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RAWLS'S THEORY OF JUSTICE: A NECESSARY EXTENSION TO
ENVIRONMENTALISM

by

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B.A. University of Central Florida, 2008

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ABSTRACT

John Rawls's stated intergenerational justice scheme, known as the just-savings principle, does not include an institutional concern for the environment and is therefore incomplete and incapable of maintaining meaningfully just relations between generations. The theory's emphasis on economic theory and capital accumulation demonstrates a misinterpretation of environmental issues and concerns as well as their underlying causes and repercussions. This lapse in Rawls's intergenerational scheme exposes flaws in his larger theory of justice by leaving the stability of society in question and placing arbitrary burdens on generations and peoples without institutional recourse. However, by supplementing justice as fairness (JAF) with Rawls's other writings, such as *The Law of Peoples*, a more satisfactory outline for justice between generations can be achieved and a more comprehensive scheme of intergenerational justice can be incorporated into Rawls's theory of justice.

This thesis is dedicated to my friends and family. Their support was invaluable during this process.

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LIST OF ACRONYMS/ABBREVIATIONS

JAF: Justice as fairness

CHAPTER ONE: INTRODUCTION

“Water and air, though the most necessary of all objects, are not challenged as the property of individuals; nor can any man commit injustice by the most lavish use and enjoyment of these blessings” (Hume 1983, p. 21).

“In the present disposition of the human heart, it would, perhaps, be difficult to find [complete] instances of such enlarged affections; but still we may observe, that the case of families approaches towards it; and the stronger the mutual benevolence is among the individuals, the nearer it approaches; till all distinction of property be, in a great measure, lost and confounded among them” (Hume 1983, p. 22).

David Hume’s centuries-old assertions bespeak both the seeds of nature’s degradation and its rescue. A crisis of deterioration due to misuse and exploitation has led to a wholly untenable situation; one threatening the quality of life for present and forthcoming generations as well as the possibility and quality of life for likely, far-off future generations. Environmental groups, sympathetic politicians, and academics have confronted the problem of nature’s decline by proposing a myriad of approaches, all with the goal of, at least, sustainable, if not restorative, practices as their aim. The tactics may diverge in execution and whom or what will be the emphasized recipient (humanity or nature) but many share the philosophical commonality of extension. Attempts have been made by theorists to support extending concepts of identity, expanding notions of the self beyond the parameters ostensibly supported by liberal political theories, or, extending concepts of shared obligations to the group, nation, world, to some or all levels of the biosphere, or, to future peoples and organisms yet to exist. It is the position of this paper that John Rawls’s theory of justice when supplemented by his international theory of justice is capable of protecting the interests of present and future generations, both overlapping and distant, through the protection and conservation of the environment within the theoretical auspices of justice as fairness as augmented by his international theory of justice, the law of peoples.

The subject of justice between generations presents nearly insurmountable difficulties for any ethical theory (Rawls 1993); the inclusion of environmental concerns compounds this already complex task. Global problems require near-universal cooperation. Some political and environmental theorists have advocated a centralized authority as the only suitable measure to retard environmental degradation (Orr and Hill, 1978). The promotion of dramatically illiberal solutions indicates the intractability and dire need for a working theory of justice incorporating values of justice between peoples, generations, and the environment. Nevertheless, a theory of intergenerational justice is incomplete without an environmental component.

Unfortunately, Rawls does not include environmental protections in his theory of justice, at least not explicitly. He remains ambivalent toward the status of nature throughout his writings, never completely limiting nature to economic resource or including it in the institutional backdrop of societies. Rawls's ambivalent attitude toward nature provides theoretical inlets which allow for the inclusion of environmental protection into the basic structure of society, these will be used to form a theory of international and intergenerational justice. As noted by Breena Holland (2008) notes the possible openings for environmentalism in Rawls's theory of justice. Rawls does acknowledge the necessary condition of sufficient material standing to maintain "fully cooperating members of society" (Rawls, 2001, p. 169), and these material necessities may be included, along with other liberties and opportunities in the "index of primary goods" (Rawls, 2001, p. 172). Rawls assumes there may be obligations based on virtue or other nonpolitical moral foundations—similar to comprehensive doctrines—capable of informing individuals' actions but not public reason or the basic principles of institutions (Rawls 1993, 1999). Rawls effectively leaves the status of natural resources and environmental quality to electoral preferences and market forces unless circumstances require elevation of the concern

for the environment rendering his theory of justice incomplete through this exclusion of the environment from the basic structure of society and intergenerational justice.

Humanity has placed the environment in a perilous position. Over consumption creates specific problems for future generations but these problems are merely one aspect of environmental degradation. Author, Ulrich Beck (1992, 1999), believes humanity has created unprecedented potential risks through its technologies, institutions, and practices. These modern developments are capable of creating global and lasting hazards confounding previously reliable standard institutional responses. Present harms can lead to devastating effects on future populations and its environment creating problems with impossible or impractical solutions (Beck 1999). Current practices of toxic waste disposal illustrate the exchange of present day pay-offs for uncertain-future hazards (Schrader-Frechette 2002). Rawls's theory of justice must be able to at limit the cost-benefit analysis approach toward future hazards for short-term pay offs.

Intergenerational justice schemes relying on a "moving wall" of protection betray a misunderstanding of the long-lasting effects presented by modern, unsustainable practices. Some theorists believe the only defensible form of obligation to future generations is to one's offspring and, maybe, their offspring. For these theorists, rights and obligations are predicated on an individual's existence. Before one can have rights with counterpart obligations one must exist to make particular demands on others (Beckerman and Pasek, 2001). However, this type of staggered, segmented obligation lends itself to generational collusion and ignores the long lasting effects of modern unsustainable practices. Limiting one's obligation to the next immediate generations, or the generations one will presumably encounter, allows dangerous investments and practices for the benefit of presently overlapping generations at the future's expense.

The accumulation of capital or infrastructural investment made through the production of unsustainable practices may perpetuate just institutions and preserve culture across generations, as Rawls asserts (1993, 1999), but the absence of a specific concern for environmental quality and resources presents a glaring gap in any theory of intergenerational justice. A healthy environment is the necessary backdrop for all institutions, culture, and life. Through scientific and environmental studies, humanity is discovering present actions can have far-reaching and potentially devastating consequences for the environment (Beck 1999). Present, unsustainable practices directly threaten future generations by diminishing environmental quality, limiting options, and reducing quality of life. Capital compensation for lost or contaminated resources is an unacceptable alternative to an unspoiled environment. Therefore, Rawls's theory of justice will be evaluated on its support for intergenerational justice across several generations. A theory of justice must account for modern, unsustainable practices capable of harming the wellbeing of far-off future generations.

Communitarian, or ecocommunitarian, approaches are parochial by nature and therefore too limited in scope. Reliance on common history, culture, and values to justify obligations not only ignores those who are presently not of the group but places future group members in an equally uncertain situation. Avner de-Shalit asserts one's ties to the future lie in the intentions for the future made in the present (1995). A communitarian concern for the ties or obligations groups have for their progeny are premised on those in the future maintaining their connections to the past through tradition and culture. If those in the future are different enough or do not maintain the groups traditions then the ties and obligations are absolved.

Ecologist and environmentalist, Aldo Leopold, is best known for his book, *A Sand County Almanac* (1966), and his environmental advocacy. His writings are filled with passages

on the breathtaking scenes of unspoiled nature. However, Leopold writes through the lens of conservationist as well as nature enthusiast. Ever mindful of the uncertain relationship between modern man and the environment, Leopold also writes on the need for a “land ethic.” Humanity needs guiding principles for its interaction with nature, he wrote. “Ethics,” according to Leopold, “so far rest on a single premise, that the individual is a member of a community of interdependent parts” (p. 239). Leopold recognized not only the need for a harmonious relationship between humanity and nature but some of the difficulties of securing that relationship.

Economists are too invested in investing, cataloging, and placing an economic value on each piece of nature. Some components although integral to the biotic community are economically worthless apart from nature’s complex system and risk extinction unless their worth can be understood or demonstrated (Leopold, 1966, p. 261).¹ However, Leopold fails to extend his argument to anthropocentric justice and thus fails to find meaningful support for his land ethic.

Leopold, unfortunately, moves away from this logical account of the environment’s ecological integrity and the interdependence of its parts, including humanity and its intertwined fate with nature. He writes, “[i]t is inconceivable to me that an ethical relation to land can exist without love, respect, and an admiration for land, and a high regard for its value” (Leopold, 1966, p.1966). And this is where most ecocentric theories become unsustainable foundations for environmental protection. By emphasizing the intrinsic value of nature apart from humanity, ecocentrists downplay or ignore nature’s instrumental value to the detriment of nature. Nature

¹ A similar charge was levied by Robin Attfield concerning Bryan Norton’s convergence theory. Attfield argues the anthropocentric characteristic of Norton’s theory still leaves swaths of nature or very distant generations susceptible to extinction, or at least a lack of concern, due to their far removed nature either in time or space from humanity’s understanding or attention.

has an instrumental value to humanity. As the context of humanity's evolution and existence, nature is the necessary backdrop for humanity and its aims, whatever they may be.

Environmentalism, by definition, cannot be limited in scope. The preservation of one territory cannot be at the cost of others. Ecocommunitarian approaches may have the "seeds" of sustainable development but the emphasis is limited geographically and culturally (Eckersley 2006). Obligations need to be extended to a global level and in to the future for the sake humanity and environmental justice. Communitarianism is incapable of providing the necessary philosophical foundations for environmentalism among all contemporaries, especially those potentially disparate groups in the future. Peter Sand (2004) supports a global effort to secure environmental resources among nations and incorporates environmental protection in the concept of trusteeship.

Peter Sand's article on bounded sovereignty for the sake of environmental protection provides helpful insight into cooperation at the international level to achieve sustainability and conservation while respecting the rights of peoples (2004). Trusteeship forms the basis of his theory. As trustees it is the duty of the world's governments is to maintain and secure the environmental resources within their borders for the beneficiaries, the world's peoples. Sand regards the possession of natural resources as conferring responsibilities to the host government rather than privileges. The world's resources form what Sand calls an "inalienable public trust" and it is the responsibility of the trustees, governments, to protect environmental resources from deterioration (Sand, 2004, p. 49).

Writings on the subject of environmental justice have questioned the viability of Justice as Fairness (JAF) as a moral and political foundation for environmental obligations. The reasons

are varied. Ecocentrists Lawrence Tribe² and Robyn Eckersley³, among others, question the appropriateness of anthropocentric theories, such as Rawls's theory of justice, as a basis for environmental protection. Ecocentrists contend, predicating environmental protection on something other than the intrinsic value and "moral claims" of the environment leaves the environment vulnerable to loopholes capable of allowing defensible forms of environmental degradation based on anthropocentric needs and wants. This places the environment in the precarious position of needing to appeal to the affections of humankind or become the object of their desire in order to forestall or prevent its own demise. However, ecocentrists rely too heavily on appeals to intrinsic value and metaphysical concepts to conjure substantive support. Anthropocentric reasoning can provide the necessary motivational, philosophical, and moral foundations ecocentrists need to support their own end of environmental protection. Although couched in the terms of anthropocentric motivation, environmental protection is ensured through mutual benefit between nature and man (Norton 1991).

Environmentalists and ecocentric theorists are not alone in their hesitation to support Rawls's theory of justice as a philosophical foundation supportive of extending obligations beyond contemporaries within society. Brian Barry, a prolific writer on the matter of obligation and justice between generations, focuses several works on refuting Rawls's theory as it pertains

² Lawrence Tribe, *Ways Not to Think of Plastic Trees*, 1974; Tribe provides a forceful and thought-provoking argument in favor of moving defenses of nature and its preservation away from what he sees as untenable arguments based on anthropocentric reasons to defenses based on ecocentrism. His argument follows much of the same lines of extension available in Rawls's own work. Mankind has been able to increase their "capacity for empathy and identification" over time. First empathy and rights were extended to blacks, then women, and to some extent higher vertebrates, but Tribe questions whether this capacity for extension and empathy is capable of recognizing the "intrinsic needs" and "moral claims" of nonhuman components such as a mountain or seashore.

³Eckersley, R. (1992). *Environmentalism and political theory: Toward an ecocentric approach*. Albany: State University of New York Press. Eckersley evaluates and critiques the available defenses of nature each defense relying on anthropocentric defenses or human centered approaches are discounted and dismissed as incapable of providing lasting and durable protection for nature. Eckersley dismisses anthropocentric theory in favor of an ecocentric approach sensitive to the intrinsic value and moral claims of nature.

to extensions of justice, specifically international and intergenerational justice. Barry deduces, “whether justice exists between states is an empirical matter and whether justice between generations exists is a logical one, it does not” (Barry p. 189). Barry’s focus concerning justice among generations is the directionality of the relationship. Previous generations are able to benefit or devastate future generations while future generations are entirely without recourse; there is no reciprocal relationship. John Rawls, in his initial formulation of the “just-savings principle,” wrote that whether future generations had saved in the past were, essentially, matters of fact and not a question of justice (Rawls 1999). The assertion, although striking at first, is the same conclusion Rawls deduces while considering the distribution of natural talent and fortune of birth. The particulars of an individual’s birth, status, or prospects are not matters of justice, according to Rawls. However, the fair distribution of primary goods by just institutions of society to mitigate burdens and foster fair cooperation among individuals with varying levels of fortune are matters of justice. Plainly, the burdens caused by unalterable matters, such as talents or whether previous generations have saved for future generations, are not matters of justice, yet the manner in which society’s institutions interact with individuals and correct these undeserved fortunes is a matter of justice. Nonetheless, Rawls’s initial assertion against the notion of whether justice between generations exists is short sighted and contrary to the moral considerations of his overall theory of justice.

Either out of sense for modesty or short sightedness, John Rawls questions whether his theory of justice, or any theory of political justice, is capable of including obligations to the biosphere or future generations (Rawls, J. 1993). Regardless of this claim, Rawls posits the just-savings principle. Rawls believes he has developed a reasonable and just procedure capable of ensuring the maintenance of just institutions through his just-savings principle. Prior literature

has focused on Rawls's ostensibly "fertile"⁴ theory of justice as posited in his book, *A Theory of Justice*. However, the just-savings principle as a means of ensuring the accumulation of wealth and resources necessary to carry on just institutions and maintain hospitable background conditions for those just institutions is an insufficient basis for just relations. The accumulation of capital assets, or fungible resources capable of seemingly endless substitution, neglects the importance and unique characteristics of natural resources. As such, harms caused by previous generations can be "justly" absolved with enough capital investment. The losses of entire species to overconsumption or habitat encroachment are offset by capital investment or comparable substitution. Unlike his theory of justice between contemporaries, Rawls bases his theory of justice between generations solely on economic investment. Cash and receipts have replaced the theory's previous emphasis for the distribution of "primary goods," such as self-respect. Rawls's intergenerational justice is unlike his theory of justice between contemporaries, in this respect.

Justice as fairness as applied to relations among generations is not sensitive to environmental degradation and therefore incapable of providing the necessary political and moral foundations for intergenerational justice, at least in its current articulation. Puzzlingly, Rawls supports the definition of society as a cooperative scheme across generations but does not stress the integral role of nature in humanity's long-term goals, which leaves the fate of nature to the outcomes of legislation, popular sentiment, and the market place. However, Rawls does allow the possibility that nature may become a constitutional matter, and therefore a matter concerning the basic structure of society, if the environmental situation becomes dire (1993). Capitalizing on this caveat of Rawls, one is provided fertile theoretical resources for intergenerational justice theory, namely his book, *The Law of Peoples*.

⁴ As described by author Bryan Norton in his book, *Toward Unity Among Environmentalists*, p.217

The present research will add to the debate of intergenerational justice by utilizing an often-overlooked work by author John Rawls, *The Law of Peoples*, to augment justice as fairness where necessary and provide guidance when needed due to lapses in Rawls's larger theory of justice. The research is set apart from previous excursions into intergenerational justice theory by its reliance on Rawls's international relations theory rather than his stated theory of justice between generations, the just-savings principle. It is my position that Rawls's theory of justice when supplemented by his international relations theory supports an extension of justice and obligation beyond the political realm of a closed society and is therefore more sensitive to claims of intergenerational and environmental justice. This is due, in part, to its recognition of other states, especially noncompliant states. The consideration of noncompliant states allows for application of the theory without the constraints of ideal theory as is present in justice as fairness. Introducing "nonideal theory" into the research allows for contingencies unavailable in justice as fairness in its domestic application; which will be necessary for generations following prodigal generations utilizing developmental practices premised on the same erroneous conception of nature as an inexhaustible resource as detailed by Hume.

The thesis of this research is premised on there being an environmental crisis in the world and humankind is, at least in part, responsible for this crisis. The assumption is also made that present practices are capable of influencing future generations through diminished wellbeing and a reduction of viable options. It is also taken as granted that man is still capable of reversing this environmental damage⁵. Derek Parfit's (1984) interesting question of our present actions' effects on the particular identity of future individuals will not be a matter for this paper. The fact that

⁵ These premises are influenced by Marcel Wissenburg's section in Andrew Dobson's (1999) book, *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice*. on the suitability of distributive justice discourse as a foundation for environmental protection.

individuals will populate the future is sufficient to beg the question of previous generations' obligations and to warrant an examination the nature of those obligations. The unique characteristics and personalities of those in the future are matters premised on there being a future to inhabit. The question is whether the moral, philosophical, and political foundations of justice support the necessary steps and obligations as fairness as supplemented by *The Law of Peoples* as elaborated by John Rawls.

CHAPTER TWO: LITERATURE REVIEW

John Rawls's stated intergenerational justice scheme, known as the just-savings principle, is incomplete and as such is incapable of maintaining meaningfully just relations between generations. The theory's emphasis on economic theory and capital accumulation demonstrates a misinterpretation of environmental issues and concerns as well as their underlying causes and repercussions. However, by supplementing justice as fairness (JAF) with Rawls's other writings, such as *The Law of Peoples* (1999), a more comprehensive outline for justice between generations can be achieved.

As a theory of justice primarily concerned with justice between contemporary individuals in a closed society, John Rawls's theory of justice is not intuitively applied to environmentalism. However, by expanding the notion of Rawls's concept of relations between states and generations a new path to environmentalism is established. Environmental quality and resources can be construed as necessary condition for honoring human rights. This redefinition of the environment as a necessary, although not sufficient condition for human rights ensures its consideration as a distributed good in society, which makes it the subject of the original position, redistribution, and the just-savings principle. However, the theoretical leap from anthropocentric theory of justice to environmentalism requires explanation.

Environmentalism and Anthropocentric Arguments

Humanity is a situated species owing its existence and evolution to the environment. Any anthropocentric theory should be concerned with the survival of humanity as a group rather than the wellbeing of individuals (Feinberg 1974, Norton 1991, 2003). Author, Bryan Norton (1991, 2003), argues the long-term success of humanity is contingent on a thriving and creative ecology.

Norton believes a systematic understanding of ecology provides the necessary guide to protecting the interests of humanity, in the long term, and nature. He also believes nature is a “fragile and resilient” system, which needs the harmonious interaction of humanity and its constituent parts (Norton 1991, p. 240). Premised on the interrelatedness of nature’s component parts, Norton argues in favor of what he terms the “convergence hypothesis” (Norton 1991, 2003).

Humanity and nature have similar aims in the long term; however, the appeal of short-term payoffs leads to defections. The short-term defections threaten nature. The convergence hypothesis contends that environmentalists and anthropocentrists can agree to the same policy initiatives, if anthropocentrists are willing to extend their period of concern to distant future generations (Norton 1991, 2003). The policy initiatives supported by “future generationism” although radical may provide significant and necessary changes to policy decisions, albeit possibly limited in scope (Dobson, 1998, p. 258).

Andrew Dobson supports the premise of future generationism as a possible basis for environmental protection but questions the scope of its protection. If, Dobson argues, the protection of the environment is premised on the protection of human interests rather than the direct interests of the environment there are parts of nature that may be judged to be insignificant and require no protection. Organisms that cannot prove their importance to humanity are left unprotected and therefore fair game for extinction. Dobson’s suggested course of action is incorporating “natural value” into the convergence hypothesis (Dobson, 1998, p. 260). However, Dobson’s ‘ecological virtue’ is beyond the theoretical and philosophical support of anthropocentric theories of justice and well beyond Rawls’s motivational stipulation for rational individuals in the original position.

The goal of securing humanity's future is entrenched in the same environmental context it evolved. If Norton's thesis is correct, the long-term aims and success of humanity can support environmental protection (Dobson, 1998). However, some welfare economists have offered the concept of capital accumulation and infrastructural development as the means of intergenerational justice and as potential compensation for ills passed from present to future generations. Without a concern for the environment and "creative ecology," these economic theories are insufficient for the maintenance of shared interests of the environment and humanity.

The Environmental Crisis

The environmental crisis present and future generations confront creates bonds of obligation through the risks created by previous and present generations and experienced by future generations. Ulrich Beck writes that ecological risks are "global, local and personal" (Beck, 1999, p. 5). Territory or borders do not confine these risks and they are not limited to the times or societies that fostered them or the generations who directly benefitted from them. The previous calculus of risk assessment was able to localize risk within a near-definitive time and place. However, the risks posed by modern practices present incalculable risks with indefinite answers to the depth and breadth of who is responsible and who will be affected (Beck, 1999, 76-7). The concepts of risk and environmental crisis demonstrate real and unrealized dangers. Currently, everyone in all societies regardless of culpability experiences risk. However, the unrealized nature of risk defines the future. Practices developed to mitigate the damages to future generations, as well as the eventually realized damages, determines the shape of the future (Beck, 1992, p.34). It is in this way all present and future generations are bound.

The concept of the individual, community, or society as an island among others, existing primarily apart from others, experiencing interaction with others only when one so chooses, or limiting external influence by mere avoidance of others is a useless assumption ignorant of the ramifications current, unsustainable practices pose (Beck 1999). The risks that define the current ecological crisis require global solutions and honest dialogue among members of the international community. The instances of threats have broken through the bounds of localized time and place. Oil spills, forest fires, toxic pollution are only an aspect of the environmental crisis. Other less “visible” dangers exist beyond the knowledge of most individuals but present life threatening consequences beyond the perpetrators (Beck, 1992, p. 162).

Beck asserts, the threats presented by ecological risks, among others, require extensive levels of resources, both expertise and capital, possibly beyond the means of any one state or society (Beck 1992). The shared risk presents shared obligations requiring wide-ranging intervention. Beck places science at the center of the ecological crisis. Science, according to Beck (1992), is both the perpetrator and arbiter of the environmental crisis. Kristin Shrader-Frechette agrees with Beck’s recommendation of reigning in science. Science left unchecked and without the correct and necessary inputs of “ethical rationality” threatens the welfare of peoples and the status of science itself (Shrader-Frechette, 1997, p.S158). Science was, at least initially, a tool for development and therefore the responsibility to mitigate created risks falls on those societies and generations who created the risks. Presently, science has overextended its own progress.

The unfortunate byproducts of science do not necessarily have corresponding remedies. Science does not progress in a uniformed fashion. The example of nuclear power provides a timely metaphor of science’s progress on the one hand and its incompetence on the other.

Harnessing the atom for the purposes of “clean” energy is an attractive notion; however, the reality of bringing nuclear power to societies presents the world’s societies with predictable benefits and unpredictable risks, which should be planned for and precluded, if possible. If avoidance is not possible, decision makers should consider either scrapping the project or waiting for technologies to catch up with potential risks to provide proper remedies (Shrader-Frechette, 1988). The perpetrators of environmental risks should err on the side of precaution. They should consider the real possibility of catastrophe and ward against it (Shrader-Frechette, 1998, p. 287). The assessment of risk should include ethical values and democratic principles. Risks imposed involuntarily on the many for the benefit of the few are unacceptable (Shrader-Frechette, p. 66). Decision makers should allow the affected population to choose their fate based on the best possible information available, which, admittedly, may require educating the public as to the potential risks (Shrader-Frechette, 1996). This provision against involuntary application of risk to populations encompasses the most direct threats of environmental damage as well as its negligible threats. Unfortunately, the application of risk rarely meets the requirement of voluntary acceptance. The nature of environmental hazards extends their area of effect potentially to global levels, and the enduring of environmental hazards almost guarantees future generations will be left affected by the poor planning and decision making of past generations.

Mitigating or preventing environmental degradation for current and future peoples requires near-universal commitment across populations and time. Sustainability efforts require continued commitment across time. The ill effects of the environmental crisis are not localized or restrained by borders, so the commitment and attempts to rectify the environmental crisis must be just as sweeping and ignorant of culture, affiliation, and time. Author, Steve Vanderheiden

(2006), notes the irrelevancy of spatial or temporal distance when considering possible harms from actions. He says, in part, the directness or indirectness of a harmful action should not factor into whether the action was wrong or not. Proximal dumping of toxic waste in a river can affect a community rather quickly and in obvious ways, but the harm can also be arrested until a later point in time (Vanderheiden, 2006). Later harms are no less real or “deleterious” to future peoples than future harms.

Fungible Fiction and Arguments against Obligations

Obligations to future generations entail corresponding claims on present generations. Present generations are obligated to constrain their actions to those either supportive or neutral toward the status of future generations. However, the notion of claims by those yet to exist coupled with consequent demands or prohibitions on realized beings to limit present actions is controversial. Nevertheless, this debate is further complicated with the inclusion of concerns for environmental protection. The environment is a shared resource across generations comprised of a multitude of interconnected components requiring conservation and humanity’s restraint. The environment provides the necessary resources for the circumstances of justice and support the wellbeing and human rights of peoples. Unfortunately, the subject of conservation and restraint has been relegated to the field of economics. The question of capital accumulation for the sake of future generations is a step in the right direction, towards supporting obligations to the future. However, savings and investment limited to capital and infrastructure are insufficient to encapsulate obligations to the future.

Market inefficiencies and economic downturns devalue some assets while overvaluing others. Placing the fate of environmental resources solely in the hands of buyers and sellers

ignores the externalities of lost or diminished resources. Authors, Pearce and Barbier (2000), recognize the difficulty of internalizing externalities to those responsible when the cost is monetary, and that this internalizing is made more difficult when environmental resources are involved. However, Pearce and Barbier (2000), come to the wrong conclusion.

Pearce and Barbier (2000) admit markets, at times, can be ignorant to the proper pricing for environmental resources, especially their degradation or loss. Nevertheless, they contend, the absence of market valuation would be more detrimental to the health of the environment. Pearce and Barbier suggest new markets sensitive to environmental degradation. These new markets would include the price of economic development as well as its benefits. The price would reflect the environmental impact of the economic development, including resource loss or environmental degradation (2000). By placing monetary values on environmental damage, Pearce and Barbier believe environmental damage can be accounted for alongside economic development (p. 6). Pearce and Barbier assume their new market with its comparative price model is sensitive to environmental degradation and offer an extra form of protection against the sum of environmental degradation, “compensating projects” (Pearce, Barbier, and Markandya 1990).

Compensating projects, or “shadow projects,” are an attractive tradeoff for economists and developers (Pearce, Barbier, and Markandya, 1990, p. 59). Rather than a blanket prohibition against environmental degradation on a project-by-project basis, compensating projects allow some projects to degrade the environment if other shadow projects provide equal benefits, or compensation, to the environment. Simply, compensating projects allow for the sum of environmental degradation to be considered rather than the merit or cost of individual projects that degrade the environment. These “shadow projects,” however, are premised on the same

mistaken premise, environmental substitutability, as previous attempts to apply monetary value to the environment.

The concept of compensating projects relies on the substitutability of environmental resources and replication of ecological systems. The degradation or loss of ecosystems require similar gains in quality and creation of ecosystems to fulfill the dictates of compensating projects. However, the substitutability of environmental resources and ecosystems seems difficult, if not impossible. What would the concept of compensating projects dictate for the loss of a rich and vibrant forest ecosystem to development? Is it possible for humanity to merely create a new forest replete with the same density of biological creativity as the original forest? Even if it were at all possible to balance this type of degradation or loss what sort of time lag would there be between ecosystem loss and the eventual balancing? The concept of compensating projects ignores the fragility and integral nature of ecosystems and is therefore not capable of guiding environmental protection between contemporaries or generations.

Economic valuations of environmental resources provide comparable values. These values are attractive to developers because they facilitate tradeoffs while allowing development. However, the valuation method of environmental resources do not always represent the true value of assets, especially environmental assets held in common. Authors Vadnjaj and O'Connor (1994) examined "willingness to pay" and "willingness to accept" compensation schemes as applied to the potential loss or degradation of an island off the coast of New Zealand. The respondents were asked to quantify "intangible" aspects of the island and place a monetary value on the island (p. 369). However, researchers found the respondents unwilling to accept degradation or loss of the island to development. Respondents viewed Rangitoto Island as a treasure held in common. No person, group, or society should limit access to or degrade the

island; therefore, the question of valuation is meaningless. This inability or unwillingness to accept compensation for a degraded natural treasure calls into question the ability of economics to truly value natural resources and ecosystems.

The unwillingness of respondents to accept compensation for the degradation of their treasured island reflects a peoples' attachment to familiar and shared land. The respondents in the study were from New Zealand, lived within sight of Rangitoto Island (Vadnjal and O'Connor, 1994, p. 270). The attachment to the island could certainly explain the apprehension of respondents to accept compensation for a developed and degraded Rangitoto Island. The study calls into question the ability of economic valuation for the purposes of compensation. Respondents, or peoples, express an unwillingness to accept development of their natural treasures. No practical scheme of compensation would change this outcome. However, if those questioned were unfamiliar with Rangitoto Island and had no attachments to the island this valuation may have been more practical and a quantified amount might have been found for compensation.

Welfare economists have proffered the notion of nature as a collection of fungible components capable of separation and substitution among its various parts and even capital. The economic approach emphasizes production and capital over wellbeing. Robert Solow writes, "if 'sustainability' is anything..., it must amount to an injunction to preserve productive capacity for the indefinite future" (Solow 1992, p. 7). He continues, nonrenewable resources must be replaced with "something else." This demonstrates the insensitive and dangerous mindset that underpins economists' understanding of nature and humanity's relation to it. Nature's components are incapable of the infinite substitution economists advocate. Economics without a philosophical or moral context is indifferent to the claims of future generations on the present.

Future generations have interests in the present because the circumstance they will exist in will be defined by present actions (Feinberg 1980).

Some theorists reject the comprehensive understanding of humanity's moral obligations to nature regardless of their culpability (Passmore 1974). To the detriment of future generations, Passmore also rejects obligations beyond one's "immediate posterity" (Passmore 1971, p. 91). The inability, or ignorance, of present individuals to project their wants or needs on the future and predict what those in the future will want leads Passmore to conclude that there are no obligations to future generations (Passmore, 1974). Intergenerational justice presents economists and philosophers with the problem of limited information and ignorance. As decision makers, present generations are incapable of truly understanding or identifying the wants and needs of future generations, which defines the ignorance problem (Norton 1991, 2003; Feinberg 1980). This supposed failure to predict and understand future generations has led some writers to exploit this problem of ignorance and substitute specific obligations to future generations with "foreshortened" compromises focused on capital investment effectively absolving community responsibility for their progeny and their wellbeing (Norton 2003, Solow 1992, Passmore 1974).

The ignorance problem compounded by the assumption of fungible resources has led some writers to support capital accumulation rather than specific obligations to conserve specific resources such as forests or wildlife. The emphasis on welfare economics rather than wellbeing leads to what Bryan Norton (2003) refers to as "the grand simplification." Norton (2003) believes grand simplification involves three erroneous assumptions, which John Rawls's principle of just savings is premised. First, grand simplification conflates welfare economics with wellbeing to simplify a complex problem of time and distance and facilitate the comparison of generations. Second, it assumes resources are fungible across uses and time, and, third, it assume

because one cannot predict the needs or preferences of future generations the obligation is capital accumulation and refraining from overconsumption. Nevertheless, economists and theorists supporting economic rather than wellbeing comparisons (Solow, 1992; Passmore, 1974; Rawls, 1999) support using economic welfare to gauge possible obligations to future generations.

Without promises made to specific individuals in existence, Brian Barry contends, there are no obligations to future generations. Far-off future generations, the most susceptible generations, are obliged to the charity of past generations. If societies or individuals decide to save may be virtuous but not necessarily just. However, Barry does provide some insight into intergenerational justice beyond the contradiction of its existence. His support of sustainability resembles the hiker's motto of leaving the area, at least, in the state it was in prior to your arrival (Barry, 1997). Each generation should maintain their stock of resources for future generations. The world they inherit should not be worse than our own. However, the growing population of the earth and the precariously low stock of both renewable and non renewable resources places future generations in an unsecure position.

Barry offers the notion of "gentle" population decline as a necessary aspect of intergenerational justice (Barry, 1997, p. 110). Those in the future are incapable of being held responsible for the world they will inherit or who they will inherit it with and their numbers. Because previous generations can only be required to support sustainability to a point and provide to a point for future generations the growth of population should not exceed the production capacity of the environment and previous generations (1997). Unfortunately, Barry does not recognize the long-term hazards present generations impose on future generations. Wilfred Beckerman makes the same mistake and limits his concern for justice to providing just

institutions, in the Rawlsian sense, rather than limits to present generation's actions (Beckerman 1997).

Beckerman has both supported moral obligations to the future by embracing Rawlsian institutions and neglecting obligations to the future by claiming just institutions are the extent of present generations' obligation to the future. A scheme of intergenerational obligation is incomplete without concerns beyond institutions. Institutions are still premised on necessary conditions like moderate scarcity of resources. Beckerman's emphasis on just institutions as the only basis for obligation between generations ignores the possible ills passed through generations, especially those since the atomic age, and their adverse effect on the environment and future societies will inherit. Beckerman rejects the notion of restrained economic growth or increased living standards. Without a provision that dictates a change of practice for current generations even moral obligations between generations cannot be met.

Previous Attempts to Extend Rawls's Theory of Justice to Environmentalism

John Rawls' theory of justice (JAF) is, and has been, a source of inspiration and criticism, at least, since its publication in the book, *A Theory of Justice*, in 1971. Supporters and detractors alike, recognize the contribution John Rawls's theory of justice has made to the field of political theory. As Robert Nozick asserts, "[p]olitical philosophers now must either work within Rawls' theory or explain why not" (Nozick 1974: p. 183). The same recognition of JAF as a boon to the field of political theory comes from another detractor, Brian Barry. Barry, in his own book on the subject of justice, *Theories of Justice* (1989), recognizes the theory's "monumental" status and its "major and enduring significance" (p. 8). Considering JAF popular recognition as a major influence on political theory and the subject of justice specifically, its application to

environmental and intergenerational justice was inevitable. The theoretical avenues are varied; nevertheless, each relies on Rawls's theory of justice as the foundation of the extension of justice to future generations and the non-human world.

Animal rights theorists have typically been wary of contractarian theories of justice. The parties of a contract are typically limited to rational individuals with their own reasonableness and ability to achieve their concept of the good. This has typically precluded non-human animals from benefitting directly from contract theories, which provides tenuous support for animal rights. However, Mark Rowlands (1997) believes some versions of contract theory are capable of supporting the moral status and therefore moral rights of non-human animals, specifically John Rawls's version of contractarianism. The original position is the specific area of focus, for Rowlands. He seems to construct his critique and augmentation of Rawls's original position in a manner capable of eliciting direct justice for humans and non-human animals.

Rowlands chooses to seize on Rawls's prohibition against arbitrary information in the original position to expand the definition of individuals in the original position to include non-human animals in the hopes of creating a theory of moral rights rather than Rawls's stated intent of creating a theory of political rights (Rowlands 1997: p.237, 242-3). Because no person chooses to be rational—they are born rational or not—Rowlands categorizes the possession of rational thinking as arbitrary. Therefore, according to Rowlands, no one is morally entitled to the benefits of being rational, the most important being the protection provided by contracts between rational individuals (p. 242). The conclusion, for Rowlands, is obvious: bracket the knowledge of whether individuals' possess rationality just as other arbitrary and potentially prejudicial particulars are in the original position. This conclusion allows the inclusion of non-rational individuals, such as children and the mentally handicap, but even this more inclusive original

position restricts the parties to human beings. Next, Rowlands extends his assault against arbitrary qualities to the knowledge of whether one is human or not.

Once Rowlands has established rationality to be a morally arbitrary property the attention he turns his attention toward another essential, although morally arbitrary property, for inclusion in Rawls's original position, being a human being (Rowlands 1997 p. 243). As with the knowledge that one is a rational being, Rowland contends the particular information of whether an individual is human or not is morally arbitrary and should be bracketed from the original position. No one has the choice of being a human, one either is or is not. Therefore, according to Rowlands, no human is "morally entitled" to the benefits of being human, including being the sole parties in the original position as well as being the sole recipients of justice (p. 243).

The inevitable objection to including all non-humans in the original position is the absurd proportions it could reach. Should an individual be concerned with being a building or tree? Rowlands responds, the limit of the contractarian approach, at least as applied by Rawls, is the range of creatures or beings one can "rationally worry about being" (Rowlands 1997 p. 245). The cut off, then, is sentience. The range of creatures capable of suffering should be included in the original position. Although, Rowlands goes further than I am prepared to go by including all non-human animals into the original position, his theory does have theoretical value for the present purpose of extending Rawls's theory of justice to environmental and intergenerational justice: expanding the category of morally arbitrary characteristics beyond those detailed by Rawls.

In a footnote Rowlands concedes his expansion of the original position to include all sentient beings, rational and non-rational, does not include trees or plants, which are considered non-sentient or inanimate life. The benefits non-sentient life will experience will be entirely

indirect through the new original position. It can be assumed, these inanimate beings, lacking the capacity to suffer, will benefit from the principles agreed to in the original position; however, it is unclear why this would not suffice for the wellbeing of sentient, non-human animals as well. The answer can only be utilitarianism, the sum of pleasure versus the sum of pain, which Rawls cautions against in *A Theory of Justice* (1999).

Although Ruth Abbey (2007) eventually concludes Rawls's theory of justice, and rights theory generally, creates difficulties for animal rights incorporation in any sufficiently pluralist society, she concedes value Rawls's theory can have value for the animal wellbeing and nature through non-rights discourse, such as moral duties. Abbey begins her examination by recounting previous attempts to incorporate animal rights into Rawls's theory of justice, including Mark Rowlands' article on extending moral rights to animals. She details, first, the apprehension animal rights theorists have over Rawls's exclusion of animals from the original position, which leads some to conclude that Rawls's theory allows for animal cruelty and exploitation contingent on the interests of humans (p. 3). She recounts Rowlands' argument for including non-rational beings in the original position, but, I think rightly, concludes the expansion of the original position does not necessarily mean an inclusion of animals in rights discourse or matters of justice (p. 4). Rawls states, unequivocally, that animals are beyond the sphere of justice and his principles; humans may have duties toward animals but these duties are premised on morality rather than the obligations of justice (Rawls 1999 pp. 15, 441, 448).

Rather than augmenting Rawls's theory of justice to extend rights to animals and nature, Abbey welcomes the exclusion and prefers the non-rights based discourse. Abbey believes rights discourse is too confining for animal wellbeing and tends to contradict cultural pluralism (Abbey 2007 p. 16). Instead, Abbey advocates a process sensitive to different cultures and traditions

values to support animal wellbeing, consistent with Rawls's recommendation. However, it is not Abbey's conclusion that is important but, rather, her defense of Rawls's theory of justice as supportive by its omission of animals from the sphere of justice. Moral duties, rather than rights, are "greater" and "different" from "justice and its rights" (Abbey 2007 p. 9).

Like Mark Rowlands, David Richards (1971) seeks to expand the defined set of individuals allowed into the original position through informational exclusion. However, Richards limits the representatives to those capable, or with the potential, of rational choice and self-control. This includes the mentally challenged, children, and infants while explicitly excluding animals (pp. 81, 182). Richards assumes this will include, hypothetically, all persons from all ages: past, present, and future. This will draw out necessary agreements between historical ages among humans creating a hypothetical dialogue to support intergenerational justice, as Richards designed, but effectively leaves the welfare of animals to the status of sentiments among persons.

The obvious objection is why Richards would be willing to include all persons from all ages regardless of mental competency in his new augmented original position but not animals. Richards makes use of a premise similar to Rowlands' expansion of morally arbitrary characteristics, "moral fortuitousness" (Richards 1971 p. 182). Moral fortuitousness includes all status and age of persons. Every person from every nation, culture, and historical age is included, but Richards cautions even this expansive notion has limits. Each person is aware they are human and not animals because the only the differences between humans is considered fortuitous (p. 83). Richards seems to have fostered an original position capable of including intergenerational and international justice at the expense of animals and nature. The wellbeing of animals is left to the sway of human sensibilities and affection (p. 66).

Richards, recognizing the license his theory of justice gives to humans over the wellbeing and status of animals, allows persons in the original position to know humans “have certain basic sympathies with animals and animal life,” assuming those in the original position will account for their possible affection once the veil is lifted and seek to protect animals (Richards 1971 p 182). However, as Brian Barry (1989) points out, the understanding would be limited to “pets and [pet-like] animals,” which certainly does not support the interests of animals beyond the fluffy and affectionate (Barry 1989 p. 207). This is a difficult criticism for Richards’ theory but there is another human interest capable of supporting animal wellbeing, albeit indirectly.

Although Richards spends little time discussing the instrumental value of animals he does offer animals protection based on their use “[promoting] basic human interests” (Richards 1971 p. 182). Unfortunately, Richards does not describe animals’ uses or extend the “sympathies” of animals enough to base substantive protections for animals or nature. Richards ignores the context in which humans and animals exist, and have existed, to the detriment of humanity, animals, and nature. Without a comprehensive understanding of the context of human evolution and existence, Richards has limited the protection of animals and nature, as well as intergenerational justice, to their contemporary sympathies and uses without explicit concern for their potential uses or potential sympathies. Richards has not offered a theory capable of preventing the degradation, or conservation, of, what Norton (1991) deemed, creative biology.

Marcel Wissenburg (1999) adds to the subject of intergenerational and environmental justice with his contribution of the restraint principle. The restraint principle dictates the proper use of property. Property is not to be destroyed unless a identical substitute is available to replace it. If property is destroyed and there is no identical substitute for replacement a suitable and equivalent substitute should replace it. If neither an identical nor an equivalent substitute can

replace the property then compensation should be provided by the offending party (Wissenburg 1999 p. 193). The restraint principle is an important step toward sustainability and intergenerational justice. It confers responsibility for justifying destruction of material goods on the destroyer and also confers the responsibility of compensation on the destroyer as well. The principle then offers the preferred method of compensation, in descending order: identical replacement, equivalent replacement, and finally mere compensation. It should be assumed that mere compensation is to be avoided. The implication of only mere compensation being available indicates the nonrenewable status of the good or at least its rarity. The destruction of nonrenewable goods shifts the burden of destruction to those who are not the offenders and thus extends property rights beyond their conditional nature.

Wissenburg defends his restraint principle by noting the conditional nature of property rights. The possession of a right over a good does not confer absolute license for the use of that good, an obvious analogy being the possession of a knife. Someone may own a knife and be protected from its theft by laws but the rights to the knife only confer conditional permissions to the owner. The owner, then, does not have the right to harm another person or damage another person's property, at least not based on the rights of knife ownership. If, Wissenburg notes, rights, especially property rights, are considered "complexes of permission" some permissions can be limited, legitimately, while duties are introduced (1999 p. 193).

Like the knife owner, humanity can be seen as the owners of the environment, conditionally. We exist in it and thrive on it. However, humanity's ownership of the environment is not without legitimate limits. Humanity has no right, based on the restraint principle, to destroy any object that could be used by another with a better reason (Wissenburg 1999 p. 194). Wissenburg includes the restraint principle as a necessary addendum to Rawls's just-savings

principle. As with the rational acceptance of the just-savings principle by individuals, Wissenburg believes it would be irrational not to accept the restraint principle. The restraint principle is for the benefit of all persons currently in existence and those yet to exist (p. 196).

However, Wissenburg limits his concern to the six generations alive at one time, to avoid the “delicate question” of intergenerational justice and the moral status of those yet to exist (Wissenburg 1999 p. 197). The restraint principle is an admirable and potentially useful construct to foster sustainable development and conservation for present and future generations, but the avoidance of far-off future generations allows less obvious forms of degradation and destruction to befall those in the future. Radiological fallout and toxic waste, among others, are insidious forms of pollution and harms, which remain dormant for an extended period of time, well after the originators and their children’s children’s children are gone, to eventually destroy, or degrade, the future environment and its occupants. Plainly, Wissenburgs’ theory, although informative, is too limited in scope. It seems to rely too heavily on the direct and instant destruction of material goods and the environment to be sensitive to the modern, subtle processes of contamination and degradation.

The restraint principle was a positive and necessary step toward sustainability and conservation but was insensitive to the insidious character of environmental degradation. Breana Holland (2008) extends consideration of environmental degradation to include its affect on human capabilities by recognizing humanity’s dependence on a healthy environment to thrive and pursue goals. To ensure the “threshold” of human capabilities is met a threshold of environmental justice must also be met, to a point (Holland 2008 p. 328). This includes a concern for the environmental quality each person experiences. Clean air and water help promote the overall capabilities and aims of individuals, treating individuals as ends in themselves(p.328).

Rawls ignores the distribution of benefits and burdens and their affect on individuals' access to social justice (Holland 2008 p. 320). Effectively, Rawls has limited his comprehensive theory by omitting the possible ills and benefits environmental quality can have on individuals' prospects and access to justice from the consideration of JAF. Holland believes the limitation of Rawls's theory is due to his emphasis on "social primary goods" (p. 321). The focus on wealth and income limits Rawls's theory. However, Rawls's theory can incorporate health into the category of primary goods. Good health is something all rational persons want regardless of station or goals (Thero 1995 p. 96). However, even this inclusion of health in the category of primary goods is weak to the same defect Holland's will be later on, limited scope of concern leading to potential intergenerational injustices. Including health as a primary good within a society ignores the borderless nature of pollution and environmental degradation. Internationally and intergenerationally, the inclusion of health as a primary good cannot alone achieve justice. Holland proposes using Martha Nussbaum's gender oriented "capabilities approach" to examine humanity's relationship to the environment and its affect on human capabilities.

The capabilities approach considers the wellbeing of individuals rather than their possession of goods, such as wealth. The basis of this concern with not only what an individual has but what one can do with it is important for environmental justice. Readily accessible food is an important primary good for Rawls, individuals would prefer rather than less. However, the easy access to food that is of quality, uncontaminated, is of importance to the capabilities approach. The capabilities approach also traverses nation-state barriers by placing the justification for the capabilities approach on the dignity all humans deserve. Although, this is an important step toward internationally recognized rights of humans and the achievement of capabilities it does not extend far enough. The future is still the available waste basket of the

present. The distant peoples Holland writes of experience the burdens of unsustainable development: pollution and environmental degradation. The capabilities approach with its emphasis on capabilities rather than goods possession, and human dignity rather than citizenship offers insightful although, still, limited support for extending obligations to future generations. The creation of nuclear power stations would alleviate the dependence on fossil fuels and other pollution creating forms of energy, but at the cost of future generations' capabilities. There seems to be nothing in Holland's article to support obligations of restraint for the sake of those humans who are potential rather than real. The capabilities approach seems unable to extend obligations to future generations.

Rawls's theory must be able to incorporate environmental protection for the sake of intergenerational justice while maintaining the strict motivational standards applied to those in the original position of disinterestedness and rationality. Environmental protection, like environmental degradation, cannot be the burden of a single society, or even a handful of societies. Environmental protection must be borderless. Each nation must be held accountable for their footprint on the environment as it is plain, now, the far-reaching and damaging influence pollution and contamination can have on individuals. However, environmental protection cannot be a mere "snap shot." The benefits of new technologies, which create delayed cost for present benefits, are to be avoided as the time bombs they are. Society is not a mere snap shot but a semi-eternal construct requiring the cooperation and peaceful coexistence of those within the society and its fellow nations over time.

CHAPTER THREE: EXTENSIONS

Efforts to mitigate and prevent environmental degradation require global efforts and commitments from all peoples to curtail or limit unsustainable practices (Sand 2004). The immense scale of concern and the intractability of environmental concerns suggest, to some, the centralization of risk and resource management (Orr and Hill 1978). An enormous centralized authority, conceivably, is able to “tighten social planning” and provide an efficient scheme of development and utilization of the necessary and precious components of nature (p. 457). However, an enormous centralized authority is also quite capable of encroaching on the rights and responsibilities of decent and compliant peoples and their governments. Utilizing Rawls’s international relations theory furnishes the necessary scale of examination and illuminates possible courses of action necessary and available to protect ecological integrity while respecting the cultural and political distinctiveness of peoples.

John Rawls’s theory of justice can incorporate the necessary environmental protections into its intergenerational justice plan. Admittedly, environmental protection will be a happy side effect to a theory of intergenerational justice and not its primary concern. The emphasis will be on the just relations between generations, both contemporary, overlapping generations and far-off future generations and whether previous generations have saved accordingly or developed sustainably for future generations to support just institutions and protect human rights. However, a thorough knowledge and understanding of the interrelated characteristic defining humanity’s

relation to nature and its parts is a necessary precondition to ensure the integrity of ecological systems.⁶

The aim of this section is to adapt John Rawls's Law of Peoples to include a concern for environmental quality and sustainability supportive of intergenerational obligations. The argument thus far has been that the long-term interests of nature and humanity can be encapsulated in policy initiatives, a theory of justice is incomplete without an explicit concern for environmental quality and ecological integrity, and by adapting John Rawls Law of Peoples to include environmental concerns the theory of justice (JAF) the theory becomes comprehensive and complete as well as a useful guide for supporting and maintaining justice between peoples both distant and future. Specifically, Rawls's emphasis on human rights will be used as the motivation for achieving and maintaining environmental sustainability. Continued degradation and unsustainable development demonstrate a lack of respect of human rights. Without the backdrop of a healthy ecological system, human rights cannot be honored.

However, the application of John Rawls's domestic theory of justice is not easily applied to environmental concerns. To supplement this gap between just, domestic institutions, Rawls's international relations theory is used. Rawls wrote *The Law of Peoples* in order to extend his theory of justice to the international level. This will allow for the inclusion of peoples and societies beyond the domestic scheme of justice and the consideration of nonideal situations, such as burdened societies, and the duty to assist those burdened peoples situations similar to those confronting current and future generations.

⁶ This is similar to Norton's requirement of knowledge for sustainability supported by anthropocentric values. Environmental integrity can be based on the needs and welfare of humanity but a thorough understanding of environmental systems is needed first.

John Rawls's Theory of Justice

John Rawls's theory of justice is distributive, contractual, and hypothetical. His defense and articulation of JAF has undergone augmentations, revisions, and omissions over the years, but the basic characteristics of the theory have remained. A theory of justice based on a concern for the fair distribution of primary goods enshrined in a hypothetical contract among rationally autonomous, free and equal individuals with their own varied and pluralistic comprehensive doctrines within a cooperative scheme over time (Rawls, 1993, pp. 305-7; Rawls, 1999, pp. 11-3).

Reading through John Rawls's writings on the subject of justice as fairness reveals the authors' concern for creating and maintaining stability between individuals and associations in a pluralistic society⁷. The multitude of cultures and comprehensive doctrines, sometimes with divergent and contradictory beliefs, presents difficulties for any society. However, Rawls believes a fair decision procedure will produce fair outcomes, facilitating cooperation among individuals in society. In contract theory, one looks to frame the initial agreement in the fairest terms possible. However, Rawls believes the initial positions of parties to agreements are privileged or disadvantaged by particular information about their talents, abilities, or preferences, which can "distort the social system" (Rawls, 1974, p. 141). The original position is the starting point for Rawls's fair decision procedure.

⁷Rawls's theory has been criticized for its emphasis on stability ostensibly at the cost of freedom of actions and conscience. Ed Wingenbach in his article, (1999). *Unjust Context: The Priority of Stability in Rawls's Contextualized Theory of Justice*. *American Journal of Political Science*, 213-232 examines Rawls's supposed integration of communitarian premises into his theory of justice at the cost of cultural evolution and choice. Author, Andrew R. Murphy, in his article, *Rawls and a Shrinking Liberty of Conscience*. *1998 The Review of Politics*, 247-276., contends that Rawls's prohibition against non-mainstream comprehensive doctrines in the public discourse represses liberty of conscience for the benefit of stability.

A useful metaphor, also used by Ronald Dworkin (1973), to describe Rawls's concept of justice as fairness is that of a game. Several players convene to participate in a board game, for instance. The players agree to the rules defining the parameters of the game prior to the beginning of play. This is similar to the original position. Separately, each player may have divergent or even conflicting goals but those goals exist within the confines of the game and are contingent on the successful execution of the game. Some players desire to be the winner by accumulating the greatest number of points. Others may truly enjoy the company of the other players and enjoy the experience of the game. Others, still, may merely enjoy being a part of a game (Rawls 1999 p. 461). Regardless of their underlying motivation (vanity of winning, social engagement, gamesmanship) each player's goal will require fair and equal competition especially if the game is to be played more than once, say in a series, as defines the social cooperation necessary in society (Axelrod 2006). Rawls's intention is to create circumstances of fair play, which will foster cooperation among the players and maintain stability across several plays of the game. Rawls intention is to limit the instances of defection (Axelrod 2006; Rawls 1999 p. 460-1).

The original position is a hypothetical, nonhistoric rhetorical device used by Rawls to mimic a contractarian "state of nature." The state of nature allows contract theorist to deduce rights and responsibilities based on the initial status of individuals prior to society. By stipulating that the original position be a rhetorical construct free of historical foundations Rawls ensures, and promotes, the use of the original position by individuals in society to propose and test the principles of society's institutions when the circumstances of conflicting claims arise. From the original position, individuals deduce and propose principles that will form the foundation of society's institutions.

With fair cooperation in mind, Rawls begins his procedure in an initial situation, the original position. Rawls believes that the agreements made in the original position will produce fair outcomes from fair premises. Representatives of society populate this “initial status quo.” The representatives are rationally autonomous, free and equal individuals with their own sense of justice who are mutually disinterested in the interests of their fellow representatives, and, importantly, the representatives in the original position are not “you and I” as Rawls puts it but merely representatives of us (Rawls 1993, pp.12-3, 27-8 306; Rawls 1999, p. 12).⁸Rational autonomy, according to Rawls, is the representatives’ ability to conceive of a conception of the good and plan accordingly to achieve their version of the good within the confines of the terms of justice. As representatives, they will propose and justify their considered principles of justice without coercion and bias. Rawls believes he has achieved an unbiased, fair decision process by depriving the representatives of particular information about society and themselves. This is accomplished with the implementation of the veil of ignorance.

The veil of ignorance is a rhetorical device used in the original position to strip the representatives of all contingent or arbitrary in order to isolate essential qualities of humans, and by concealing such information as an individual’s concept of the good, height, race, or religious proclivities prejudiced decision making or system gaming is rendered impossible(Rawls 1993, p. 272). The original position is the initial status quo, situating the representatives in a symmetrically equal scheme amongst themselves, but the veil of ignorance is meant to maintain this scheme of equality in the decision-making process. Rawls believes the representatives

⁸ The distinction of the representatives becomes important during the stage of reflective equilibrium. The “you and me” Rawls refers to are the eventual recipients of the basic principles social institutions are based. The procedure Rawls outlines asks the real citizens of society to compare the basic principles agreed to in the original position against their particular, firm judgments. Once the basic principles satisfy all levels of generality, the original position and reality’s particular judgments, the “most reasonable” conception of justice for us has been achieved.

should be ignorant of their social and natural fortune, and, so, by separating representatives from contingent characteristics Rawls is able to situate the representatives within a fair procedure capable of fair outcomes. The veil is not complete in its concealment. Rawls stipulates, allow enough information in through the veil in order to make the decision process rational, “but still suitably independent from historical, natural, and social happenstance (Rawls, 1993, p. 273).” As a rhetorical device, the veil of ignorance is meant to help elicit a particular form of justice, which can be agreed to through rational autonomy. Although the representatives are incapable of full autonomy⁹ Rawls contends, the representatives, as rational individuals, will try to hedge their bets in an effort to compensate for their dearth of information. The representatives will, according to rational-choice theory, ensure a comfortable minimum for the least well-off in society, and because they are ignorant of their concept of the good or which comprehensive doctrine they will adhere to if any the most expansive scheme of liberty for all in society is established. Rawls believes this will lead to the acceptance of two principles of justice:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.

The metaphor of society as a game is useful to demonstrate and defend Rawls’s assertion of autonomously rational, mutually disinterested individuals, ignorant of their own characteristics and concept of the good choosing these two principles of justice as the guiding principles of social institutions. Rawls believes everyone benefits from society’s cooperative

⁹ This is due to the representatives’ inability to complete the process of full autonomy: rationally deciding one’s conception of the good, and “advancing” their conception of the good within the restrictions set forth by the principles of justice in a cooperative scheme (Rawls 1993 pp. 306-7).

scheme. As such, the benefits should be arranged in a pattern that elicits participation and cooperation. The game, or society, is dependent on cooperative participation and the two principles of justice are designed to achieve that stable cooperation in society over time.

The principles proposed in the original position are understood as reciprocally applicable. That means the representatives in the original position propose the most reasonable and fair terms of cooperation for others to accept even if circumstances dictate defection for personal gain. Reciprocity, in this way, is hypothetical in the sense that it is not necessarily tested. Like the original position, the terms of reciprocity advocated by Rawls are contingent on the minimum circumstances being met. Plainly, the representatives in the original position are ignorant of their prospects, talents, and particulars of the society they will come to inhabit in the real world. However, the representatives propose fair terms of cooperation to govern the institutions of society with only enough information to make the decision process rational. Once, the veil is lifted reciprocity is achieved if the fair terms of cooperation are adhered to regardless of possible gains due to defection.

Once the original position with its constraints is in place and a fair decision procedure is followed, the outcome, moral principles proposed by the representatives, is compared to other proposals and refutations. The principles proposed by the representatives are moral and therefore subject to self-evident premises lacking considered judgment. However, through the process of reflective equilibrium the moral intuitions and self-evident principles are incorporated into the representatives considered judgments. Rawls specifies, all proposals, which are based on our convictions must be evaluated at all levels of generality, and it is through the process of reflective equilibrium that the abstract, weak principles agreed to in the original position are evaluated in light of real-world situations.

The Just-Savings Principle

The matter of justice between generations presents unique and difficult problems for any ethical theory. Rawls's theory of justice is no exception. The representatives in the original position are aware they are contemporaries, which presents a clear rational hurdle. As rational, mutually disinterested individuals there is no motivation for those in the original position to accept a principle of just savings for the sake of future generations. One of the methods Rawls implements, and subsequently revises, is instructing the representatives in the original position to consider themselves "heads of families." As heads of families, the assumption can be made, representatives will act rationally and accept principles sensitive to the welfare of the next immediate generation, their children, and, maybe to a lesser extent, the welfare of the following generation, their grandchildren. Rawls believes by extending affections and concern beyond the current generation by at least one or two generations in concert with the ignorance of where in time the occupants of the original position will occupy he has accounted for the rational acceptance of the just-savings principle. However, the introduction this new motivation into the original position has met criticism among political theorist.

Rawls eventually abandons the heads-of-families motivation in his later book of lectures, *Political Liberalism*, but examination of his initial proposal and eventual revision will prove informative. The original position is the initial status quo, as stated by Rawls, where everyone is situated in complete equality to everyone else. This is ensured by using the veil of ignorance to conceal particular information from the representatives. Rawls believes the rational mutually self-interested representatives will use any information about themselves or society to gain an edge in the proposal of principles, which will lead to biased proposals and prejudiced decision-making. However, Rawls permits some information into the original position to support rational

decision making among the representatives: laws of human psychology, economics and sociology (Rawls, 1993, 1999). Rawls also allows the representatives to know they are contemporaries in society, which introduces particular problems for justice between generations (English, 1976).

Representatives in the original position are rational, mutually disinterested individuals aware they are contemporaries. Based on these premises, representatives in the original position will not accept a just-savings principle. However, Rawls believes “society is a system of cooperation between generations over time,” which requires a principle of savings (Rawls, 1993, p. 274), and, as such, each generation should agree to at least maintain if not improve capital investments, culture, and just institutions for the betterment of future generations. A stable society needs continuity from one generation to the next but Rawls’s theory lacks the proper rational motivation. To compensate for this lack of rational motivation, Rawls introduces a new motivation meant to extend obligations beyond the contemporaries in original position. The representatives are asked to view themselves as heads of families or family lines responsible for the welfare of their family. However, this presents problems for Rawls’s larger theory of justice and his decision procedure in the original position. First, the particular information of being the head of a family could influence the proposals made by the representatives, beyond the acceptance of the just-savings principle. Representatives may decide to support a proposal declaring only heads of families can vote or any number of proposals furthering their own self-interest (English, 1976, p.96). Jane English believes the head-of-families motivation is not only problematic for Rawls’s theory but also introduces conflicts within the structure of the family. The family is a multi-generational grouping of individuals, similar to society. As such, there is still potential for a conflict of interests among family members. One cannot assume the level of

benevolence Rawls attributes to family members to extend natural sentiments to multiple generations of a family (English, 1976, pp. 92-3).

Without considering the relatively few parents unmoved by their children's wellbeing, among benevolent parents sensitive to their children's needs there are discrepancies. Jane English uses the example of a parent's effort to send their child to college. Is that parent willing to starve to death or merely drive a less expensive car (English, 1976, p. 94)? Jane English's recommendation is for Rawls to maintain his restriction against particular information and introducing new motivations, such as assuming the representatives in the original position are heads of families, and rely on the motivation of the rational individual to achieve a just-savings principle in concert with remove the present time of entry stipulation. However, incorporating Jane English's suggestion into Rawls's procedure does not render JAF sufficiently sensitive to the matter of environmental justice between generations for far-off future generations.

Rawls revises the heads-of-families motivation in favor of a different motivational requirement in his book, *Political Liberalism*. In order to maintain present-time of entry Rawls now requires the representatives in the original position agree to a savings principle they would "want all previous generations to have followed...no matter how far back or forward in time (Rawls, 1993, p. 274)." However, like Jane English's recommendations for Rawls theory of justice, Rawls's own revision is still incapable of meaningful environmental justice across generations into a distant future.

The just-savings principle is Rawls's attempt to account for just relations between generations and achieve stability. Each generation is expected to accumulate capital and invest in infrastructure if investing does not adversely affect the state of the least well off in society. The level of savings is agreed to behind the veil of ignorance. Each generation must decide under

which circumstances the proper level of savings justice requires: generations facing undue hardship or early generations with higher levels of necessary investments will be responsible for fewer saving for future generations than other generations with fewer initial investments. As with the distribution of natural fortune and talent among contemporaries, Rawls treats the matter of previous just-savings as a matter of fact rather than a question of justice, but Rawls compensates with concealing this particularly historical information behind the veil of ignorance (Rawls, 1999; Rawls, 1993, p. 273).

Ideal and Nonideal Theory

The principles agreed to in the original position are foundations for the just institutions of society. They provide a just background for individuals and associations to interact but they do not directly apply to the individuals or the associations directly. It is important to delineate what Rawls refers to as a “division of labor” between rules applied to the basic structure of society and rules applied to transactions between individuals (Rawls, 1993, pp. 269, 284-5). The rules and their divided labor are designed to allow individuals and associations to act freely, supported by just background institutions (Rawls, 1993, p. 268-7). However, even under ideal circumstances of fair transactions among free and equal individuals patterns over time emerge and tend to pull background generations away from their just beginnings. Individuals and associations cannot be expected to full understand the ramifications of their collective actions, so to compensate the basic structure of society is constantly held to an ideal standard, one capable of righting the basic structure though example (Rawls, 1993, p. 268). Rawls believes nonideal theory alone is not capable of producing just change (Rawls, 1999, p. 343). Injustice does not lead to justice,

necessarily. Ideal theory, according to Rawls, is the necessary example and motivation to guide change and needed adjustments (Rawls, 1993, p 284).

Rawls limits his consideration of justice, primarily, to the restricted consideration of ideal theory. Ideal theory provides an aim of justice when injustice is discovered (Rawls, 1999, 1993, 2001). He writes based on the assumption of good faith and strict compliance rather than what he calls partial compliance. Starting from ideal theory, according to Rawls, allows for a realistic and “systematic” understanding of the limits of a just society. He does grant that partial theory, or nonideal theory, also has pressing concerns such as punishment and compensatory justice but is satisfied to pursue matters concerning the basic structure (Rawls, 1999, p. 8). However, Rawls is not blind to the existence of injustice and provides some suggestions to confront injustice. As stated in his book, *A Theory of Justice*, it is everyone’s natural duty to assess and correct any injustices. We must use our considered judgments and our own sense of justice to decide which are the most “grievous” injustices are, gauged by their deviation from our ideal concept of justice, and correct those first.

Rawls divides his theory of justice into two parts. One part is strict compliance of the Rawls theory of justice, which defines ideal theory and the individuals in a well-ordered society. The second part of Rawls’s theory of justice is the consideration of injustice: punishment, transitional justice and compensatory justice (Rawls, 1999, pp. 215-6, 309). Nonideal theory, according to Rawls, must work in concert with ideal theory (Rawls, 1999, p. 343). The parties must first establish the just aims and practices of society prior to confronting injustice similar to the nonhistoric, hypothetical characteristic of the original position. The aims and practices of society are developed under the assumptions of ideal theory, which will provide a map for the necessary adjustments to amend injustice (Rawls, 1993, 215-6).

The Law of Peoples

John Rawls's writings on his theory of justice have been largely restricted to the subject of creating and maintaining the just-background institutions in a well-ordered closed society among rational, mutually disinterested individuals strictly adhering to the laws and mandates set forth by the same just institutions premised on the moral and philosophical foundations accepted in the original position behind the veil of ignorance. Rawls believes assuming the premises of ideal theory will suffice for the majority of institutional concerns and provide an aim for policy when noncompliance is a factor, but remains open to the pressing concerns presented by noncompliance or nonideal theory (Rawls 1999). However, Rawls does not explore the possible effects nonideal theory will have on his theory of justice in detail until his writings on the subject of justice between societies in his book, *The Law of Peoples*.

In *The Law of Peoples*, John Rawls examines the viability and result of extending his eminent theory of liberal, democratic justice (JAF) to the subject of international law (Rawls, 1999b, p. 4). By exploring his theory's application concerning international law, Rawls has introduced previously unexamined possibilities. The matter of noncompliance becomes a more pressing possibility among states. States, unlike peoples, have "rational" goals which may conflict with the aims of peace and stability in the international community. Concerns for just and unjust wars, effects of famine and drought, as well as rogue states are all necessary concerns any theory of international justice must take into account. As Rawls notes, it is "in actual affairs, nonideal theory is of first practical importance and deal with the problems we face every day" (Rawls, 1993, p. 44). Rawls international relations theory is an important resource for supplementing his larger theory of justice due to the theoretical extension of justice as fairness to the international relations between states and distant peoples. It will be fruitful to examine the

theory and examine its significant and useful differences as well as its commonalities with JAF as applied to domestic institutions.

Similar to the domestic application of justice as fairness, Rawls's theory of justice as applied to justice between states begins with a basic unit of consideration. However, unlike the domestic application of JAF, which begins with the individual as the source of decision-making unit, Rawls's theory relies on the decisions of reasonable peoples. Rawls is quick to specify peoples rather than states as the level of analysis. Rawls asserts (1999b), the characteristics of a people as moral and decent agents makes qualifies them as the unit of consideration. States are especially influenced by considerations of prudent or rational ends, which can lead to illiberal and unjust actions toward other states to pursue their own ends. As the basic unit of consideration peoples will be represented in the second instance of the original position and will propose and justify the principles that will form the basis of international cooperation and institutions.

Rawls utilizes an original position as with the initial formulation of his contract theory. However, Rawls incorporates two separate instances of the original position into his law of peoples: the first for domestic institutions and the second for the creation of just international institutions between well-ordered and decent peoples. The first instance of the original position is familiar as it is the one used in his original statement of JAF. The second instance is an extrapolated version of JAF to the international level. Rawls mimics the conditions of the original position as applied to individuals, in the first instance, to create a fair decision procedure to decide the principles of the just institutions between peoples, in the second instance.

The second instance of the original position is designed to elicit particular principles as the basis of just international institutions, as was the aim of the constraints of the original

position in the first instance. The principles “[belong] to all peoples and [cover] their domestic affairs” (Rawls, 1993b, p. 46). The list of principles is the basis of association among peoples, although, it is not an exhaustive list.

1. Peoples (as organized by their governments) are free and independent, and their freedom and independence is to be respected by other peoples.
2. Peoples are equal and parties to their own agreements.
3. Peoples have the right to self-defense but no right to war.
4. Peoples are to observe a duty of nonintervention.
5. Peoples are to observe treaties and undertakings.
6. Peoples are to observe certain specified restrictions on the conduct of war (assumed to be in self-defense).
7. Peoples are to honor human rights.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime. (Rawls, 1993b, p. 46; 1999b, p. 36)

The principles indicate Rawls’s appreciation for the distinctions between peoples, indicated in the first and fourth principles, as well as their shared inviolability, as indicated in first, second and seventh principles. Societies are to maintain just relations and a certain distance from other societies except in cases of burden or aggression.

The second instance of the original position utilized by Rawls’s law of peoples is meant to outline a fair scheme of cooperation in a world with an arbitrary distribution of benefits and burdens through the proposal and acceptance of, at least, the seven principles. The requirements of assistance of burdened peoples and intervention in times of human rights violations demonstrate Rawls’s commitment to the inviolability of human rights.

Similar to the principles agreed to in the domestic application of the original position, Rawls believes rational, well-ordered peoples with a reasonable plan to achieve their rational

goals will accept these fair terms of cooperation. This defines the motivation to support the principles of justice forming the foundations of the just institutions of society, which facilitate fair cooperation and stability of the international scheme. It will be these principles guiding relations between peoples that will guide relations between generations as they concern the environment.

The Role of the Environment in *The Law of Peoples*

To a limited extent, John Rawls recognizes the role of nature as a necessary condition for well-ordered and decent peoples to maintain just institutions as well as its status of as a necessary condition for burdened societies to become decent or well-ordered societies, in his theory of international relations. Societies are to view their territory as property. Peoples should be aware they are the sole owners of their territory and its resources and are responsible for the environmental integrity of their territory. According to Rawls, a peoples' government is the responsible "agent" for maintaining their territory's environmental integrity (Rawls, 1999b, p. 8). Rawls believes by specifying the object of responsibility and the agent of responsibility degradation through misuse will be less likely. However, his concern for nature is dangerously limited.

The territory of peoples places boundaries, in Rawls's international relations theory, to bind peoples to geographically localized areas. The resources of a peoples' territory are meant to sustain its people into "perpetuity" (Rawls, 1999b, p. 8). Rawls is emphatic about this condition. The negative outcomes of overconsumption cannot be mitigated through conquest or migration. The actions of peoples cannot place burdens on other peoples. The loss of resources due to one's own neglect or oversight is not a legitimate reason for war. A society, through its government,

must “husband” resources for future generations and the life of society (p. 107). The Society of Peoples must remain aware of the resources used, the technology to conserve remaining resources, and the regeneration of resources and “the capacity of the natural world to sustain its human population” (p. 107). Still, this concern for societies pursuing sustainable practices is limited in scope; it is unaware of the pervasive, pernicious, and borderless aspects of modern unsustainable practices, such as radioactive and toxic waste.

The hazards of unsustainable development are not limited to the borders of one society. A theory of international relations, which requires a concern for environmental protection, must be sensitive to the far-reaching nature of unsustainable practices. Unfortunately, Rawls’s law of peoples, at least as constructed, remains ignorant to these dangers. The multifaceted and complex nature of environmental hazards demands education and honest dialogue between societies and peoples. However, Rawls’s law of peoples does provide a useful starting point for regulating cooperative schemes between peoples, both compliant and noncompliant. Through augmentation, Rawls’s law of peoples can be sensitized to the environmental concerns of unsustainable environmental practices, including those within a society’s territory.

Author, Koos Neefjes recognizes the role resource depletion and environmental degradation can have on peoples and their relationship with their government and the governments of others (Neefjes 1999 p. 274). Instances of war and migration over poor environmental conditions pervade regions of the planet. These factors have a destabilizing effect on peoples’ governments and the region, if not globally (p. 274). Further, Neefjes notes that societies already reeling from environmental degradation are less likely to pursue sustainable practices and only worsen the environmental degradation that plagues them. This only increases the need for a theory of justice capable of limiting, if not preventing, environmental degradation

capable of destabilizing governments and preventing the realization of the circumstances of justice.

The Ninth Principle of the Law of Peoples

The law of peoples and its principles govern the affairs and relations among well-ordered and decent peoples and the limits of actions toward nonideal peoples such as burdened or outlaw states. However, the principles also limit the internal autonomy of peoples and provide remedies such as sanctions and war to correct any egregious infractions of the principles, especially human rights violations (Rawls, 1993b, pp. 79, 81). Remedies should be comparable to the infractions and similar instances should be treated similarly, as the dictates of human rights demand. Nevertheless, the eight principles need revision to support environmental integrity and human rights. The eight principles are in the tradition of liberal democratic values and should be supported by all reasonable, well-ordered or decent peoples, but, nevertheless, are insensitive to humanity's reliance on nature as a shared and necessary resource:

1. Peoples (as organized by their governments) are free and independent, and their freedom and independence is to be respected by other peoples.
2. Peoples are equal and parties to their own agreements.
3. Peoples have the right to self-defense but no right to war.
4. Peoples are to observe a duty of nonintervention.
5. Peoples are to observe treaties and undertakings.
6. Peoples are to observe certain specified restrictions on the conduct of war (assumed to be in self-defense).
7. Peoples are to honor human rights.

8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime. (Rawls, 1993b, p. 46; 1999b, p. 36)

A ninth principle of the law of peoples is needed.

9. Peoples have a duty to limit their actions, both internationally and domestically, to those either supportive or neutral toward the status and good standing of well-ordered or decent peoples. Actions or practices preventing peoples' attainment or maintenance of well-ordered or decent status are considered acts of aggression. As such, these practices open the offending peoples to sanctions and, possibly, other coercive actions from the Society of Peoples, including war.

The proposed ninth principle is a prohibition against a peoples' actions burdening other peoples. This is consistent with Rawls's determination that no people are entirely autonomous. A peoples' self-determination is limited. No peoples, according to Rawls, have a right to "succession at the expense of subjugating another people" (Rawls, 1993b, p. 38). Rawls asserts, a people's independence, as framed by the first principle, is not sacrosanct. Severe violations of the eight principles invite intervention from other decent or well-ordered peoples. Well-ordered people are just internally toward their people and internationally toward the members of the Society of Peoples. Actions with deleterious effects on other peoples are forbidden as they undermine the aim of all well-ordered or decent peoples: bringing all peoples into the Society of Peoples as well-ordered or decent peoples. To be clear, these deleterious effects are those capable of substantially undermining the just institutions of well-ordered or decent peoples, causing undue burdens on peoples, and preventing, or obscuring, the realization of the minimum requirements of the circumstances of justice.

The circumstances of justice, as authored by Rawls and modeled on Hume's formulation of the circumstances of justice, are of two categories, objective and subjective circumstances. Here the primary focus is on the objective circumstances of justice. The objective circumstances are the conditions supportive of human cooperation such as moderate scarcity. If resources are in

abundance there is no need for cooperation because the incentive to ration resources is moot due to a lack of conflicting claims. However, according to Hume, abject scarcity also precludes the consideration of justice. If the stores of environmental resources fall sufficiently low the terms of cooperation cannot hold and conflicting claims overcome the construct of justice (Hume, 2000, p. 317). Rawls provides a corollary to the requirement of moderate scarcity and the motivation for beneficial mutual collaboration: conditions cannot be “so harsh” as to breakdown any form of cooperation because the goal of social cooperation is to provide all with a decent standard of life (Rawls, 1999, p. 110; Rawls, 2001, pp. 84, 197).

Societies are not to prevent the realization of justice for other societies. Potentially dangerous, harmful or unsustainable practices by society that effectively prevent the realization of the circumstances of justice are unjust. Peoples have the right to independence and self-determination, as guaranteed by the first principle as well as a duty of assistance to burdened societies. Pollution or overconsumption in a closed, complex and interdependent system threatens the resources available which undermines the prospects of social cooperation and prevents the realization of the circumstances of justice, effectively depriving other peoples from attaining justice domestically and entering the society of peoples. The graveness of this issue of obstructing a society’s realization or maintaining the basic circumstances of society requires equally serious remedies.

If dangerous, long-term externalities are taken seriously and included in a theory of international justice as acts that, although possibly indirectly, unduly harm other societies both in the present and in the future, and their ability to undermine the realization of the circumstances of justice as well as the status of just institutions, then the available remedies should be similar to

those used to deter illegitimate wars and aggression between societies. Unsustainable growth or environmental contaminations are grounds for coercive action.

The Right to War

Any well-ordered or decent peoples have the right to pursue their legitimate and morally permissible goals free from invasion or interference from other societies (Rawls, 1999b). In times of self defense peoples can go to war to protect themselves, and their allies, from the aggression or actions of another society. These interests must be reasonable and not the rational aims of a state, such as expansion or resource accumulation. Rawls believes any society that is nonaggressive and respects human rights has a right to self-defense (1999b). Preventing or limiting the effects of unsustainable development is an important aspect of legitimate war and self defense.

The actions of outlaw societies, in some cases, require corrective responses on the part of decent and well-ordered peoples. These responses can be in the course of protecting one's own peoples or on behalf of other well-ordered, decent peoples, and importantly for burdened societies. The effects of environmental contamination and degradation have global reach but these effects tend to affect the already worst-off or burdened societies. A legitimate cause of war must include the protection of these already burdened societies.

Previously, I have argued unsustainable practices should fall under the category of aggressive acts or actions in the pursuit of rational aims of a state. Economic sanctions are an available method to correct errant societies; however, these sanctions affect the peoples of outlaw states rather than the decision makers, those who are responsible. Military action or physical conflict may be the only viable coercive action capable of correcting outlaw societies,

but war must be waged in a manner that respects human rights and does not place undue burdens on those arbitrarily associated through place of birth in outlaw societies.

Rawls's "just war doctrine" provides a helpful guide to the parameters of a just war (Rawls, 1999b, p.94). Well-ordered and decent peoples are still restricted to permissible actions during times of war. Human rights are still a central concern of international relations. As such, well-ordered and decent peoples must separate out those who brought about the conditions of war. Outlaw and noncompliant states are likely to have a centralized form of government where most, if not all, decisions are made. This effectively bases the responsibility for noncompliant actions or acts of aggression in the hands of the few in power. War against peoples would be unjust in circumstances where the citizens were powerless to effect change (1999b). Further, during wars well-ordered and decent peoples are to indicate the terms of resolution that will conclude the aggression between peoples.

The terms of "just war" as applied to environmental concerns need modification. Although unsustainable practices threaten peoples, both domestically and internationally, the perpetrators of unsustainable practices are sometimes non-state agents like companies. These non-state agents present difficulties for permissible, just coercive actions. Economic sanctions in the forms of trade embargos can be applied to the goods or holdings of international companies. However, sanctions may not be enough. Companies are guided by the dictates of the free market. Exploiting niches for economic gain is a free market aim that can come in to conflict with the peaceful coexistence of peoples.

Companies are subject to the same restraints as societies of peoples. They cannot work to undermine or prevent the realization of the circumstances of justice, create burdens threatening the status of peoples as well-ordered or decent, or burden already burdened societies. In this way,

the actions of companies and societies are similar. The question is whether companies, as non-state actors, are open to the sanctions of state actors to correct noncompliant behavior.

It is the responsibility of societies to constrain the actions of its native companies. Companies can have the same deleterious effects on the peaceful coexistence of well-ordered and decent peoples. A society is held accountable for the actions of its various internal factions and organizations. If an internal organization is committing acts of aggression, terrorism provides the starkest example, it is the responsibility of the host or base country to curtail that organization's noncompliant activities, seek assistance in the matter of correcting noncompliance, or face involuntary assistance from other peoples.

China and Lead Poisoning

China has enjoyed decades of unprecedented growth. However, China's development has been at the expense of its people, especially rural residents. Manufacturing and resource harvesting (mining) contribute to China's environmental degradation. Their hazardous practices, especially toxic dumping, harm the nearby residents and, possibly, distant populations, as well. Lead and heavy metal poisoning can "damage the brain, kidneys, and blood cells, which may result in anemia, deficits in IQ, high blood pressure, coma, or death" (Human Rights Watch 2011 p. 17). Unfortunately, this case illustrates the need for intervention.

China has a responsibility to its people to maintain a healthy and secure environment capable of fostering the capabilities and success of its population. Further, China has a responsibility to the international community to maintain the articles of the Universal Declaration of Human Rights, which is supported by the United Nations (UN), an international body of deliberation and action China is a key member. The neglect of China's duties to its

people, concerning lead poisoning, violates, at least, the 3rd, 8th, and 25th articles of the declaration.

Article three states: “everyone has a right to life, liberty, and security of person” (United Nations 1948). Article 25 is similar to article three but futures the definition of life and liberty. According to article 25, people are entitled to “adequate health” and “wellbeing” for the sake of the individual and their family (United Nations 1948). China has a responsibility regardless of its internal structure or constitution to assist its people and maintain a healthy environment capable of promoting human rights. However, the report on lead poisoning in China details the lack of response and the lack of political recourse individuals have to change the situation, another violation of the declaration of human rights. Article eight demands that countries allow individuals to seek remedies for infractions of fundamental laws, such as human rights. However, China has only paid lip service to calls for remediation. Chinese officials claim every effort has been done to limit or prevent toxic dumping. Companies who are found to be violating this provision are supposedly held accountable, however the dumping continues. The birth defects and delayed development are still rampant in part of China with little indication of change (Human Rights Watch 2011).

The UN has been effectively powerless to change the behavior of China towards its people. As a permanent Security Council member, China maintains one of eight powerful seats in the United Nations. China, through its role as permanent member of the Security Council, is effectively able, with some support, to veto any provisions from the UN deemed contrary to the rational aims of China as a state. As an international body devoted to peace, the peace is achieved, as Rawls would say, for the wrong reasons. Peace is purchased at the cost of human rights violations. There seems to be no conceivable force available to the UN, and its members

through the purview of the UN, to conjure sufficient coercion necessary to change China's behavior.

International justice must seek peace but not at the price of human rights violations. China's inaction in the case of lead poisoning demands substantial assistance or intervention from the international community. These actions cannot be stymied by protocol or arrangements of power. Rawls's law of peoples is explicit in this manner. Well-ordered or decent societies will protect the rights of its people, however if a society is incapable or unwilling to protect the wellbeing of its people the society is no longer well-ordered, or decent. This society becomes either an outlaw state due to its noncompliance or a burdened state. Burdened or outlaw societies place obligations on well-ordered societies to rectify the situation. It is the duty of all well-ordered societies to help lift burdened or outlaw societies to well-ordered status.

The methods available in Rawls's law of peoples include military intervention. The UN also provides for such measures but these measures have been consistently limited to smaller, less powerful countries such as Rwanda, Iran, and Sudan. An international organization, such as the UN, must be able to coerce even its most powerful members. The law of peoples allows for such coercion for the sake of human rights violations.

The Duty of Assistance

The final end of political society, according to Rawls, should be to help burdened societies manage their own affairs reasonably and rationally and bring burdened societies into the Society of Peoples (Rawls, 1993, p. 106). Human rights are best achieved under a well-ordered society. A burdened society lacks either the material resources or expertise necessary to maintain a well-ordered society. This duty to assist peoples who have so far failed to achieve

well-ordered societies, due to historical or circumstantial hardships, is similar to the minimum savings agreed to by the parties in the original position, known as the just-savings principle. Like the just-savings principle, the duty of assistance is used to establish and maintain just institutions of society and “secure a social world that makes possible a worthwhile life for all its citizens” (Rawls, 1999b, p. 107). Rawls’s scheme of international justice demonstrates the concern all societies should have for the status of other peoples and their societies regardless of affinity.

Rawls admits the extension of concern is not a natural inclination, even among liberal peoples (Rawls, 1999b, p. 112). However, the progression from self interest and mere rational aims to extended notions of affinity is possible. Rawls maintains that liberal, decent peoples are interested in a world where all peoples will live in a well-ordered society. The affinities of peoples are not fixed and are capable of expansion (p. 113). The concern for other societies and their people may begin with the cold calculation of maintaining peace and limiting external threats but can evolve to genuine concern for the wellbeing of other peoples.

The concept of assistance to burdened societies can be extended, further, to any society, or generation, failing to meet the basic tenants of a well-ordered society. The aim of assistance is for the burdened society to maintain the minimum material and expertise necessary to support a well-ordered society and meet the basic circumstances of justice. The duty of assistance can encompass the burdens of any future society.

The duty of assistance implies corresponding obligations, specifically limits on the actions of societies, namely, their level of resource consumption or environmental contamination. Nature, as an interconnected, interdependent and complex system relies on the good status and quality of its components to maintain its integrity. Meaning, the actions of states

or peoples that contaminate or harm nature harm both neighboring and distant societies placing undue burdens on others.

Corollary obligations from the duty of assistance are durable and extend over the life of any society and its peoples. The interconnected, interdependent character and instrumental value of nature extends this obligation to the environment protection. Unsustainable practices threaten the ability of peoples to maintain, or achieve, well-ordered and just societies, which should be the aim of all well-ordered peoples. Like the principle of just savings the obligations implied by the duty of assistance are matters of justice. However, unlike the principle of just savings the obligations to burdened and future peoples include more than mere capital accumulation and investment (Rawls, 1999b, p. 106).

The purpose of assistance is to help burdened societies achieve just and stable institutions. The help provided by well-ordered peoples does not have to be in the form of capital. Rawls actually warns against using funds in an attempt to absolve deficiencies in burdened societies (Rawls 1999b, 106-7). The accumulation of wealth for the sake of wealth does not automatically right a burdened society. Rawls provides examples of societies with relatively few natural resources or with limited supplies that are liberal and decent, Japan for example. The lesson being that although capital may be a necessary tool of assistance it is not a sufficient condition and should not be the only tool of assistance, the goal of assistance is for burdened peoples to realize just institutions, which, according to Rawls, can only be done with an emphasis on human rights (Rawls, 1999b, pp. 108-111).

It is the responsibility of the world's governments to protect and conserve the natural resources and creative biology of the world. It is the responsibility of the world's peoples to hold their own governments and the governments of others accountable in this task of sustainability.

Efforts to ensure the sustainability of nature should be universal, which requires commitments from all peoples and governments. Noncompliance or unsustainable practices are grounds for assistance in the form of coercive sanctions, war, or aid. The duty of assistance reflects peoples' shared fate in the quality of the environment and the mutual interest in maintaining human rights for all peoples regardless of citizenship or place in time.

CHAPTER FOUR: CONCLUSIONS

The environment currently overlapping generations inhabit is surpassed in degradation only by the environment it will leave to succeeding generations. Declining environmental quality affects peoples regardless of wealth or position; risks and hazards operate without concerns for borders or treatise. Increasingly, the realization of human rights and the circumstances of justice become more difficult to attain. These problems are global, enduring and require international and intergenerational commitments. Attempts to mitigate or reverse environmental decline must recognize the scope of the problem as international and intergenerational. John Rawls's theory of justice, as applied to international relations, provides the necessary theoretical paradigm for confronting international concerns, such as the environment.

Theories of justice must recognize the situated and interconnected nature of humanity's relationship with the environment. Domestic, international, and intergenerational theories of justice are premised on there being a minimum of environmental quality and are incomplete if they do not account for environmental protection. John Rawls's theory of justice as applied to international relations provides the proper global scope of justice but needs some augmentation to account for environmental protection. The creation of a ninth principle or the law of peoples incorporated terms of aggression beyond the open hostilities prohibited by the original theory. Domestic, as well as international, actions were originally limited to those supportive or neutral toward human rights. Human rights are of universal concern for all societies and peoples. The violation of human rights permits legitimate acts of coercion to correct errant and noncompliant. The matter of human rights in John Rawls's theory of international justice provides the necessary scope and permissible actions of righting noncompliant societies. By integrating environmental

quality as a necessary condition for the realization of human rights, terms of use and misuse mitigation were achieved.

By focusing on the circumstances of justice rather than obligations to particular individuals, Rawls's theory can be applied across borders and across time. The concern for human rights is universal. There are no stipulations for cultural, national, time of existence allegiances. Although peoples, through their governments, should maintain their own territory and are held accountable for their actions, they should do so for the sake of their own society in perpetuity and the human rights of others in perpetuity.

The events leading up to the current state of the environment are premised on the untenable and dangerous assumption that natural resources are inexhaustible and contamination absolvable through the environments natural processes. The problem, plainly, is license and the lack of accountability. Rawls's law of peoples sets limits on permissible actions a society can rightly take, but autonomy is secured for peaceful and compliant states. The need for an autocratic centralized government has been avoided and thus saves cultural diveristy, but autonomy is not without limits. Peoples, through their governments, can be the agents of their own environmental policy and responsible for the externalities their territory and internal organizations create. However, as in times of war or aggression, this right to self-determination or autonomy is not inviolable. Human rights are to be protected by all peoples, regardless of culture or citizenship.

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