Abstract: This paper develops the notion of eco-relational pluralism based on Rawls’s mature theory of political liberalism. I explore the liberal commitment to protecting basic liberties as a means of furthering environmentalist ends. I argue that fair acknowledgement of eco-relational pluralism challenges the authority of the economic growth and development imperative as an uncontroversial and absolute good. I supplement my Rawlsian framework with a discussion of Martha Nussbaum’s capabilities approach for adjudicating competing claims to resources in tragic circumstances, which fall beyond the purview of Rawls’s ideal conception of justice.

I. Introduction

At the semicentennial of John Rawls’s magnum opus, *A Theory of Justice*, liberalism continues to serve as the globally dominant paradigm of political/legal justification.¹ Over this period, global rates of environmental degradation and destruction have unfortunately steadily increased. Numerous environmental theorists have spurned the Rawlsian framework, claiming its core message is a continuation of the anti-green, exploitative neoliberalism that has pushed society toward an imminent ecological reckoning (Schramme 2006; Holland 2007; Read 2011; Welburn 2013). Dominic Welburn condemns Rawls’s prioritization of liberal neutrality: “The well-ordered society must remain neutral between competing green and non-green conceptions…The well-ordered society thus promotes liberty to the extent that it could diminish the liberty of future citizens – citizens who will have to endure a warmer [ecologically degraded] planet (Welburn 2013, 62-63).

¹ Charles Mills explains liberalism’s dominance, “The importance of liberalism is that it is the most successful political philosophy of modernity and is now globally hegemonic. Liberalism provides the most developed body of normative theory for understanding the rights of persons and the conceptualization of social justice” (Mills 2017, 203).
In a recent paper, I argue this dismissal of the Rawlsian framework has been too hurried (Author 2021). I offer an environmentalist interpretation of Rawls’s theory of justice by developing precisely that aspect critics take to be an environmental failing of the approach, i.e., that treating citizens as free and equal requires the state remain neutral in toleration of a plurality of relationships with nature (Sagoff 1986, Miller 1999, de-Shalit 1995). I contend that liberalism’s commitment to pluralism can rather be utilized to protect citizens’ environmental interests.

In this paper, I will further develop and refine the notion of *eco-relational pluralism* as a discursive and legal tool for compelling states to curtail environmentally destructive social and economic practices. I will focus on Rawls’s first principle of justice, the basic liberties principle, as it best exemplifies liberalism’s commitment to respecting a plurality of values, protecting and enabling diverse conceptions of the good life. Emphasizing the first principle of justice is in keeping with developments in Rawls’s thought. Rawls came to view his second principle of justice (fair equality of opportunity, the difference principle, and the just savings principle) as merely one of several reasonable comprehensive moral doctrines to which a moral agent might subscribe. Yet the basic liberties principle maintains its pertinence in his mature theory as a political conception of justice that any reasonable citizen of a liberal society should hold, regardless of their particular comprehensive worldview.

I will also explore the limits of this approach by identifying situations in which it is unable to provide guidance on what justice requires. In *Political Liberalism*, Rawls advances a “basic needs” principle, i.e., a right to minimally adequate levels of subsistence, shelter, basic healthcare, and education, which he states is lexically prior to the basic liberties principle (Rawls 1993, 7). Although some thinkers conceive a basic needs principle as environmentally
advantageous (Bell 2005 and Wolf 2009), I will analyze how Rawls’s addendum to the principles of justice presents a significant hurdle to my environmentalist interpretation. Lastly, I will employ Martha Nussbaum’s capabilities approach as a theoretical alternative in circumstances Rawls himself admits fall beyond the purview of his theory of justice.

II. Delineating Environmental Harms Under Consideration

A central motivation of Rawls’s theory of justice is to uphold the liberal ideal that states ought to remain neutral in their treatment of various reasonable comprehensive doctrines. He declares that the principles of justice “not only specify the terms of cooperation between persons, but they define a pact of reconciliation between diverse religions and moral beliefs, and the forms of culture to which they belong.” (Rawls 1999, 194).

Numerous conceptions of the good life are tethered to maintaining traditional relationships with the natural world. This is supported by Nussbaum’s inclusion of “relations with other species” and “control over ones’ environment” in her Central Human Capabilities constitutive of a good life (Nussbaum 2011). The final section of this paper will examine Nussbaum’s Central Human Capabilities in greater detail.

The plurality of human lifestyles practiced across the globe can be broadly categorized into two different camps of eco-relationality: autarkic citizens and roving citizens. Autarkic citizens maintain a highly localized self-sufficient lifestyle requiring a deep epistemic connection to their environment, whereas roving citizens are comfortable with substituting, depleting, and destroying habitats, due to not being immediately materially dependent upon/significantly tied to
a particular land/ecosystem (Author 2021). People living in the ‘developed’ world frequently mistakenly assume that nearly all humans alive today derive their sustenance from participating in a globalized, industrial economy. It is paramount to correct this misconception in our political philosophy by acknowledging the multitudes who rely on localized subsistence practices. Glenn Albrecht estimates “about half of the world’s population still lives in a small town or rural village and is mainly sustained by its hinterland. These people are already intensely local in their survival orientation and will be highly motivated to protect their patch should the need arise” (Albrecht 2019, 173).

Since citizens’ connection to nature can play a central role in their ability to develop and pursue their life-plans, justice as fairness requires respecting eco-relational pluralism as a basic right (Author 2021). For a given society to satisfy the condition of respect for reasonable pluralism, the state must remain eco-relationally neutral, by permitting citizens to maintain a reasonable range of connections with the natural world. This condition is often unmet, as is made evident time and again by modern states’ extensive privileging of roving lifestyles over autarkic ones. Eco-relational pluralism cannot be met if roving interests incessantly trump autarkic citizens’ desire to maintain an ecologically sustainable and intimate bond with their habitat. The prioritization of roving interests is a prominent cause of environment destruction, often occurring in the form of ecocide.

I define ecocide as intentional environmental harm that undermines the vital interests of non-consenting citizens (Author 2021). I conceive “intentional environmental harms”

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2 These two categories exist on a spectrum. Autarkic citizens may maintain limited trade with outside communities, and roving citizens may partially rely on their immediate habitat for subsistence purposes.

3 Non-autarkic citizens can also claim to be victims of ecocide, but they must meet the criterion of demonstrating that an act of intentional environmental destruction occurred without their
expansively to include the foreseen side effects of actors’ direct aims, e.g., an executive who knowingly pollutes a river to maximize profit for his firm (Author 2021). 4 A well-documented and vivid examples of ecocide is the Canadian government’s decision to dam the La Grande River to provide urban communities electricity at the expense of the Northern Cree (McCUTCHEON 1991 and Churchill 2002). 5

III. Ecocide’s Violations of the Basic Liberties Principle

According to Rawls, the basic liberties principle establishes the fundamental rights and liberties that must be allocated to all citizens equally for a society to be just. This secures the means through which citizens can pursue their reasonable life plans and fosters a minimal level of agreement to safeguard social cooperation and stability. Rawls clarifies that the “intuitive” idea behind the basic liberties principle is “to generalize the principle of religious toleration to a social form, thereby arriving at equal liberty in public institutions” (Rawls 1999, 180). Helpfully, Rawls offers a list of the basic liberties:

4 A benefit of this focus on ecocide is that it helps shift environmental responsibility from individuals to corporate actors, as it is often corporations who are exploiting and degrading autarkic communities’ land. For example, instead of placing responsibility for environmental pollution on consumers and municipal waste, focus on ecocide draws attention to the production side of economic activity, including mining, logging, factory farming, resource depletion, and pollution through industrial processes.

5 Other examples include: the British and Australian governments’ authorization of nuclear testing at Maralinga, which devastated the local Anangu people (Mattingley and Edwards 2016); the Bolsonaro administration’s decision to incentivize the clearing of the Amazonian rainforest in Brazil for agricultural development, which threatens the 400-500 indigenous groups who call the region home (SOLLY 2019); and Carbocel (a Colombian state-run company) and ExxonMobil strip mining the Cerrejon Mountain for coal to the detriment of the indigenous Wayúu people and surrounding Afro-Colombian villages (REDNER 2014).
Important among these are political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. (Rawls 1999, 53)

Based on this list, the two most salient basic liberties that ecocide likely infringes upon are liberty of conscience and right to personal property. The following will analyze both potential violations.

A. Ecocide and Liberty of Conscience

Rawls conceives liberty of conscience broadly, as “a liberty to pursue the perfection of the human spirit, however this perfection is [reasonably] conceived” (Singer 1988, 229). Ecocide might limit autarkic citizens’ liberty of conscience if environmental destruction makes it impossible for these citizens to engage in many of their cultural, religious, ceremonial, and spiritual practices that are connected to, and must be performed within, a specific natural space. Brent Singer reminds us that “many religions (probably most) have material bases such that in the absence of these, the practice of that religion is rendered very difficult, if not impossible” (Singer 1988, 227). For instance, numerous religions around the world feature deities residing in ‘sacred groves,’ such as Hinduism, Buddhism, Shintoism, Jainism, and Maausk, which establishes these groves as places of worship and preservation. Aaron Lercher is correct in claiming that if these sacred natural spaces are destroyed it “is analogous to destruction of a church” (Lercher 2006, 315). Beyond traditional religious worship, many anthropologists and religious studies scholars have explored deep green worldviews, in which “nature is sacred, has intrinsic value, and is therefore due reverent care” in contemporary societies (Taylor 2010, 10). There is therefore no reason to assume that citizens with religious/spiritual/conscience
connections to natural entities and spaces live outside of, and independent from, the modern liberal states Rawls is considering.

Ecocide may sever citizens’ connection to nature and foreclose key aspects of their religious freedom and purposeful self-development, frustrating the underlying reason for the basic liberties principle. Lercher therefore maintains that “a negative right against interference in the pursuit of natural value is a reasonable extension of religious liberty [i.e., liberty of conscience]” (Lercher 2006, 215). Even if this is true, however, liberty of conscience is not absolute and may be curtailed by the needs of securing basic liberties for others (Singer 1988, 229). Adjudicating which liberties should be inhibited for the sake of others when will be discussed below. For now, it is enough to recognize that justice as fairness requires considering the importance of sacred natural spaces for protecting citizens’ liberty of conscience.

B. Ecocide and Right to Personal Property

Rawls stipulates citizens are entitled to “at least certain forms of real property, such as dwellings and private grounds” (Rawls 2001, 114 note 36). He defends this right to housing, shelter, and personal items on Hegelian grounds, as a vehicle for safeguarding “a sufficient material basis for personal independence and a sense of self respect, both of which are essential for the adequate development and exercise of the moral powers” (Rawls 2001, 114). Due to the intimate material, cultural, and psychological connection autarkic citizens have to their local habitat, permitting ecocide appears anathema to their right to personal property.

It is important to bear in mind, however, that the right to personal property – same as liberty of conscience – is not absolute. As Rawls explains, “the basic liberties are specified by institutional rights and duties that entitle citizens to do various things…[they] are a framework of
legally protected paths and opportunities” (Rawls 1993, 325). The principle aims to secure a “fully adequate scheme of basic liberties for all” (Rawls 1993, 291). It does not aim to maximize each citizen’s desire to pursue their own preferences.

As such, the basic liberty principle does not protect the specific objects citizens currently value, but rather necessitates a certain institutional structure that guarantees the rights necessary to hold personal property. This becomes clear in cases where citizens’ personal property claims conflict. For instance, imagine a rancher exercising their property rights by clearing forests on their estate. This results in disrupting the ecosystem on which neighboring autarkic citizens depend. If both the rancher and autarkic citizens have a reasonable expectation to utilize their personal property, how ought justice as fairness to adjudicate the conflict?

Answering this and similar questions are key to developing a workable understanding of what respecting eco-relational pluralism entails. For Rawls, an important consideration in determining whose interests should be prioritized depends on whether purposeful self-development is inhibited by the other party’s demands/actions. As Rawls says, the role of the right to personal property “is to allow a sufficient material basis for a sense of personal independence and self-respect” (Rawls 1993, 298).

One might argue the ranchers can clear their land without violating autarkic citizens’ basic liberties if the impacted citizens are adequately compensated or relocated to a new habitat. If it is possible to provide sufficient reparative support, then it might not necessarily violate autarkic citizens’ basic rights. There may, however, be some non-material losses, e.g., memories, attachments, relationships, and identification with their former habitat, that are non-substitutable. For example, impacted citizens’ might be unable to conduct religious ceremonies tied to a specific geographic location or natural entity if that place/object/entity has been destroyed or
made inaccessible. Severing the deep connection between autarkic citizens and their ecosystem likely forecloses key aspects of their self-development, which frustrates the underlying reason for the basic liberties principle, even if material needs are met. For this reason, it seems the basic liberties principle would be more readily satisfied by prohibiting the rancher from clearing their land. If the rancher is only clearing their land for financial gains, it would be markedly easier to achieve a “fully adequate” scheme of liberties by compensating the rancher for their lost revenue. If, however, the rancher has non-material connections to clearing the land – if it is somehow tied to their purposeful self-development or self-conception – then it is much less straightforward whether the autarkic citizens’ claims ought to be prioritized. Here the ideal of eco-relational pluralism may offer guidance.

IV. Adjudicating Clashes in Eco-Liberties

Rawls laments that, even in just societies, some ways of life and cultural practices will inevitably die out: “no society can include within itself all forms of life…there is no social world without loss” (Rawls 1993, 197). One might therefore argue that states should remain neutral and abstain from taking a side regarding roving’ and autarkic citizens’ conflicting rights claims. This argument holds that autarkic communities disappearing is not necessarily a failure of justice, since it is accepted that the basic institutional structures will inevitably encourage some ways of life and discourage others. Rawls asserts that it is “impractical” to expect political liberalism achieve “neutrality of effect or influence” (Rawls 1993, 194). Rather, Rawls avers that the state

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6 The Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) offers a conceptual framework articulating the non-substitutability of relational values between peoples and place, which serves to illustrate autarkic citizens’ local knowledge and worldviews (Diaz et al 2015).
should not intentionally aim to benefit any reasonable comprehensive doctrine over others (Rawls 1993, 194).

Respect for reasonable pluralism seeks to preserve the priority of justice over the pursuit of any specific conception of the good. To achieve this, the basic structure of society must be able to sustain a range of reasonable ways of life. I contend that states often infringe the ‘neutrality of aim’ requirement by undertaking projects, issuing allowances, or legislating policies that explicitly aim to promote economic growth and the maintenance of industrial systems of economic production at the expense of the perpetration of ecocide. Such decisions contravene the basic impetus for neutrality – that there can be reasonable disagreements about the good life.

According to Rawls’s political liberalism, it is a violation of state neutrality to implement policies overtly hostile to reasonable ways of life or that openly espouse the superiority of one comprehensive doctrine over others. There is no reason to think that autarkic citizens’ desire to preserve their habitat should be excluded from this consideration, as this is obviously a reasonable conception of the good – a reasonability becoming more and more apparent as environmental crises worsen. Rawls even explicitly says that “justice as fairness honors, as far as it can, the claims of those who wish to withdraw from the modern world… provided only that they acknowledge the principles of the political conception of justice” (Rawls 1993, 200). Hence, states overtly intending to privilege roving conceptions of the good at the expense of autarkic conceptions are in direct violation of justice as fairness.

When attempting to adjudicate clashes over competing liberties in currently existing societies (i.e., with the ‘veil lifted’), the state ought to consider the documented pervasive prioritization of roving comprehensive doctrines over autarkic ones. Modern states have
rampantly and expressly prioritized economic growth and development over eco-social sustainability. This is most apparent in the drive to integrate communities into global supply chains at the cost of their ability to maintain traditional/local subsistence practices. For example, the Chinese government’s construction of 50,000 large dams in attempt to bring the power grid and modern amenities reach every village in China, despite the fact that the forced resettlement and disruption of traditional economies diminished the social capital of impacted citizens (Tilt and Gerkey 2016, 153).  

Currently in policy circles, the goal of economic growth and development is accepted hegemonically as a nearly unquestionable good. As Arturo Escobar discusses, developmentalism, i.e., the idea that more mining, drilling, building, and manufacturing is indubitably socially beneficial because it maintains and expands the economy, has been the hegemonic ideology driving international affairs at least since Harry Truman’s 1949 inaugural address. Truman announced the U.S.’s aspiration to deliver a “fair deal” for the entire world, aimed at “uplifting” the “underdeveloped areas” of the globe. Since then, “the dream [of integrating the entire world into the global industrial system] was universally accepted by those in power” (Escobar 1995: 3-4). Even at the time, however, it was recognized that such changes came at a price, as noted by the United Nations Department of Social and Economic Affairs:  

“There is a sense in which rapid economic progress is impossible without painful adjustments. Ancient philosophies have to be scrapped; old social institutions have to disintegrate; bonds of cast, creed and race have to burst; and large numbers of persons who cannot keep up with progress have to have their expectations of a comfortable life frustrated. Very few communities are willing to pay the full price of economic progress.” (U.N. 1951: 15)

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7 The United Nations Environment Program (UNEP) World Commission on Dams (WCD) estimated that since the end of WWII large-scale damming projects have been responsible for the displacement of roughly 40-60 million people from predominately indigenous, tribal, and peasant communities (2000: xxx).
Despite these concerns, the goal of ‘development’ has proceeded unrelentingly.

When these decisions are made time and again, sacrificing traditional cultures in the name of “economic progress,” a compelling de facto case can be made that states are violating the basic liberties principle by advancing one reasonable conception of the good over other legitimate views. Rawls affirms, “[T]he state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another, or to give greater assistance to those who pursue it” (Rawls 1993, 193). It is important for states to realize that pursuing economic growth and development for its own sake (at the expense of preserving ecosystem functioning) is not a neutral aim. It is an aim informed by a particular conception of the good that is not universally shared. Autarkic citizens’ reasonable desire to preserve the ecological integrity of their lands makes the non-neutrality of this aim clear.

Critics of liberal environmentalism have wrongly assumed that maintaining state neutrality requires conceding to demands for economic growth and development (Welburn 2013). But such responses would not be legitimate if they pursue economic growth and development for its own sake, e.g., for the purpose of ‘raising the standard of living.’ Respect for eco-relational pluralism puts the onus on states to justify any proposed ecocidal activity as a means of obtaining or preserving justice – a burden that will often not be met. Before kowtowing to critics’ conviction that environmentalism can only succeed once the fetters of political liberalism are abandoned, it makes sense to first try truly applying the political ideal of respect for pluralism to the topic of eco-relational values.

In this light, respect for eco-relational pluralism offers a powerful tool for challenging the developmentalist credo by demanding that liberal states recognize citizens’ commitment to environmental preservation as a comprehensive doctrine rivaling the importance of the almighty
economic growth imperative. Some environmentalist thinkers (Daly 1996, Kallis 2018, and Hickel 2019) argue the entire notion of economic growth for growth’s sake should be jettisoned. The approach here offered is more subtle in that it is not dismissing the value of economic growth and development *tout court*, but simply establishing that it cannot, in fairness, be viewed as an absolute good.

V. Hard Cases: Conflicts Between Rights and Needs

It appears societies can *justly* pursue ecocide when the environmental destruction is construed as a necessary means of satisfying the principles of justice. Rawls states in *Political Liberalism* that a “basic needs principle” is *lexically prior* to the basic liberties principle.\(^8\) To say such a principle is lexically prior seems to entail that the demands of fulfilling some citizens’ basic *needs* could justify violating other citizens’ basic *rights*. We could imagine a scenario, for example, in which clearing and developing autarkic citizens’ land would be deemed necessary for satisfying the basic material needs of the urban poor (e.g., by generating energy or capital used to fulfill those needs). This possibility appears more likely the more expansive and technologically advanced we conceive of basic material necessities.\(^9\) In such cases, the basic liberties of autarkic citizens could be justly sacrificed in attempting to fulfill the material needs of roving citizens.

\(^8\) To reiterate, the “basic needs” are the socially guaranteed minimum of material resources that citizens’ must be able to access, i.e., a material floor, which citizens are not allowed to fall below (Rawls 1993, 7).

\(^9\) Rawls states that establishing and maintaining just institutions does not require the society have a high level of wealth or income (Rawls 2001, 47, note 12). It is unclear what this means for determining which technologies should be deemed necessary for achieving minimal adequacy in material life, e.g., electricity, high-speed transit, communication technologies, etc.
Rawls’s addition of the basic needs principle asserts that some material conditions must be met before issues of legal and political rights can be considered. This has some intuitive appeal. For example, it is unreasonable to think citizens can engage in public discourse or vote if they are starving or homeless. One might argue, on the other hand, that Rawls is mistaken in holding that the fulfillment of basic needs should be lexically prior to respect for basic liberties in that legal, political, and economic rights are too interdependent to settle one prior to the others. Moreover, one might think that the failure to satisfy any of these rights is incompatible with human dignity. Such an intuition is in line with Nussbaum’s capabilities theory which will be discussed in the next section (Nussbaum 2006, 179).

Now imagine a scenario in which the basic needs of the urban poor can only be met by sacrificing the fulfillment of autarkic citizens’ basic needs. Rawls’s theory is unable to provide insight into whose needs ought to prioritized in such needs vs. needs situations. If the state is too immiserated to achieve and preserve just institutions, then it does not meet the condition of “moderate scarcity” in the “circumstances of justice” (Rawls 1999, 110). Hence, Rawls’s theory is philosophically incapable of offering guidance regarding what justice requires in a “burdened society” (Rawls 1999b, 106). As a matter of public policy, it seems these tragic situations cannot simply be ignored because they fall outside the scope of Rawls’s ideal conception of justice.

Similarly, Rawls’s theory is unable to resolve disputes between differing, yet adequate, possible arrangements of basic liberties. For instance, imagine a scenario in which the perpetration of ecocide would impede autarkic citizens’ purposeful self-development; but not engaging in ecocide could also be construed as threatening the purposeful self-development of
the urban poor.\textsuperscript{10} As Inder Marwar recognizes, “there seems to be no clear resolution with respect to conflicts between the different possible arrangements of the basic liberties; we must simply accept the limits of the original position and the irreducibility of conflicting schemes” (Marwar 2007, 11). In conflicts over needs vs. needs or liberties vs. liberties, determining whose basic rights and interests should be prioritized cannot be decided from behind the veil of ignorance.\textsuperscript{11} Rawls’s theory is incapable of answering these challenges and abdicates responsibility to reasonable citizens and institutions to resolve these issues at later stages of political decision-making (legislative, judicial, and administrative stages) when more information is available on the society’s present conditions and history. These limitations are philosophically unsatisfying.

Moreover, the sad reality is that difficult policy decisions of this kind are expected to become more prevalent in the future. Autarkic citizens are likely to suffer many of the gravest socio-ecological impacts from climate change. As resources become scarce, more expanses of wilderness will be made ‘productive,’ converting the last remnants of intact ecosystems into resource extraction sites. The move to ‘renewable resources,’ unfortunately, does not solve this problem, but intensifies it. James McCarthy explains, “large-scale geographies of renewable energy production, distribution, and consumption on a global scale would thus likely involve powerful new rounds of investment in, and claims on, rural areas, on scales potentially far exceeding even recent land grabs” (McCarthy 2015, 2497). McCarthy recognizes that the

\\textsuperscript{10} For example, basic material needs could be met on both sides, but a case could be made that additional economic resources are required for promoting the purposeful self-development of the urban poor, e.g., destruction of natural habitats to generate capital/energy to fund/power arts programs and post-secondary educational initiatives.

\\textsuperscript{11} Recall this paper’s earlier discussion asserting that, after the veil of ignorance is lifted, eco-relational pluralism can be employed as a tool to help make these decisions in societies that have pervasively privileged one way of life over another.
burdens of shifting to renewable/green energy production will “likely fall disproportionately on rural areas, where land values are lowest and existing users often have less power and fewer formal land rights” (McCarthy 2015, 2497). In other words, transitioning societies to much more spatially extensive forms of energy production (e.g., building wind farms, solar farms, geothermal power plants, and hydroelectric dams) will almost certainly include plans to exploit areas inhabited by economically and politically marginal autarkic citizens.¹²

An adequate conception of eco-relational pluralism must offer guidance on how to proceed in adjudicating conflicting interests of this kind. Since Rawls’s ideal constructivist framework is unable to provide insight into what justice requires in these situations, analysis must be undertaken through a different conception of justice. Henceforth, I will refer to circumstances in which the only way to meet the basic needs of some segment of the population is through acts of ecocide as ecologically tragic situations.

VI. Capabilities Approach to Ecologically Tragic Situations

Martha Nussbaum’s capabilities approach can offer guidance in balancing competing justice concerns in ecologically tragic situations. To begin, it is important to distinguish Nussbaum’s “capabilities approach” (Nussbaum 2006 and 2011) from Amartya Sen’s “capability approach” (Sen 2009). Unlike Rawls’s procedural method (constructing principles of justice through an idealized process of reflection), both Sen and Nussbaum’s approaches are “outcome-oriented.” They proceed by comparing how individual and groups are actually faring by

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¹² Reuters reports that the Business & Human Rights Resource Centre (BHRRC) has documented a “concerning rise in human rights violations in renewable energy projects … recording about 200 allegations of land rights and indigenous rights abuses, displacement, violence and threats in the last decade” (Chandran 2021).
tracking the advancement or retreat of (in)justice through alterations in groups’ welfare over time, i.e., analyzing and comparing what people are able to do and to be.

Sen eschews adopting a definite list of capabilities by arguing that a pre-political cataloging of social goods would undermine actors’ ability to be heard and respected throughout the social decision-making process (Sen 2009, 242). Nussbaum arrives at the opposite conclusion, arguing that respecting other cultures and listening to a multitude of perspectives requires a definitive list of capabilities as a precondition of successful democratic deliberation (Nussbaum 2006, 297). Sen’s emphasis on the role of public reason and deliberative processes renders his theory just as philosophically muted as Rawls’s when confronted with tragic situations, in that both leave it up to democratic decision-making to determine how best to proceed. Nussbaum criticizes Rawls and Sen’s abdication of philosophical reasoning in tragic situations, arguing that it is precisely during such crises that normative reflection is most useful and necessary. She asserts it is possible to rank one tragic state of affairs over another: “sometimes one choice may be clearly better than another in a tragic situation, even though all available choices involve a violation of some sort” (Nussbaum 2011, 86).

Moreover, Sen’s democratic approach to social decision-making provides shaky foundation for defending eco-relational pluralism in states dominated by roving citizens.\(^\text{13}\) Imagine a state in which a majority of citizens, who meet and deliberate in ways that satisfy normatively appropriate procedural constraints, decide to replace their pluralistic constitution

\(^{13}\text{In fact, being recognized as an independent nation-state often entails that the state accept binding commitments with international development organizations, such as the International Monetary Fund and the World Bank, to promote roving citizens’ interests (e.g. free trade and open markets). As Vijay Prashad emphasizes, “the rules of the world order were established when the majority of humanity struggled under colonial and post-colonial domination” (Prashad 2012, 24). Colonial and newly independent states were required to do whatever was necessary to integrate local markets and societies into the expanding globalized economic system.}\)
with one declaring the country ought to become an entirely urban, industrialized landscape. Sen’s democratically oriented capability approach would allow for such an outcome, implying that respect for eco-relational pluralism is a negotiable item for a decent pluralistic democracy. Nussbaum’s approach would likely not allow this: “We ought to say, ‘What the majority desires here is wrong’” (Nussbaum 2004, 201). Nussbaum’s interpretation of capabilities as constitutionally secured entitlements offers a strong basis for respecting eco-relational pluralism. Her theory thus seems more amenable to evaluating the demands of justice in ecologically tragic situations than that of Rawls or Sen.

In applying her theory to ecologically tragic situations, practitioners would begin by examining all the available alternatives, holding them up against the Central Human Capabilities. These are capabilities states must afford their citizenry to be considered just, including: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one’s environment) (Nussbaum 2003, 42-43; 2006, 78–81; 2001, 78-81). Nussbaum’s Central Human Capabilities gain their “central” status from their being not merely instrumental for a flourishing human life but constitutive of such a life. In her words, “all of them are implicit in the idea of a life worth human dignity” (Nussbaum 2006, 70). Accordingly, if any capability of any citizen falls below the appropriate threshold, it constitutes an injustice (Nussbaum 2006, 176). Unlike Rawls’s theory, Nussbaum maintains that each entitlement is worthy of equal consideration. There is no lexical prioritization of basic needs over basic liberties or basic liberties over fair equality of opportunity.

This difference has important implications regarding state responses to ecologically tragic situations. Per Rawls’s theory, the state ought to sacrifice autarkic citizen’s non-material interests, e.g., freedom of conscience, if doing so could meet the basic needs of the urban poor
without causing comparable loss. According to Nussbaum’s framework, in which “each important entitlement is a distinctive thing in its own right,” such privileging of material needs is not automatically prioritized (Nussbaum 2006, 283). Nussbaum’s capabilities approach thus provides a stronger basis for respecting eco-relational pluralism than justice as fairness in certain situations.

According to Nussbaum, if there is an option available in which no citizen’s basic entitlements are violated, then that is the outcome that ought to be pursued. However, ecologically tragic situations are scenarios in which all options include a violation of fundamental entitlements. As such, without the lexical prioritization of rights offered in Rawls’s theory, which justice concerns take precedent in the capabilities approach?

Nussbaum argues decision-makers should pursue the option that over the long-run has the best prospects of changing circumstances so that society will not face those tragic choices in the future (Nussbaum 2000, 1024-1025).14 This adds an important temporal element to the capabilities approach that is absent from Rawls’s prioritization of “basic needs,” which could potentially sacrifice long-term interests for short-term benefits (e.g., providing for the needs of

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14 Breena Holland’s recommendation that Nusbaum’s capabilities approach should include “capability ceilings” is an interesting proposal regarding how best to “avoid a [tragic] capability conflict without pushing anyone’s capability below a threshold” (Holland 2008, 420). Implementing capability ceilings is an effective means of preventing tragic situations from occurring in the first place. But her addendum does not offer insight regarding what decisions should be made in a tragic situation (where every choice necessarily results in pushing some citizens’ capabilities below a threshold), which is the focus of the present discussion. Furthermore, while Holland’s proposal seems it could prohibit ecocidal activity and respect eco-relational pluralism, it is unclear what conceptual benefits focusing on “ceilings” achieves. The limits are set based on if greater allowances would push citizens below a “threshold,” as such it seems that ensuring citizens’ basic entitlements do not fall below a certain level is pulling the normative weight. In other words, justifying the need to prevent ecocide because it undermines citizens’ ability to achieve basic entitlements is a more straightforward way of protecting citizens’ environmental interests than attempting to establish capability ceilings.
the urban poor of this generation in a way that inadvertently condemns future generations to an ecological wasteland).\textsuperscript{15}

Beyond emphasizing the need for long-term structural change to prevent such injustices from occurring in the future, there is an additional aspect of Nussbaum’s approach that can assist in deciding whose entitlements should be prioritized in ecologically tragic situations. She claims recent work by Jonathan Wolff and Avner De-Shalit offers valuable insights for deciding which outcomes are preferable, i.e., which capabilities ought to be prioritized over others in tragic situations (Nussbaum 2011, 97). In summary, Wolff and De-Shalit propose that, in deciding how to proceed in tragic situations, practitioners and theorists consider the “dynamic clustering” effect of promoting or discouraging a capability. This entails consideration of how gaining or losing a capability can cause accumulation and reproduction of (dis)advantage (Wolff and De-Shalit 2007). They argue social policy can benefit from indexing “fertile functionings” (capabilities that “spread their good effects over several categories, either directly, or by reducing risk to the other functionings”) and “corrosive disadvantages” (capabilities that “have negative effects on other functionings”) (Wolff and De-Shalit 2007, 121-122).\textsuperscript{16} Nussbaum endorses Wolff and De-Shalit’s conclusion that when two or more capabilities cannot be satisfied, the capabilities that promote fertile functionings and discourage states of affairs that

\textsuperscript{15} Rawls’s “just savings principle” does establish that it would be unjust to future generations to sacrifice natural resources for economic prosperity in the present (Rawls 1999: 251-262). However, the just savings principle functions as a constraint on the difference principle and as such is superseded in lexical priority by the basic needs principle. Consequently, unlike the capabilities approach, it does not offer a basis for preserving sustainable autarkic relationships with nature if some citizens’ basic material needs are unfulfilled in the present.

\textsuperscript{16} Nussbaum criticizes Wolff and De-Shalit for causing conceptual confusion by dubbing the term “fertile functionings,” since the concept is more readily applied to “capabilities” instead of “functionings” (Nussbaum 2011, 98) She jests, “I fear that alliteration has superseded theoretical clarity” (Nussbaum 2011, 98).
generate corrosive disadvantages ought to be prioritized (Nussbaum 2011, 98-100). In ecologically tragic situations, policy makers might evaluate whether ecocide will generate greater fertile flourishing than corrosive disadvantages in the society writ large.

These determinations must be made on a case-by-case basis.\footnote{For a case-study exploring how to adjudicate competing interests in an ecologically tragic situation, see my paper “Mining Thacker Pass: Environmental Justice and the Demands of Green Energy” (Rodeiro 2022). The paper analyzes the proposed lithium mine at Thacker Pass, Nevada, which pits society’s need to transition away from fossil fuels against the interests of preserving a critical wildlife habitat on which local ranchers and indigenous communities depend.} But, generally, it seems unlikely ecocide will promote human flourishing, even in cases where perpetrated with the aim of furthering basic welfare. Ecocide is unlikely to generate greater social capabilities than it erodes due to the fact that, as Breena Holland puts it, “functioning ecological systems create the physical conditions that are necessary for human life, conditions that enable the very possibility of human life” (Holland 2007, 6). In other words, functioning ecological systems are necessary for having any of the other capabilities. Based on this, Holland proposes that “Sustainable Ecological Capacity” should constitute a “meta-capability” added to Nussbaum’s list (Holland 2007).

Holland’s notion of a meta-capability is somewhat confusing, as it is unclear how Sustainable Ecological Capacity is applicable to the “beings and doings” of humans’ individual lives.\footnote{A problem with construing Sustainable Ecological Capacity as a capability is that, unlike Nussbaum’s other Central Human Capabilities, which are constitutive of human wellbeing, an individual can choose to live unsustainably and still flourish at a personal level, as evidenced by the prevalence of roving lifestyles in the modern world.} Nevertheless, it is true that functioning ecological systems are a prerequisite for achieving Central Human Capabilities, in that these systems maintain the biochemical background conditions necessary for sustaining human flourishing. For instance, functioning
ecosystems facilitate food production, waste absorption, and maintain the appropriate chemical compositions of air and water. It may be true that in certain circumstances destroying an ecosystem may assist in meeting basic entitlements; in the long run, however, such destruction will likely impede future generations achieving the Central Human Capabilities.

Holland’s insight recognizes that all citizens are threatened by ecocide, in that each of us has at least some epistemic and material connection to natural objects, entities, and processes (e.g., clean air and water) necessary for our very survival. Humanity’s dependence on exhaustible, non-substitutable natural goods makes it abundantly clear that a society based on entirely roving relationships with the natural world is a hopeless impossibility that cannot be sustained long-term. Once this is recognized, the need for environmental protections as a form of mutual benefit becomes clear.

VIII. Conclusion

Upon realizing that ecocide can readily undermine each and every Central Human Capability (not just for autarkic citizens but for all), it seems rather implausible that it could be justified as a means of meeting some citizens’ fundamental entitlements. At the very least, the analysis of ecologically tragic situations has demonstrated that, for ecocide to be justified, it mandates that every other avenue that does not generate comparable justice concerns must be exhausted. The proposed ecocidal activity must generate greater fertile flourishing and less corrosion of capabilities than allowing some citizens’ basic needs to go unfulfilled, both at present and in the future.

The paper has explored how Rawls’s mature theory of political liberalism, centered on preserving basic liberties, offers a means of compelling states to curtail environmental
destruction and degradation. While the paper acknowledges there are limits to relying on eco-relational pluralism for confronting the present ecological crisis, it has attempted to refute the perceived weaknesses of the approach, as well as provide alternate paths forward in situations falling beyond the purview of a Rawlsian theory of justice.

Works Cited:


