead to more environment sensitive policies and be acceptable from liberal point of view at the same time.

Politické myšlení nemůže adekvátně reagovat na environmentální problémy současné společnosti, pokud nebude více pracovat s konceptem environmentální spravedlnosti. V tomto článku se snažím ukázat způsob, jak může být otázka environmentální spravedlnosti uchopena pomocí teorie společenské smlouvy v podání Johna Rawlse. Lidé mají svoji činností významný dopad na životní prostředí, což má za následek nerovnou distribuci environmentálních dober a škod. Proto existují vůči ostatním lidem povinnosti vyplývající ze spravedlnosti vztahující se na environmentální oblast. Environmentální otázky se nicméně musí řešit pomocí závazných společenských pravidel, která mají podobu zákonů vynucovaných státem. Tyto zákony mají své hlubší ospravedlnění právě v určité teorii spravedlnosti, která zakládá jejich legitimitu. Ve článku se snažím ukázat, že pomocí teorie společenské smlouvy lze konstruovat soubor principů environmentální spravedlnosti pro společnost, která se chce stát více odpovědnou vůči životnímu prostředí a zároveň fungovat podle liberálních principů.

Introduction

In the contemporary world, discussions of environmental problems and their impacts upon society are widespread. Ozone depletion, climate change, acid rains, water scarcity, overfishing of the world oceans, deforestation and many other problems have become a steady part of social and political agenda. Apart from empirical questions dealing with the

precise causes and effects of above mentioned processes, there are many related issues to tackle in the fields of philosophy, ethics, and politics. Injustice in the distribution of environmental goods and burdens has serious impact on the life of various social groups. One of the most intriguing problems is the question how to choose between policies, which will have disproportionate environmental effects on the affected population. Often, in cases such as power plants construction, infrastructure investments, habitat protection or mining, we have to choose between policies, which will consequently distribute negative environmental goods among the inhabitants of some particular area (city, region, nation state), no matter which of the alternative policies would be adopted. Another issue is the problem of intergenerational justice. Social life could be seriously salient damaged by insensitive environmental policies of ones ancestors. In a similar way, we can influence the very quality of life of future generations, depending on us behaving responsibly towards our natural environment.¹ Therefore, we must try to find out a suitable approach to tackle these questions.

Questions concerning our dealings with nature are nowadays rightly deemed as a part of social and political theory (philosophy) and we should consider them from the view of the political concept *par excellence*, that of justice. Justice is not concerned only with the idea of equality, its interpretation and implementation, but also connects other crucial ideas in political thought like autonomy, respect, harmony, law and legitimacy. Similarly, Andrew

¹ Unfortunately, this paper cannot tackle the question of obligations towards future generations. Many thinkers claim that we have duty to posterity, but not because this duty is entailed by corresponding rights, i.e. that future generations have right claims against us. Our relation with future generations in their view is of beneficiary, not cooperative relationship. Our duties to posterity are at best similar to charity. However, I think that the key to grant rights to future people is that even though we do not know great deal about their precise condition (social, political, technological), we know that a) their essential interests would be similar to ours; b) they will have rights to have life-conditions above sufficient threshold; c) we are in a position that we can severely affect these life conditions by our contemporary actions. Many philosophers deny that we have “perfect duties” to future people, just “imperfect” ones (distinction found in Kant’s philosophy). Perfect duties entail corresponding rights, but imperfect duties (such as beneficence and charity) do not (there is no right to charity). If you donate money to the world’s poor and therefore alleviate their suffering, it can be seen as an act fulfilling imperfect duty of beneficence, but the receivers of your money have no right to your donation. On the other hand, if some factory pollutes its neighbourhood and harms its inhabitants, they have valid right claim against its owners. Compensation in this case is not a matter of charity, but of respecting the polluted area inhabitants’ rights. If those are violated, persons responsible for the factory must fulfil their duty. I don’t think that it is reasonable to say future people stand to us in relationship similar to that existing between a beggar and rich person. Therefore, we have perfect duties to future generations; however, we have to say that not all rights of future generations entail duties on our side. Only some rights, so-called passive rights are applicable to future generations and present valid moral claims to regulate our behaviour in the presence. Passive rights are rights not be treated in certain ways, prohibiting certain harmful actions. Because we can see future peoples’ needs and essential interests, it is reasonable to ascribe them negative rights. Still, persistent critic can claim that the group of future generations does not have identifiable persons and therefore it is not intelligible to ascribe rights to them. That would mean we would have duties to persons and still not knowing who these persons are. But future generations are not simply imaginary beings. Their existence is more or less certain, as well as interests underpinning their rights. In a similar vein, many of our contemporary legal and moral duties are so-called in rem duties, which are owed to anyone (against “the whole world”), not identifiable persons as such. For detailed discussion of these issues see Parfit (1986), Kumar (2003).

Dobson writes

“that the natural world—normally ‘invisible’ to political theory—affects, and is affected by, political decisions in a way which makes it necessary to consider it a site of political activity” (A. Dobson, quoted in Mayer 2006, p. 778).

I think that here the political idea of *justice* is indispensable, because it could give us at least some ways how to cope with the normative questions related to environmental problems. Obviously then, I will not be concerned with the environmental justice *movement* (having its origins in the USA), but with environmental justice as an abstract concept in political theory.

This paper will try to defend a contractarian version of environmental justice. Social contract theory holds that moral and political obligations, principles of justice, and legitimacy of political institutions are derived from a hypothetical contract between individuals to whom these norms should apply.² Here I understand justice to be

“*moral permissibility* applied to distributions of benefits and burdens (e.g., income distributions) or social structures (e.g., legal systems).” (Vallentyne 2007, p. 548, emphasis in original).

Two parts of environmental justice have to be discerned: 1) that which concerns human-nature relationships, where I would claim that the principles of justice state what human actions are generally permissible when dealing with the natural environment; and 2) that which concerns the distribution of environmental goods and burdens in society through social cooperation.

Furthermore, I will focus on the case of domestic justice, not the case of international (or global) justice. I am a bit reluctant to develop global normative principles straight away, because we can see that the most formative environment for an individual’s aims, values and goals is his domestic society. Solving the case of domestic justice will give us some ideas about the global level, which is still qualitatively different. In the first part of the paper, I will sketch my answer to the question why is necessary to see our natural environment beyond pure instrumentality. Second part shortly introduces the Rawlsian theory of justice and tries to extend its scope so it includes the non-human environment as one of its primary goods being distributed in the society. Finally, in the third part I propose some principles which should inform and regulate human/nature relationship as part of more general framework of a theory of justice.

1. Nature and Intrinsic Value

² Of course, it is a complicated question to what extent contract theories of the past were based upon the idea of hypothetical, rather than actual contract. However, contemporary contractarians uniformly adopt the idea of hypothetical contract allowing them to get rid of many otherwise insurmountable contradictions, which were already so aptly criticized by Hume in his seminal essay *On the Social Contract*, see Hume (1987).

I think there would be only a few of those who would consider human beings radically separate from their natural environment, except for adherents of some version of strict mind-body dualism, like Descartes. Natural environment and more generally the world ecosystem is indispensable for one simple reason: we cannot live without it. We need natural resources; we need air, water, food. Moreover, nature plays an important role in human psychology because of its aesthetic and other functions. Natural environment is essentially important. Basic human potential no matter how understood could not be fulfilled if the natural environment was seriously damaged or utterly destroyed. Taken broadly, nature is instrumentally valuable as being necessary for *any form of life on this planet, including human life*. Does it mean that the natural environment has value apart from human instrumental reasons (i.e. does nature also have an *intrinsic value*)?³

My answer to the question would be no, if it is meant by intrinsic value that there exists some real (metaphysical) value apart from human reasoning and valuation. There are no *objective moral* values akin to Platonic forms. On the other hand I think that the answer to our question should be in the affirmative, if we take something having an intrinsic value as opposed to instrumental value, i.e. having an end to itself, without any reference to human good. Contrary to some thinkers (usually dubbed as deep-ecologist, see Naess 1989) I deem the idea of something possessing value even without the existence of a valuing agent as contradictory.⁴ Bryan Norton (1984) called this position quite aptly *weak anthropocentrism*, meaning that all valuing of nature is rooted necessarily in human-centred reasons, but this does not degrade nature to be only of instrumental value.⁵ There are other authors who hold the view that both instrumental and intrinsic value is subjective in the sense that they need and agent being capable of the act of valuing (see Callicot 1985). Therefore, ‘when we say that some non-human entity has intrinsic value, we do not mean that moral rules apply to it as a moral agent—because, of course, being a moral agent requires the capacity to make moral judgements, and in that sense values are attributed to objects by humans; they are not

³ Instrumental value means here that something has value solely as a mean for something having intrinsic value. Some object having intrinsic value has it for its own sake, with no relation to any other valuable objects. Therefore, if health is of intrinsic value, exercise (as a mean to achieve good health) would be an instrumental value.

⁴ Ascribing intrinsic value to some entities without reference to human reasoning seems to be philosophically implausible. It would entail some form of direct cognitive access to what are the interests grounding intrinsic value. But how would such knowledge be possible, if all interests are known only through an act of reason? Seeking purely non-human set of values is probably hopeless, because all interest we ascribe to nonhumans are rooted in human language discourse. Furthermore, the deep ecologists‘ calling for equality of all forms of life in their interest (based on their idea about what intrinsic value is) would probably make human life miserable (probably every satisfaction of human needs clashes with some interests of non-humans) and would lead to necessary sacrifices great number of human lives for upholding interest of non-human entities.

⁵ General move from strong anthropocentrism to its weaker forms in political discourse could be discerned in some important international documents, such as the *The Declaration of the United Nations Conference on the Human Environment* (1972) and subsequent related documents.

discovered. Rather, since we mean that there is development of inherited capacities and faculties in this entity' (De-Shalit 1994). Contrary to many scholars working in the field of environmental ethics I think we need not to see anthropocentrism *per se* as necessarily hostile towards non-human environment. Only some forms of anthropocentrism seem to lead to that conclusion, for example the view that sees nature only as resource completely at our disposal (see Light 2001, pp. 10–12).

Animals or larger natural entities have an end to themselves without any reference to human race, because they were created during the millennia of Earth's evolution long before *Homo sapiens* even existed. Thus, apart from instrumental value for humans, natural entities have their own interests. We should also bear in mind that the separateness of humans from their environment is to a large extent hypothetical. Therefore, nature has intrinsic value and because it is independent of human action it deserves our respect and should not be destroyed unless it is in serious conflict with our essential needs. Just because we have no interest in something (like the wilderness in Antarctica) does not mean *it* does not have value. Another good argument is supplied by A. Vincent, who speaks of nature's indispensability for the development of human reason. Not respecting

“the environment is to act against reason and is thus self-contradictory. If reason directs one to the sustenance of a natural environment (which is its essential presupposition and condition of reason's flourishing) then there are good reasons for obligatory action premised upon intrinsic value.” (Vincent 1998, p. 143, n. 43).

We can call this the evolution argument and it enables us to better appreciate the human-nature relationship in a more subtle manner.

I have said before that every form of life unquestionably needs a healthy environment. Healthy and prosperous natural environment contributes to human flourishing also indirectly, because nature is immensely important for aesthetic feelings and scientific progress (Passmore 2007, p. 581). Furthermore, humans are not just one among the Earth's species, but their capabilities make them special in a sense that potentially everything can be harmed by them given the present state of technology available. That would mean special responsibilities on the side of the humankind that other species simply do not have. We are able to recognize the interests of other animals, plants and life on planet in general. Our position on the planet as the highest form of life that came out of the evolutionary process entails duties on our part to our environment. Terence Ball acknowledges that

“our ever-expanding knowledge of the natural world brings with it an expanded responsibility to recognise the interests (some greens go further, and say ‘rights’) of other creatures. And whilst we may not always be able to promote these interests, we must, as moral and political agents, at least accord them serious consideration in making political decisions and public policies that affect their well-being or, indeed, their very existence” (Ball 2008, p. 543).

To make the whole idea more clear, you can think in a similar way about the protection of

precious *artefacts* generated by millennia of human development (architecture, objects of art etc.). Even though they are not at all necessary for our survival and their value is largely aesthetical, in majority of societies there would be no question about the need of their protection and many societies invest significant amounts of money to achieve this goal. Contrary to enormous costs of artefact preservation and maintenance, nearly every human society proudly takes care of these objects.

There is no difficulty to imagine possible trade-offs between different kinds of intrinsic values (cf. Bell 2006, pp. 216–217). Most of the times we tend to see the environment instrumentally, but there are cases when it is necessary to invoke the idea of nature as worthy to be respected, even if there is no straightforward connection to any human interests. This view can be taken as imposing general *side constraints* on our behaviour towards nature, but it does not say in more detail what our specific obligations are and they have to be worked out separately.⁶ However, it does not hold that recognizing nature's intrinsic value automatically creates morally binding reasons to preserve it. It gives some moral guide by saying what is intrinsically valuable, but does not answer the crucial question: which of society's actions related to the environment are good and which are bad (Brennan and Lo 2008)? It seems to be clear that we need principles according to which we can decide possible conflicts inherent to many issues on the environmental agenda.

2. Environmental Justice and Rawlsian Social Contract

Moral reasoning sketched in the previous chapter gave us some preliminary thoughts about the human-nature relationship. The philosophical debate sketched in chapter one is only partly relevant to the question of justice. Why? The main reason is that human relations to natural environment have to be in the end ruled by laws given by a legitimate political authority. In contemporary society even the best philosophical argument given cannot overrule standard political and social practices. When I speak about contemporary society I have a society in mind, which is governed by social and political rules sustained and generated by liberal democratic regime.

I propose to tackle the question of environmental justice through the theory of *social contract* inspired by John Rawls as developed in his *Theory of Justice* (Rawls 1971) and subsequent works. Justice, in his view, is the ordering of social institutions in a way that ensures fair cooperation among free and equal citizens (Rawls 2001, p. 27). Principles of justice are applied on the *basic structure* of society, which

“is understood as the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation. Thus political constitution, legally enforced forms of property, organization of the economy and the nature of the family, all belong to the basic structure” (Rawls 1996, p. 258).

⁶ On the notion of side constraints and its importance for political thought, see Nozick (1974).

Also, very important is Rawls' idea of the *well-ordered* society, by which he means a society where principles of justice and their justifications are fully public and where all reasonable citizens acknowledge them (Ibidem, p. 14). His view is that any theory of justice, which would not be stable in that kind of society, is not worth pursuing. My goal here is to use Rawls's theory and alter it in the light of constraints related to human relationship with the environment.

But it seems that the social contract theory has a fatal flaw. Such a contract has never happened so how it could have any normative force and its results having a binding force upon us (see Dworkin 1973)? The answer to this objection is that social contract theory rests upon the assumption that a unanimous agreement between citizens in free and fair conditions would show us what kinds of actions or social institutions will be just. It is not that *hypothetical arguments* bind us, but because the normative force is derived from the most *reasonable* procedure the hypothetical contract arguments want to simulate. Jean Hampton nicely explains this point:

“So what we ‘could agree to’ has prescriptive force for the contractarians not because make-believe promises in hypothetical worlds have any binding force upon us, but because this sort of agreement is a device that (merely) reveals the way in which (what is represented as) the agreed-upon outcome is rational for all of us” (Hampton 2007, pp. 482–483).

So the modern version of the social contract theory is not an actual survey of citizens about particular questions concerning justice, but a thought-experiment based reasoning about norms of the justification of moral or political norms.

In Rawls's theory, individuals decide the principles of justice for a society, assuming that they would like to cooperate on the basis of taking each person as free and equal. To ensure that the results of the contract decision are fair, Rawls urges us to use hypothetical device which he calls the *original position* (Rawls 1971, pp. 12–13). This device is highly abstracted traditional idea of the state of nature found among classical social contract thinkers. In the original position, contractors are to be under the veil of ignorance, meaning that they would not have any particular knowledge about their desires, aims, gender, race or social position they occupy in the society (Rawls 1971, p. 18; see Freeman 2007, pp. 154–160). However, they do have knowledge about basic facts governing natural and social phenomena, which we can call basic knowledge of social and natural world's ontology. In the original position as Rawls envisions it, decision making is characterised by absence of potential unfair advantages that particular persons could have, if they knew more detailed facts about their life prospects, social status and so forth. Because the procedure of choosing principles of justice can be seen as fair, the following results of the procedure are *just* and legitimize policies build upon these principles. In Rawls's view, the contractors would reason upon the future principles of justice governing their society by using the method of *minimax* (maximizing the minimum, Rawls 1971, pp. 134–139; see Pogge 2007, pp. 67–73). In situation of great uncertainty, when no one knows what will be his social position in society and other crucial features, it is rational and reasonable to select such principles of justice, where the worst-off

position is the best among the feasible alternatives.⁷

For Rawls, deliberation of individuals within the original position is not the same as the economic bargain of mutually disinterested, isolated, atomistic individuals, with their behaviour driven purely by their self-interest. Rather his goal is to develop fair rules of social cooperation, which presupposes the necessity of cooperation in which all the individuals involved would like be able to justify their actions to others (see Freeman 1990). Rawls in his later work claims that because democratic society is inevitably marked by pluralism of moral, philosophical and religious doctrines, main social and political institutions must be guided by principles, which do not have their source in some particular comprehensive doctrine (*reasonable pluralism*, Rawls 2001, p. 3). We should rather turn to “freestanding” political conception of justice. This political conception is supposed to be based around values ‘latent in the public political culture of a democratic society’ (Rawls 1996, p. 175).

But how can then animals, trees or larger natural units be part of the conception of justice *at all*? I agree here with M. Wissenburg’s claim that nature could possibly figure in the idea of political or distributive justice in three possible ways: 1) as a distributor, 2) as a recipient (organic nature), 3) as a resource (Wissenburg 1993, pp. 6–8). The first point is clearly irrelevant to our discussion. To the second point, I again agree with Wissenburg that plants and inorganic nature only figure as a resource in the idea of distributive justice, but resource here takes a very broad meaning. Justice is about the distribution of natural benefits and burdens for the sake of human and animal needs. Specifically, under social contract theory, animals can be part of the original position as being *represented* by humans, but not as the contracting parties (Ibidem, p. 17). The development of human technologies enables humankind to severely change the Earth’s environment as well as the rapid growth of the human population has shown that the moral basis of responsibility of human actions needs to be adjusted to accommodate the present state of society. There are good reasons for partly extending moral consideration from humans to the environment, even though it is us who have to represent its interests. Natural entities have no rights, but could have morally relevant interests, because it is not necessary for X to have rights though X may have interests (cf. Bandman 1985). If there exist interests of something that has intrinsic value this must be taken into account in the concept of justice, which details which actions are permissible from the moral point of view.

Environmental justice concerns regulating human use of non-human nature *qua* human reasoning. Properly speaking, destructive behaviour towards nature is not unjust in the sense that we are unjust towards animals, plants, natural objects or the ecosystem as a whole; it is immoral because we do not respect what should be respected. Our behaviour can be seen as unjust in the sense that we did not respect what we should have. On the other hand, our duties of justice based on human reasoning can be beneficial to the non-human world (Jamieson 2007, p. 93). The reason for this is that nature, even though it deserves the respect

⁷ For critique of this type of reasoning see Hare (1973). S. Freeman (2007, p. 167–180) presents reasonable arguments supporting Rawls.

and moral considerations of our actions itself does not have *moral agency*, usually characterised by language, rationality, self-consciousness, and high level of social cooperation. Non-human entities are in my view moral subjects, not moral agents, therefore not being agents of moral reasoning, but demanding moral evaluation.⁸ All moral agents are moral subjects, but not vice versa.

I am opposed to the view of non-human nature as having moral agency because it leads to severe difficulties. If, for example, all sentient beings were to be *moral agents*, would they have rights? If so, are we going to take some qualitative distinction between various species of fauna, or are we to grant rights simply to every organic entity? Even then it would not be simply enough, because in the majority of environmental issues we are concerned with holistic entities (ecosystems) rather than individual animals, plants or objects. Non-human animals (less other parts of natural environment) obviously don't have moral autonomy, duties and responsibilities and therefore it is not unjust if they are excluded from the politically relevant community of humans. It is therefore wholly mistaken to imagine non-humans as our "fellow contractors", which should take part in construction of the principles of justice in the original position. Humans have to account for the interest of non-humans (living and non-living), because only humans are capable of *rational and moral reasoning* and only they can influence the societies decision-making process. Specifically in Rawls's own theory, necessary conditions for moral personhood is a) being able to rationally set down and follow one's life plans and goals, and (b) having the capacity for a sense of justice (Rawls 1971, p. 505). On the other hand, non-human entities should be given adequate respect because of the moral side constraints briefly elucidated in part one of this article.

There is one potential problem here. Not all members of the human species satisfy the condition for moral personhood. Generally, normal human being is a moral person, but there are so-called "marginal cases" of humans (for example the mentally handicapped, people in coma or suffering from dementia, infants), who lack the prerequisites to have moral personality (cf. Dombrowski 1997, 2001). No matter how the criteria for moral personhood will be elaborated, they will always be at least some animals who satisfy those criteria, but not some members of the human race. The upshot is that if we ascribe moral personality only to

⁸ Rawls (1971, p. 512): "But it does not follow that there are no requirements at all in regard to, nor in our relations with the natural order. Certainly it is wrong to be cruel to animals and the destruction of a whole species can be a great evil. The capacity for feelings of pleasure and pain and for the forms of life of which animals are capable clearly impose duties of compassion and humanity in their case". Some authors differentiate between environmental justice and *ecological justice*, where the latter should designate direct relations of justice between the human and non-human world (see Baxter 2005). However, it is unclear how could we be unjust to nature, when natural living and non-living entities are not moral persons. Second, some accounts of environmental justice take the environment purely instrumentally, but it is possible to reject the idea of justice to be applied to nature directly and at the same time take into account the intrinsic value of nature as a part of a theory of justice. There is no moral subjectivity outside the human race, but this does not mean that animals, plants etc. should not be morally respected. It just does not lead to the conclusion that they have to be a part of the deliberation leading to principles of justice. For discussion of this point see Bell (2006, esp. pp. 219–221) and Michael (2000, p. 47–48).

humans and not some of the animals which are more rational than people representing the “marginal case”, we are guilty of prejudice similar to racism, sexism and so on.⁹ So for example according to Vandevere persons the representatives in the original position behind the veil of ignorance should not have the knowledge that they might moral persons at all (Vandevere 1979, pp. 371–372). That leads to possibility that the deliberation in the original position will generate principles protecting non-human animals, because the deliberators would not know to what species (able to achieve moral personhood) they belong:

„They might choose principles which preclude treatment of any sentient creature (not posing a serious threat to others) which would render *no life at all* for that creature, on balance (...) preferable to its living.“ (Vandevere 1979, p. 375).

Critique such as Vandevere’s fails for several reasons. 1) The whole idea of original position suits larger Rawls’s goal of his theory of justice and that is his attack on utilitarianism. His position is that utilitarianism is morally defective, because it does not respect individuals with their rights and life goals enough and subsumes all moral reasoning to maximization overall utility. As L.-M. Russow puts it:

“Rawls seems to assume what others have argued for: to respect individuality one must reject the idea that it is rational (rationally obligatory?) to have no or less interest in the fulfilment of one's own desires as in the fulfilment of another being's equally strong interest (...) More specifically, the entire idea of an original position and the veil of ignorance is presented as an alternative to utilitarianism; therefore, any criticism of Rawls's strategy must be consistent with the rejection of utilitarianism that motivates the strategy, or else must reach further and attack the anti-utilitarian arguments on which the original position is based“ (Russow 1992, p. 226).

And that is precisely the reason, why only human moral persons equipped by the two moral capacities should and could decide over principles of justice in the original position. 2) The whole idea of animals deliberating over principles of justice in the original position seems to me to be just far-fetched. The reason is that it would imply we could have sound and coherent idea about how would animals (cognitively and in other ways very different *species* from us) decides over matters that have literally never entered their mind. Sure, animals have interest and legitimate ones that have to be respected at that, but they could not be understood as contractors akin their human counterparts.

Now, liberal states are usually thought to be neutral in the sense that their legitimacy is not supplied by any comprehensive notion of good (derived for example from religion), but by political principles, which ensures that anyone can pursue his own vision of good life as long as he does not coerce his fellow citizens to adopt policies of the state based on his own good. On many issues citizens hold contradictory opinions and it is very hard (some would say, impossible) to objectively decide between them. In every such regime, we can presume

⁹ See Singer (1988) for classic elucidation of this objection.

with Rawls that there is some kind of threshold of consensus above which there is no guarantee of mutual understanding among citizens due to the nature of language and how open societies work in information exchange. Everybody is affected by *burdens of judgement* (Rawls 1993, pp. 54–58). How it is then possible to develop principles of environmental justice and do not breach the neutrality of the liberal state?

Nevertheless, neutrality does not mean the absence of *any values*. Every political or ethical conception presupposes some form of world ontology, i.e. how the world works and what is the position of the humans inhabiting it. The existence of society in the long run is not possible without protection and improvement of the state of environment, because our demand for natural resources is simply too high and it is rising with increasing living standard in populous countries like India, China, Indonesia, Turkey, Brazil or Mexico.¹⁰ If we suppose that social non-cooperation is not an option when tackling essential problems of human society such as environmental degradation, then it seems reasonable to adopt some sort of limitation on possible life plans of individuals, because they have share the environment with others. Thus, I think the environmental goods should be seen as a part of Rawls' primary goods (indeed a *meta-good*), of which it is reasonable for every person to have more than less, consistent with the same share of goods with other citizens (cf. Rawls 2001, pp. 57–58; Rawls 1982; Wissenburg 2006, p. 115).¹¹ According to Rawls, these primary goods are basic rights and liberties, freedom of movement and occupation, income and wealth, powers and prerogatives of offices and social basis of self-respect (Rawls 1996, pp. 181, 308–309). We need these primary goods whatever our conception of the good life may be. Subsequently the quality and richness of the environment is important for every human being. Environmental goods are indirectly social, but to a great extent dependent on political and social rules. Rawls acknowledges this point by saying that every just society needs favourable background conditions. We also have to take into account “moderate scarcity” of resources in nearly any

¹⁰ Just to mention one example, majority of wood exports from Sub-Saharan Africa go to China. Even though China is still not the world's biggest importer of timber, its growing appetite for this commodity does and will be doing more damage to forests of Siberia, Philippines, Cameroon or Gabon. Endangered species all around Africa also suffer from growing demand of these rare “commodities” mainly from still richer Asians (Michel and Beuret, 2008, pp. 45–60).

¹¹ In this way we can avoid the objection raised by Rawls himself (Rawls 1971, p. 512) that potential duties of justice towards the non-human environment rest on certain metaphysical ideas of our place in nature, which would breach the requirements that the principles of justice rest on freestanding political conceptions of justice, not on any of the comprehensive doctrines. Also, we have to claim *contra* Rawls (1996, pp. 245–246) that our relation to nature is not one of the basic questions of justice. It certainly is, albeit because of what we owe to other humans, not in spite nature *per se*. Rawls claims that for example wilderness protection is not one of the “constitutional essential” (Rawls 1996, p. 214), but as I have already shown before, healthy and prosperous natural environment is indispensable for humans to enjoy *all of the other constitutional essentials* (political rights, civil liberties etc.). Thus, there are at least some environmental principles, which are fully part of a theory of justice and are able to create an overlapping consensus among the adherents of various reasonable comprehensive doctrines (environmental racism, for example). Some other principles will, on the other hand, fall outside the scope of justice (prohibition of deer hunting, use of laboratory animals etc.). See Michael (2000, pp. 50–52).

human society (Rawls 1987, p. 22). If citizens deem each other as free and equal, there must be principles ensuring the autonomy of each individual's way of life, which also implies just distribution of environmental goods.

Not every person has to adopt strong moral feelings towards nature, but the important point is that these notions are widespread and what is more important, it is more and more socially recognised how the environment is crucially important, biologically, economically and aesthetically. Therefore, all principles of justice must ensure that *there will be as many as possible forms of natural environments available for humans to pursue their vision of life*. Recall that we have said before that every human life and every society is inevitably linked to its environment and to global ecosystem. This could serve as the basis for consensus among citizens on environmental protection policies, their different visions of good life notwithstanding. Value pluralism is central both to ecological and political values (Jayal 2001, pp. 68–69). Even perfect philosophical consent about inherent and relative value of non-human entities cannot solve environmental issues as *political* and *social* question. The reason would be that political and philosophical consent is substantially and procedurally different and consent in the political sense is necessary condition of state's legitimacy (Waldron 1987, p. 140; Achtenberg 1993, p. 92). And only those environmental policies (backed by the coercive power of the state) that could be reasonably justified to all reasonable citizens don't breach the neutrality of the liberal state. Using the previous argumentation, we are able to effectively avoid the problem of neutrality, because no one's lifestyles or ideas of the good are given superiority over another.¹² Otherwise the environmental policies will be illegitimate since they would not show equal respect to all citizens and therefore will be lacking legitimacy (see Nagel 1987).

Claiming environmental goods to be among primary goods depicted above does not mean that the environment taken generally is purely of instrumental value, like income or wealth. Protection and improvement of the natural environment are essential when any human cooperation is concerned, providing us with necessary resources for vital life functions (water, air, food), as well as with resources needed in many other types of human society's production. The important point is that by allowing improvement and protection of human's natural environment to enter our considerations about justice, it can help us to build an overlapping consensus in our society on this question. An overlapping consensus

“is not merely a consensus on accepting certain authorities, or on complying with certain institutional arrangements, founded on a convergence of self- or group interests. All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides“ (Rawls 1996, p. 147).

Citizens approach the question of justice from different angles and justify their actions by

¹² For discussion about the liberal principle of neutrality in relation to environmental policies cf. Michael (2000).

different sets of beliefs, norms and ideals. Because the state's power is coercive, its justification cannot be based on comprehensive moral or religious doctrine, but on principles which will be justifiable from everyone's point of view. Overlapping consensus

“consists of all the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizable body of adherents in a more or less just constitutional regime, a regime in which the criterion of justice is that political conception itself“ (Rawls 1996, p. 15).

One of the goals of political theory should be working on building the overlapping consensus around the most important and salient issues in political and social discourse.

I think we can conclude this part by saying that human actions involving environment are should be constrained by three groups of considerations: 1) The essential importance of nature for human life (the *instrumental* consideration); 2) The special position of the human species on the planet (*epistemological* consideration); 3) Nature as having intrinsic value (end in itself) calling for respect (*moral* consideration). The second and third point highlight the reason why we should take in consideration interests of non-human natural entities, even if they are of no *instrumental* value to us. Using the social contract methodology, non-human entities should not be seen as taking part in the deliberation leading to principles of justice within the original position. Even though non-humans are not moral persons and are not directly part of the social cooperation calling for regulation by principles of justice, we have other moral duties towards them which have to be incorporated into general theory of justice.

3. Reasoning in the Original Position: the principles

Now we have arrived at the point where we can consider reasoning in the original position. Original position is a hypothetical device, where individuals behind the veil of ignorance decide the principles of justice for their society. Apart from the reasoning in this situation depicted by Rawls (cf. Rawls 1971, § 25–27), the contractors should act on the three types of considerations (instrumental, moral, and epistemological) as depicted in the previous paragraph. This will be done in more detail in form of two additional principles of justice concerned specifically with the question of the natural environment. I have to stress that the principles of justice should be applicable on the basic structure of society, therefore regulating basic rights, liberties, political and legal system, as well as setting rules for the economy and system of property rights, which is very important theme in environmental protection itself (cf. Rawls 2001, pp. 10–12). Rawls himself proposed his two famous principles of justice:

“1. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

2. Social and economic inequalities are to satisfy two conditions: (a) They are to be attached to positions and offices open to all under conditions of fair equality of

opportunity; and (b), they are to be to the greatest benefit of the least advantaged members of society” (Rawls 1996, pp. 5–6).

Principle 1 takes lexical priority over principle 2, and principle of fair equality of opportunity (2a) over the difference principle (2b), (Rawls 1971, pp. 37–38). Basic rights and liberties protected under principle 1 can be only restricted for the sake of other such liberties, forming an adequate system of basic rights. I think that overall these principles are sound, but they are mainly relevant for the distributive part of the environmental justice problem, i. e. how we potentially to distribute environmental goods and risks among the population are. Rawls’s original principles cannot give us reasons what should be our obligations towards natural environment in a situation when interests of non-human entities are not directly related to human interests. Because there are many contradictory interests going on in public and political debate, we need some other principles, which would enable us to judge these clashes of interest in cases dealing with environmental issues (Achtenberg 1993, p. 96). Also, recognition and representation of disadvantaged groups has to be properly spelled out by the principles.

Concerning the instrumental importance of the environment and our moral obligations to respect it, citizens will choose such principle(s) which will ensure that our capabilities as humans will flourish, but not *at substantive costs to the environment* (see Ball 2006, pp. 217–218). Parties to the contract would also see the present state of environmental degradation. I think the following principle would be satisfactory:

The Improvement Principle: *We are obliged to improve condition of non-human environment, be it in the cities or in the wild. When basic human needs are at stake these interests overweight those of non-human entities.*¹³ *If that is the case,*

¹³ My argument here implies that only members of the human species have all basic rights, primarily right to life, which is not dependent purely on the capacity to have moral personality, but is species dependent. How could such speciesism be justified? Aren’t there humans whose mental capacities (marginal cases) are way behind some higher mammals? We violate our own criteria for who might be deemed moral person (with according rights including the right to life), because we unjustifiably give precedence to humans over some higher mammals only because they are members of our own species. In my opinion, such speciesism is justified for several reasons. First, the capacities of being moral person can be lost (mentally ill, people suffering from dementia), or are not yet fully developed (infants). If sheer bad luck or some other unlucky circumstance didn’t occur, they would develop normal moral personhood. However, these human moral *non-persons* should have all the rights of moral persons, because we identify with them as they are connected to us by empirical conditions of human life. So even if some animals actually have bigger potential for rationality, we don’t have to ascribe them moral personhood, because we simply don’t share our existential human situation with them. (see Wreen 1982, pp. 49–50). Furthermore, in our world only those who are lucky enough could *understand their own moral personhood*. Therefore, it is justified to be a “speciesist”, because human personhood is not easily separable from that it is embodied in the members of the human race. Moral personhood is thus rightly identified with human beings alone, and could not be extended to other entities, because purely non-biological descriptive qualifications for personhood alone are not enough to ascribe moral personality (Ibidem, pp. 51–52). The empirical conditions of human existence determining how we perceive and interact with other people’s moral personality present significant constraint on judging who is and who is not a moral person. So humans and non-humans do not differ only alongside some criterion like rationality or sense of justice, but also completely different

we have to ensure that such alternative is chosen, which will result in the lowest possible level environmental degradation in given situation.

By basic means here I understand food and shelter, together with economic activities necessary for providing them. The first part of this principle is *consequentialist*, i.e. it measures actions according to their consequences. The second part is *deontological*, stating that some actions are always permissible, but also says that we should always aim at doing the least harm possible.

Why the obligation to improve? The reason is the already bad condition of many non-human and urban environments.¹⁴ It may seem that the improvement principle is too weak and does not respect the environment very much, but that appearance is misleading. First, improvement in this sense means creating possibilities for successful flourishing according to the basic capabilities of living things and the ecosystem in general. Second, actions depressing intrinsic natural value should not be permitted, unless basic human capabilities (nutrition, safety, personal integrity etc.) are at stake. Third, the principle would prohibit many contemporary practices which are clearly environmentally destructive, but will accomplish this in a gradual, rather than radical or revolutionary way, thus improving the environment step by step. Clever tax and market policies (carbon tax, emission trading schemes) could be of some help here, no matter whether these policies are pursued on local, national, regional, or global level. Finally, the improvement principle points to commitment to redress previous wrongful practices and urges us on any actions threatening the environment to think hard what impacts there may be. If improvement of the state of the environment is not possible, maintaining the status quo should be the least permissible course of action.

It can be argued against the improvement principle that there can always be reasonable reasons for giving priority to human interests. But as Elliot stresses, assessments of the impact of human actions (or policies) on the environment

“typically exaggerate benefits for humans, underestimate deleterious environmental impacts, ignore alternative means of benefiting humans, do not investigate alternative social and economic arrangements, underestimate the costs of environmental despoliation and degradation to present and future humans and non-humans and fail to interrogate the connection between quality of life and material wealth” (Elliot 2001, p. 183).

My first principle would surely have far reaching applications if applied constantly, but it is not supposed to measure every action of every individual. Its main aim is to regulate the basic structure (constitution, political and economic system, system of rights) and look to the future.

historical and biological characteristics of their life conditions.

¹⁴ The whole debate in environmental ethics/politics/philosophy debate pays sadly too little attention to very important areas of urban environment. To certain extent it is excusable by primary focus on wildlife protection, which is surely necessary. However, majority of people nowadays live in cities, not in countryside; see De-Shalit (1994).

For example, because of the natural resources scarcity, it may be not possible for us to use some resources and still leave enough for others, such as the case of oil or other non-renewable resources. One of our obligations then should be to develop technological capacities so that future generations can cope with their needs (Partridge 2001, p. 386), as well to gradually minimize the use of resources which are not necessary. In the same vein, banning some sort of economically attractive undertakings in protected natural areas needs to be followed by compensation to people, whose means of living had been endangered by this act. On the other hand, the improvement principle does not allow environmental actions which are too burdensome and which result in disrespect to basic human rights, especially among the least advantaged.

The second of my principles of environmental justice concerns the application of political authority in the distribution of environmental goods:

Principle of Distribution and Accountability: All parties directly or indirectly affected by environmental risk should have these burdens distributed equally among them, but with priority given to the least advantaged. All parties affected must be consulted and given all relevant information for achieving just and fair procedure of bearing environmental costs.

Generally, the link between environmental policy and democratic decision making is rendered by this principle, which itself is a variant of Rawls' difference principle (see Mayer 2006, pp. 782–786). If we want to treat citizens as free and equal, just procedures must be ensured to deal with such grave issues as environmental degradation. Concerning the distribution of environmental burdens, it should be seen as unjust if the majority of society would benefit from policies causing environmental degradation, which falls heavily on some already in different terms disadvantaged minority. There are many examples of this issue described in the literature (see Shrader-Frechett 2002; Shiva 2000; Schlosberg 2004, pp. 522–529). The two principles stated above should not be seen as disconnected. Applying the first principle could positively affect the question of distributive environmental justice and vice versa. I would like to invoke again the idea of primary goods. If it would be reasonable for every citizen to have more rather than fewer primary goods with the proviso that it is compatible with the same amount for everyone there is no reason why political decisions about environmental goods and costs as well as property rights should not be regulated by the concern for equal and fair distribution (see Rawls 1971, pp. 58–59).

Take the following case. Public authorities are thinking about building a power plant in your neighbourhood, which will cause environmental damage to some extent. First, one should consider whether the first principle is violated. If the facility is necessary (i.e. it satisfies the condition that it is needed to meet some of the basic human needs), or it would improve the intrinsic value of the environment overall (some other less efficient power plant could be closed instead of the new one), the building of the power plant is to be justified. The power plant should also be constructed using the most environment friendly technology available to one's society. With respect to the second principle, we have to ensure that the construction would not place too much of a burden on citizens who will be afflicted by the

construction, otherwise they should be adequately compensated. Particular cases would depend on the potential legal structure incorporating the second principle. But we have to bear in mind that we should still do the least possible environmental damage possible. Following the principle of distribution and accountability would mitigate to large extent many of the issues of environmental degradation, which falls unequally on people who do not benefit from the particular policy involved. The obligation to take into account the interests of all parties concerned would reduce behaviour otherwise *imposed by the authorities* without any democratic control on a particular people or region. And it would also protect the interests of those who do not have a voice in political debates, like the poor, children, disadvantaged ethnic minorities, simply all those who are in danger of being disproportionately hit by pollution or other instance of environment degradation (Shrader-Frechette 2002, pp. 6–7). Sometimes it is necessary that somebody has to bear disproportionate environmental costs (like in case of power plants supplying electricity for the whole nation without anyone wanting them to be built in their living area), but this cannot come without just compensation and assurance that the best level of technology and protection for the local population available will be used.

Would a society guided by such principles as depicted above be liberal in the sense that it would not overstep somebodies basic human rights and liberties? There are many real-world examples when environmental policies lead actually not only to further degradation, but also to erosion of democratic decision-making procedures. For example, N. G. Jayal in his survey of environmental policies in India found out that wilderness preservation in India suffers from lack of official's actions transparency and denial of usufruct or property right to indigenous citizens is widespread. Few actions are taken to educate the inhabitants of their rights and necessities of wilderness preservation and compensation is sorely needed for damage done by protected animals (Jayal 2001, pp. 69–81). In many parts of the third world, wildlife protections resulted in grave loss in political values, such as autonomy, representation, and freedoms of person. At worst, overzealous environmental protection can lead to various human rights abuses.

But this does not mean we should give up environmental protection altogether. This leads us again to the urgent necessity of having clearer idea of environmental issues taking part of public agenda and decision-making process. Rawls says that the political conception of justice, which treats its citizens as free and equal within fair social cooperation, must be *public* to be stable. The reasoning is as follows: citizens obey political authority only if they can see basic political principles as reasonable in a way that everyone would see as reasonable as well. L. Wenar writes that

“citizens engaged in certain political activities have a duty of civility to be able to justify their decisions on fundamental political issues by reference only to public values and public standards” (Wenar 2008).

Therefore, principles of justice have to rest upon reasons that can be seen as reasonable to all citizens. For example, principles having its basis in the Bible or any other revelation would not count as public, reasonable to all citizens irrespective of theirs other moral or religious

views and doctrines. My second principle satisfies this condition of publicity and, because it calls for throughout democratic control of environmental legislation, should not lead to erosion of human rights or other important values.

Do my principles of justice have any specific implications for day-to-day policies of the state in the social and economic sphere? Nowadays the most often used principle for judging a policy is the cost-benefit analysis. Although being in many ways indispensable, as a sole decision-making procedure it can lead to serious infringements of justice and other relevant political and social norms. Every society needs to find balance between ecological, economic, and social rationality. Maximizing the rationality of some subsystem of the society can lead in the end to “loss of overall rationality and systemic failure” (N. Luhman, quoted in Ferris 1993, p. 148). On the other hand, giving the environmental interests bigger leverage over economic ones can have positive impacts on social equality and disadvantaged groups’ emancipation. For example, tackling the problem of severe air pollution in particular area means that distribution of environmental goods among the state’s population had become more equal and this can have positive economic effects in the long term.

Long term planning seems absolutely crucial in contemporary environment policy when the state of environment is given its proper considerations. The most promising strategies seem to be increasing the efficiency of energy consumption, support for effective public transport and careful and informed urban planning (see Ferris 1993, pp. 153–157). Even though basic economic rationality of ecological modernization of human society needs to be respected, sadly many new technologies are not supported very much. There will always be a clash between state policy and various individual rights, however, considering environmental justice there are many groups that are clearly disadvantaged in distribution of environmental risks. Environmental philosophy cannot be simply a model for social policy, because there is too much controversy in many issues involved. Nevertheless, we should do our best to find solutions being more just, i.e. those distributing the least negative externalities for the rest of society. Another important problem is the interconnectedness of environmental and intergenerational justice. Various solutions were proposed, but every contemporary society has to tackle the issue of environmental degradation and its asymmetrical impacts on various groups in population having the long term impact of these processes in mind (cf. Clements 2012, pp. 149–181).

4. Conclusion

In this paper, I’ve attempted to present the case for environmental justice approached through the modern version of social contract theory prominently represented by the works of John Rawls. I have proposed to acknowledge certain moral side constraints in dealing with non-human environment. Also, I spent some time on justifying the incorporation of environmental criteria in social contract theory. This effort generated a set of principles, which I see as necessary supplement of Rawls’s original principles of justice. I have to admit that I have probably left too many points aside. Most serious of these would be the question of which

principles of environmental justice would be applicable globally. But I think that my approach to environmental questions through the social contract theory can be fruitful, because it looks towards environmental principles which can be pursued by any legitimate political authority in the eyes of its citizens and can bring greater coherence and transparency to the process of making principles to deal with the environment. A. Vincent opposes the idea of environmental justice on the grounds that it would need a much larger change in the metaphysical picture of the human position in the wider, natural world (Vincent 1998, p. 139). I think this approach is mistaken. The question of environmental justice is not ‘how can we be unjust towards nature,’ but ‘what should be our obligations towards nature and *other people*’ given the fact that the natural environment is essential to us.

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