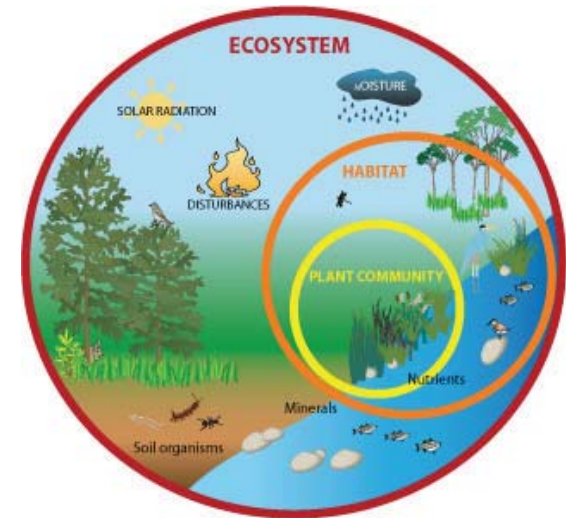


- Ecological Limits v. Economic Growth
- The Role of Law and Legal Theory for the Need of Future Generations
- Inga Carlman, Professor Ph.D. ,Department for Technology and Sustainable Development
- Mid-Sweden University, Östersund, Sweden and Aðalheiður Jóhannsdóttir, Professor L.L.D., Faculty of Law, University of Iceland

What is the problem?

Is it the Ecosystems - the biosphere?



If not, what is it?

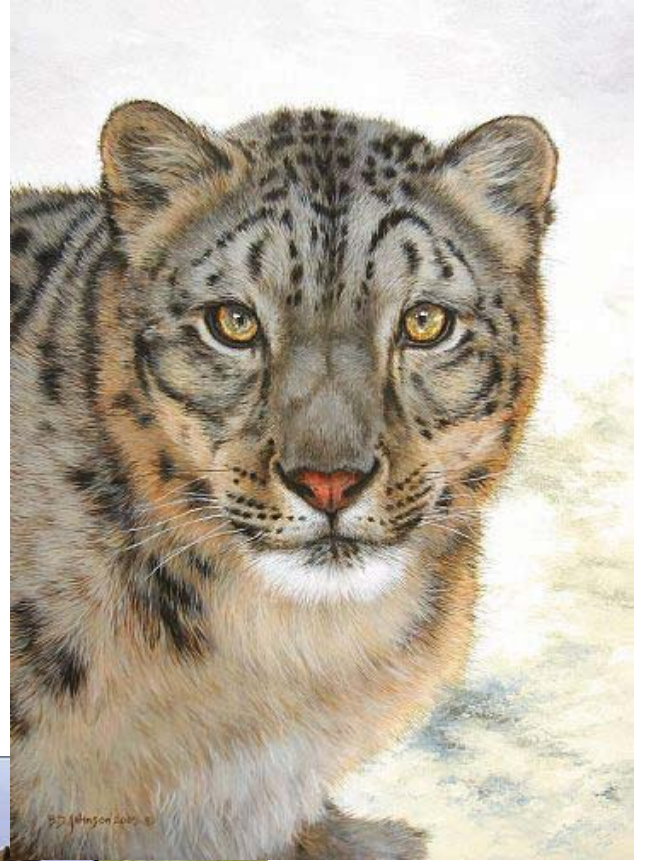
- Human actions!
- Man's behaviour!
- Both rich and poor people!

Negative environmental effects of human actions





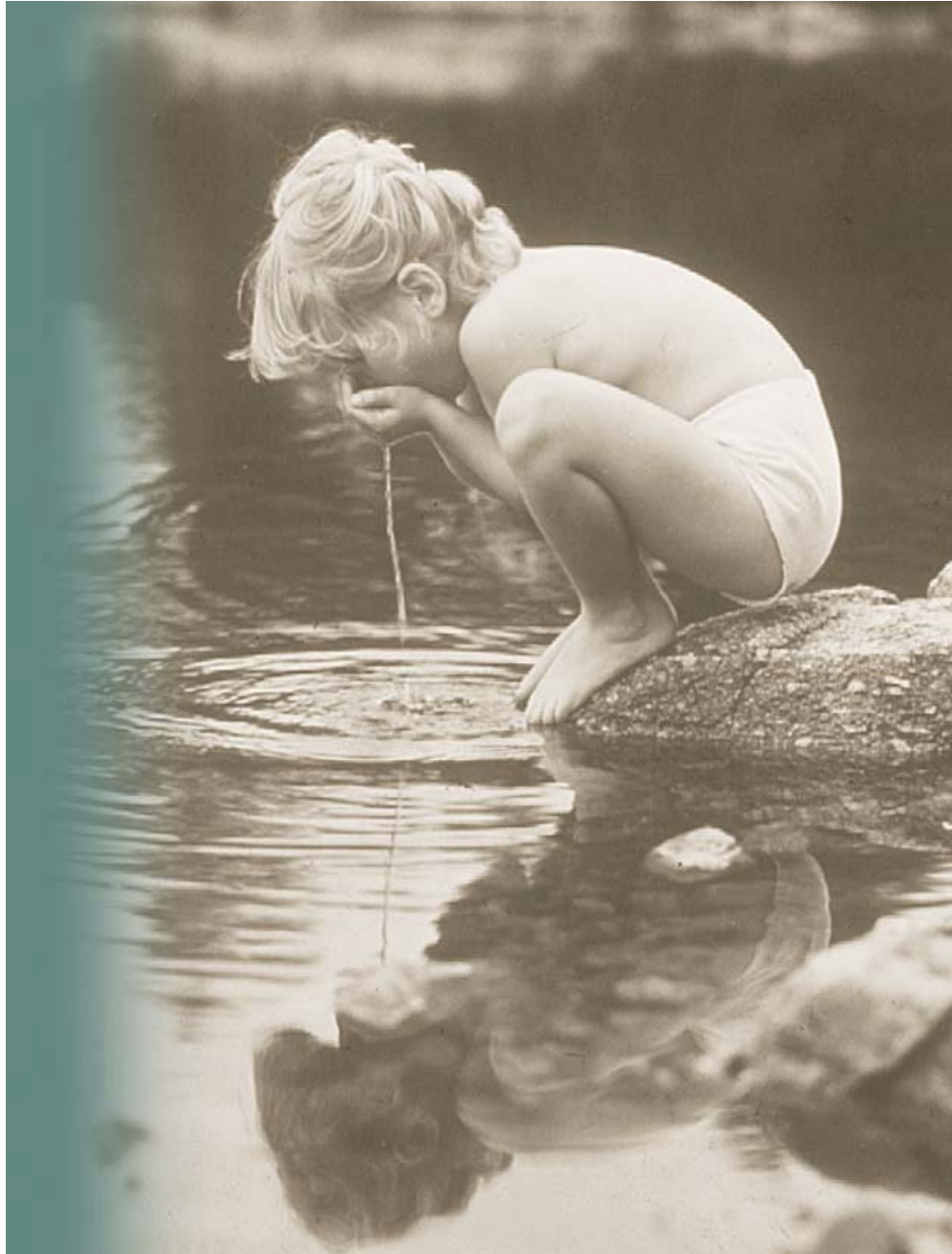




Political goals

- 1987 Sustainable development – the overarching goal
- Reinforced and more pregnant in 1992 and 2002
 - subgoals in relation to e.g.
 - loss of biodiversity loss
 - deforestation
 - desertification
 - Poverty

Goals for whom?



Approaches when defining and analysing problems

- Is man to be the point of departure?
 - How much burden can humans put up with – economically?
- Is nature to be the starting point?
 - How much can nature take – carrying capacity?
- This is vital for the outcome of solutions!

Since 1750

Driving forces

- Economic growth
- Technological development
- Trade

Law up to the middle of 1960s

- Eased the way for economic growth
- Started to deal with negative impacts health mostly water related

Law after 1960s

- the first modern environmental laws are enacted e.g CCA, CWA (US) Environmental Protection Act (Se) (1960s and 1970s). More are to come
- Two main political ideologies

Economy in practice since 1960s

- Mainstream economy reigns i.e neoclassical economy
- Some economists started to embrace not only natural resource economics but also partly environmental economics

Scientific issues after 1950

Social science		Natural science and technology
democracy , freedom		ecosystems
justice		chemicals
reflexivity		scarce resources
devolution – bottom up		energy technology
anti –authoritism		GMO
communication		
	Technology/economy	
equity	utilitarianism	
	anti-C & C – deregulation	
	free will – pro-voluntarity	
	market forces – cap and trade	
	globalisation – market forces	
	mitigation and adaptation	
	ecological modernization	

social science

- Fear of the past – consequences of social political systems
 - Communism, Fascism, Nazism, racism, etc (oppression)
- Critique of the implementation of the well-fare state - unequal distribution of power and means
- Participation

- Theory of justice
- Theory of communicative action
- Critical theory
- Critical legal studies
- Reflexivity

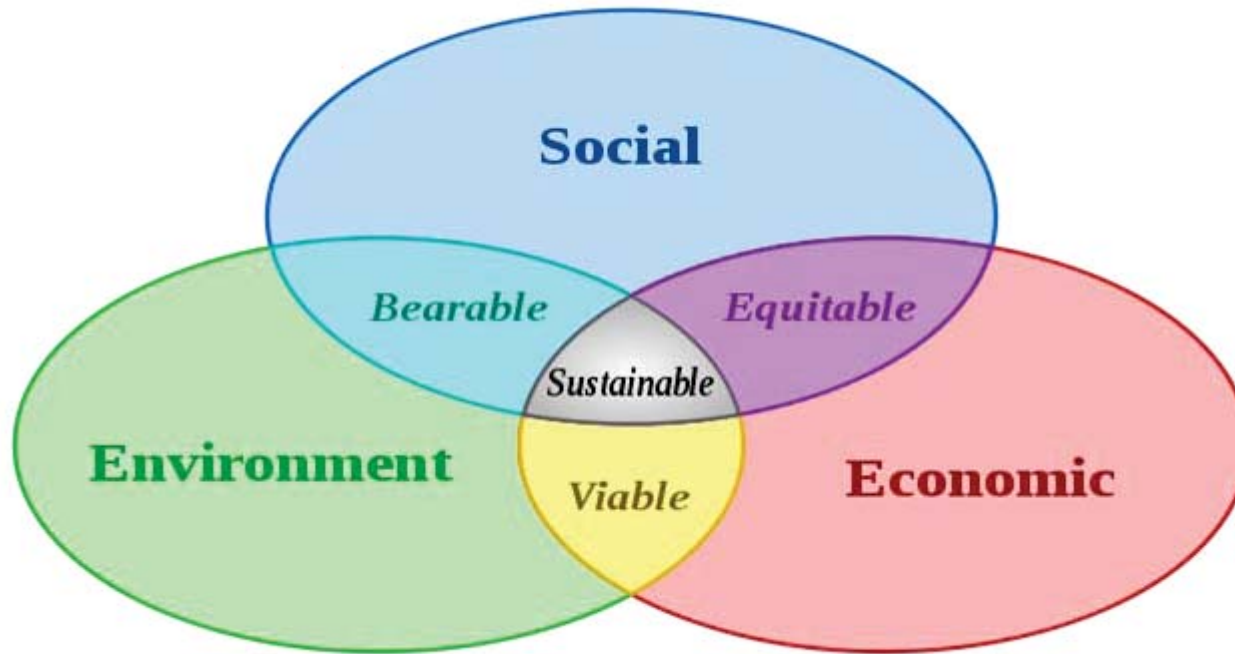
- Hostility towards limits (boundaries) reflect the authoritative state and hinder freedom.

- ***Actor approach and intra-generational perspective - old paradigm***

Sustainable development

- The term *development* in sustainable development attracts social scientists.
- Weak sustainability is coined i.e. economic and environmental concerns can and must be balanced.

Weak sustainability - balancing



- Note, however, that if the environment fails, social and economic systems fail too. That is where weak sustainability fails.

The market thrives

- Social scientific research, based on mainstream social scientific theory (the old paradigm) and *weak sustainability, fits* the market – economy and industry – perfectly.

Demonizing *Command and Control*

- Command and control is a ghost to the market – industry and economy.
- Command and control stands for anti-freedom, anti-profit etc

What is command about?

- Command and control assume the Rule of Law.
- Where does law come from?
- From the people through the legislators and fundamental legal principles.
- The legislators will either take part in steering or not.

What is command about? *cont.*

- If the legislators want to take part in steering activities and behaviour in society then the absolutely fundamental question is:
 - ***Are the legislators not to regulate and in stead hope for initiative from below? Or are the legislators to take command and say how things should be and set e.g. the ecological quality limits***
- This is the kernel of the command concept, and the most important issue for understanding mankind's relation to ecological sustainability.

What is control about?

- Control is about
 1. Inspection – enforcement to see that rules are followed, or
 2. Control to make sure that environmental quality standards/goals are met e.g. that the air is sufficiently clean.
- Both are vital but must be held and understood separately. No₂ is the most important point.

Control system



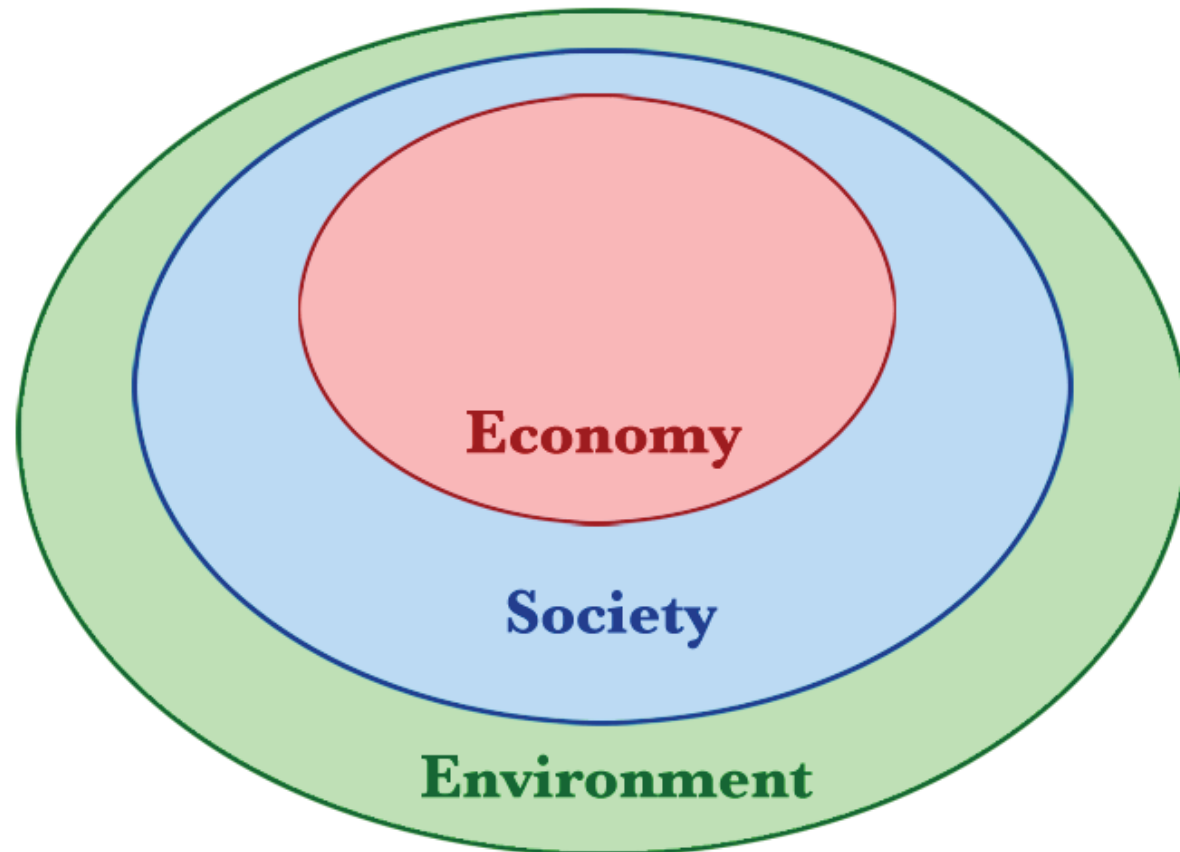
The new paradigm – Law and Economics

- Environmental law
 - A new perspective on law and the role of law
- The ecological economics
 - A new perspective on economics and the role of economy
- Both take the point of departure in the ecosystems
 - i.e. a reactor approach

The new paradigm – Law and Economics cont.

- Recognizes the ecological systems as an unconditional fundament for the human existence for generations to come
 - the laws of nature, the thermodynamic law etc
 - complexity, non-linearity
- Recognizes the ability of man
 - e.g. to plan

Strong sustainability - the new paradigm



A sustainable environmental law

- The new legal paradigm is built on
 - Rule of Law
 - a biosphere with its intrinsic natural laws
 - ecological sustainability

The *purpose* of a sustainable legal order

- to place future generations on the same level as the present ones
- to reach and maintain natural and environmental preconditions for sustainable development (ecological sustainability)
- to ensure the rights to a healthy environment for individuals
- to generally create a good environmental quality
- to create preconditions for the best possible development
- to do this with the greatest possible consideration of constitutional rights, such as freedom and property rights as long as these do not violate or counteract sustainable development.

Environmental quality standards

- Environmental quality standards - EQS – have nothing to do with ideologies
 - Nature just reacts, it does not punish anyone. It is steered by natural laws.
- Environmental quality standards are totally separated from planned economy
 - Setting limits, reaching them and maintaining them is not fundamentalism or any other “ism”, it is simply necessary ***IF*** we shall take the responsibility for coming generations.

Law and economy - again

- If ecological economists do not relate to law as such and also to the new legal paradigm, they simply come out wrong.

Final statement

- It is vital to understand the difference between:
 - Whether
 - How

Development is extremely complex

