



The law and sustainable futures



A fundamental point

- **The future is not somewhere we are going, it is something we are creating**
- **Always** many possible futures
- **We should be trying to shape a sustainable future**

How could we create *unsustainable* futures ?

- Rapid population growth
- Growing consumption per person
- Deplete mineral resources, e.g. Oil
- Over-use fisheries, forests, water
- Disrupt climate, lose biodiversity
- Economy demands resource growth
- Widen inequality
- Materialism or fundamentalism

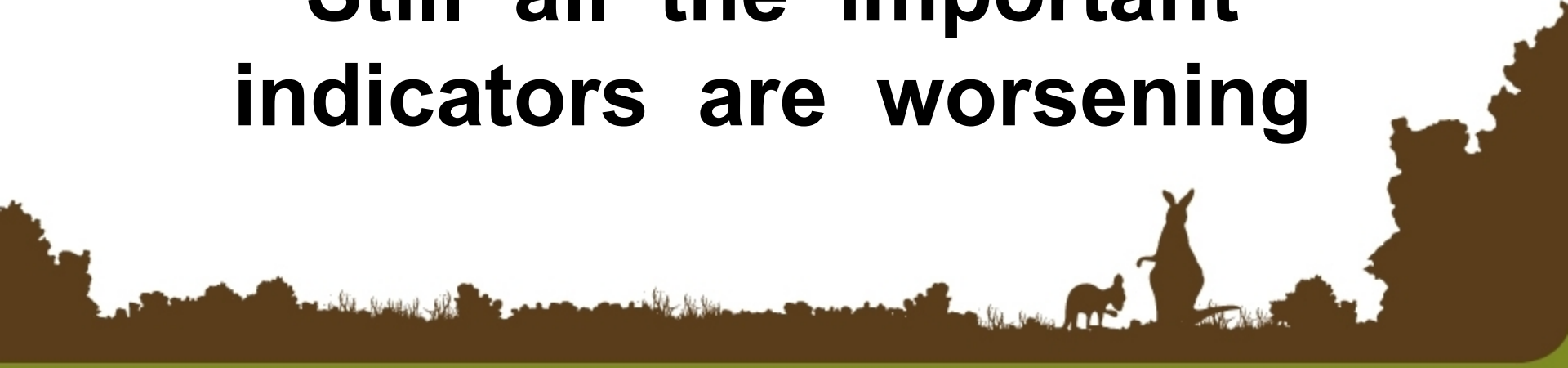
"Our present course
is unsustainable -
postponing action is
no longer an option"

- GEO 2000 [UNEP 1999]



Nearly 50 years awareness
35 Years of environmental law
25 Years of EDOs

**Still all the important
indicators are worsening**



SoE 1, 1996: major challenges

SoE 2, 2001: all getting worse

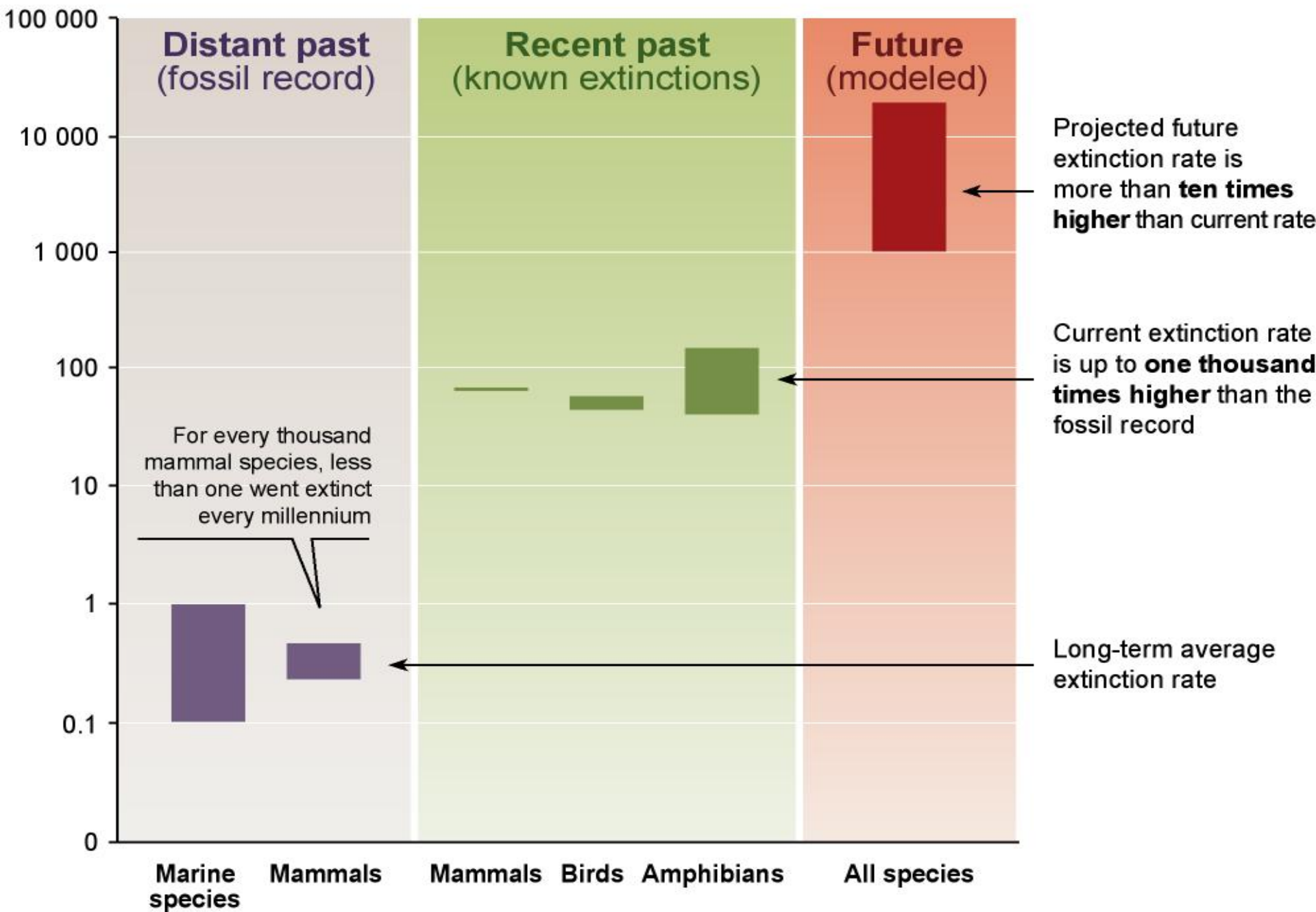
SoE 3, 2006: still getting worse

**MAP 1-3: all indicators worse
except urban air quality**

GEO4: “Unprecedented environmental change at global and regional levels”

- Increasing global average temperatures, widespread melting of snow and ice, and rising global average sea level
- Unsustainable land use and climate change driving land degradation
- Aquatic ecosystems are heavily exploited
- Water availability declining globally
- Almost all well-studied species declining in distribution, abundance or both

Extinctions per thousand species per millennium

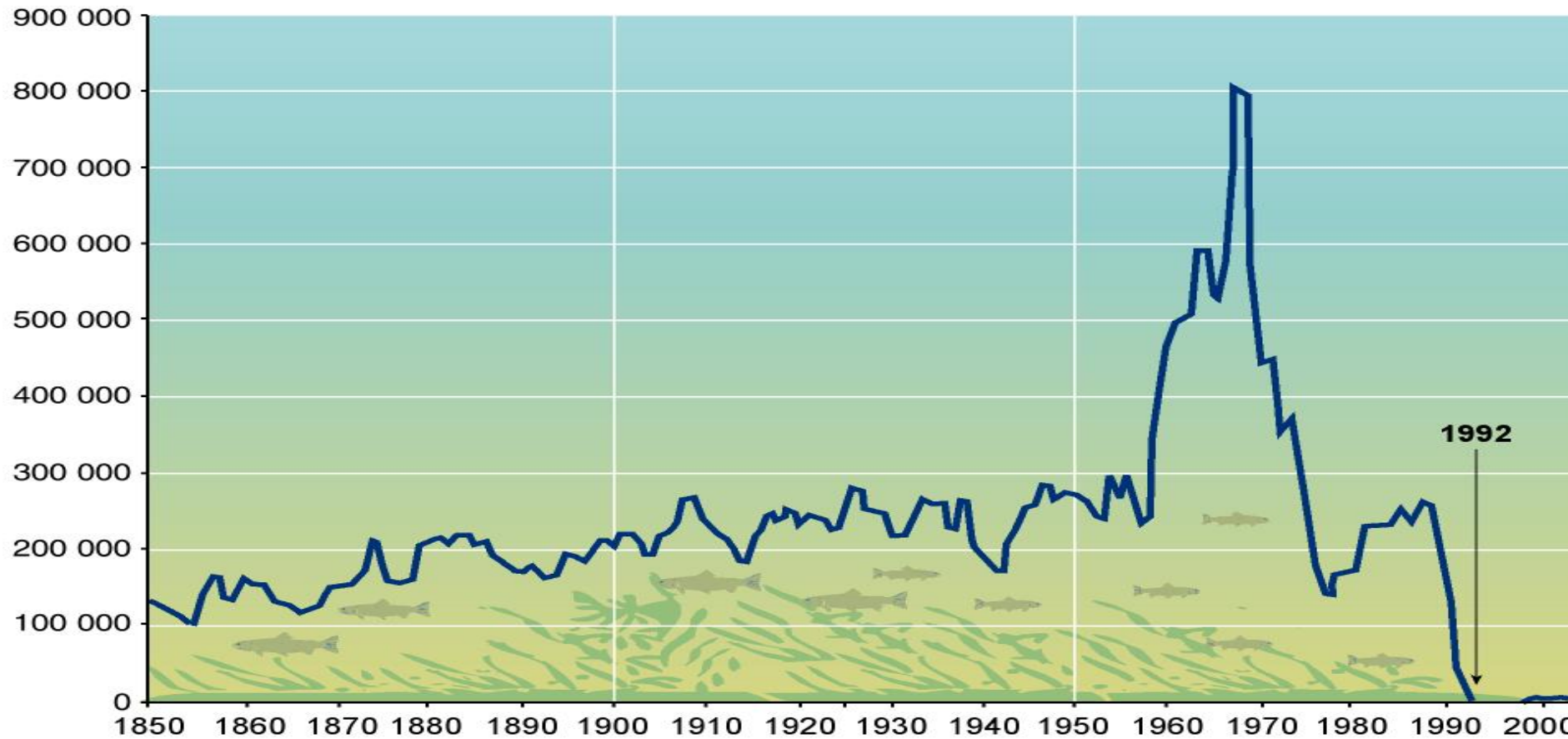


Increased likelihood of non-linear changes

There is *established but incomplete* evidence that our impacts on ecosystems are increasing the likelihood of non-linear changes ... with important consequences for human well – being.

An example of non-linear change

Fish landings in tons



Source: Millennium Ecosystem Assessment

**Though we have
made important
gains, the present
system has critical
flaws**

Defects of present system

- **Weighted to economic development**
- **Fails to consider cumulative impacts**
- **Deals poorly with scientific evidence**
- **Rarely uses precautionary principle**
- **Cannot handle climate change etc.**
- **Privileges this generation over future**
- **Doesn't verify earlier studies, decisions**
- **Rarely enforces conditions imposed**



**And the goalposts
sometimes get
moved when we
look like scoring !**



Prof. Rob Fowler's Conclusions

- **Environmental law developed in piecemeal fashion and lacks an underlying objective**
- **Including an “objects” clause re ESD seeks to provide retrospectively an appropriate philosophical basis**
- **“balancing” approach to ESD assumes “trade-offs” – so frequently emphasises economic “benefits”**
- **“rights-based approach” to environmental law almost totally absent, except partially w.r.t. “procedural” rights**

RIGHTS-BASED APPROACHES TO ENVIRONMENTAL LAW

PROCEDURAL RIGHTS

- Standing to sue (including for trees!)
- Access to information
- Access to legal resources
- Immunity from costs
- Anti-SLAPP laws

HUMAN RIGHTS

- Right to clean and healthy environment
- Right of access to water
- Right to development

SUBSTANTIVE RIGHTS FOR NATURE

- Deep ecology movement
- Public trust doctrine
- Ecuadorian Constitution 2008

“Nature or *Pachamama* [the Andean Earth goddess], where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution. Every person, people, community or nationality, will be able to demand the recognition of rights for nature before the public bodies”.

CONSTITUTION OF ECUADOR, adopted by public referendum, September 2008

Polly Higgins: Ecocide

- “extensive destruction, damage to or loss of ecosystems...”
- Amend Rome Statute to add
- Provides an erga omnes obligation
- Complements national laws
- Strict liability, without *mens rea*
- Hence focus on *preventing* harm



AUSTRALIAN
CONSERVATION
FOUNDATION



STOP CRIME

A new approach



Scientific panels informing process

Transfer burden of proof

Overhaul standard: no reasonable doubt

Past advice evaluated

Cumulative impacts explicitly considered

Read consideration of future generations

Independent assessment

Monitoring in the light of claims

Enforcement of conditions

What is impeding this ?

- **The legal system embodies community values**
- **While we esteem economic growth above environmental integrity and social cohesion, so will the law**
- **Shape civilised values rather than hope legal palliatives might slow impacts of inappropriate values**

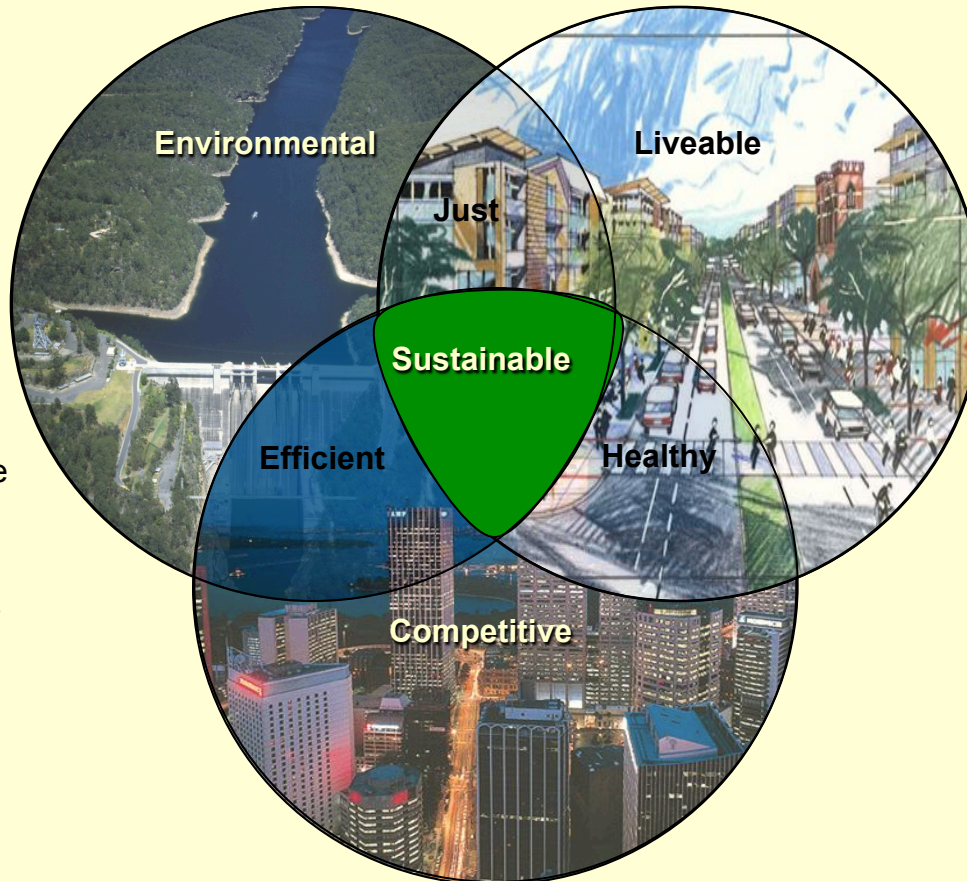
Vision for a Sustainable City

Sustainability

Sustainability is about living within our means. It is about managing our consumption of resources and balancing environmental, economic and social outcomes. It means improving our quality of life, but making that improvement without leaving a burden on the future generations.

Looking after our Environment

Environmental Sustainability is about reducing our impact on the environment by protecting our air, water and land, our native flora and fauna. It means reducing the load on our natural resources, such as water and fuels for energy, and decreasing our production of waste.



A Better Place to Live

Liveability is about making Sydney a better place to live. It means being able to walk to your corner shop, local school, park or bus stop, as well as providing us with a choice of housing that meets our needs.

Supporting our Economy

Competitiveness is about supporting Sydney's role as a Global city, and ensuring our city's long term economic prosperity. It means providing quality infrastructure and services to service our jobs and the economy, and supporting urban centres

SOCIETY

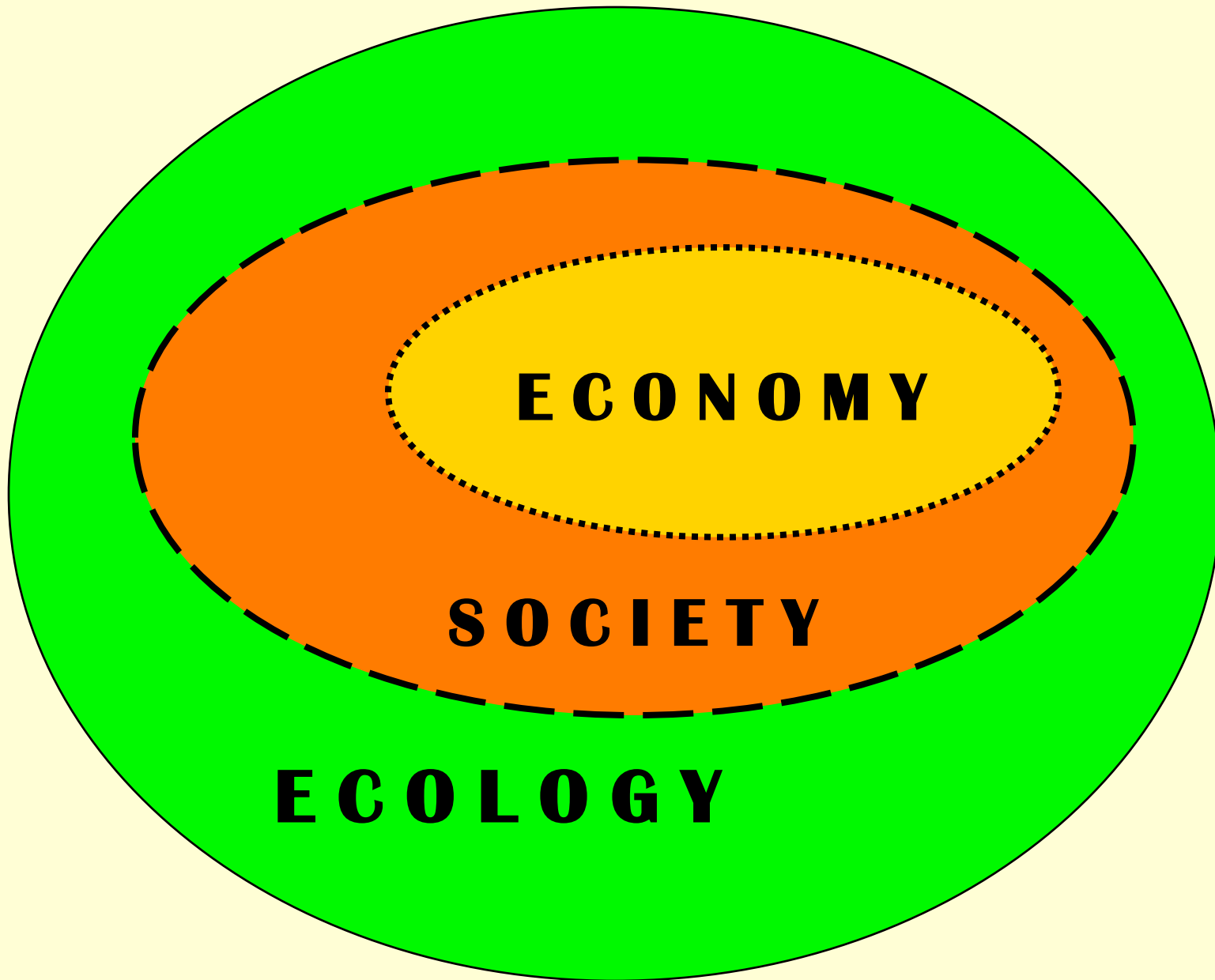
ENVIRT

ECONOMY

Markets give us things
many of us want

Natural systems give us
things we all really need





New suite of values

- Domination of nature becomes *ecological sensitivity*
- Consumerism replaced by *quality of life*
- Individualism -> *human solidarity*

Conclusion

- Despite all our efforts, natural values still in decline
- We could envisage a much better legal framework
- Law embodies our values
- So need values compatible with sustainable futures
- Our moral responsibility to other species and to future generations

