Editorial¹

Ecosystem services and capitalism: a valuation or de-valuation of 'nature'?

'Nowadays people know the price of everything and the value of nothing'²

As with many of Oscar Wilde's amusing but apparently flippant statements, the quotation above, on closer consideration, raises something much more profound, and here seems to get to the heart of the concerns raised by the thematic topic of this edition of the *Journal of Human Rights and the Environment* – ecosystem services and capitalism, with a particular focus on the currently topical incarnation of this wider debate in the form of payment for ecosystem services (PES).

In terms of current planetary boundaries thinking,³ which serves to focus attention on the core challenges that we currently face, all of the nine boundary areas⁴ so identified can readily be viewed as being concerned with aspects of ecosystem services. It is salutary to observe that three of those most directly linked to ecosystem services, namely biodiversity loss, climate change and the phosphorous and nitrogen cycles are areas where the boundaries are in fact already being transgressed.⁵ Despite this, it is not so much a sense of scientific urgency that has finally brought (re)considering ecosystems to the fore in international and domestic law, but rather the search for a

1. This is my final editorial for the JHRE as, with regret, I have had to stand down due to pressure of work. I would like to take this opportunity to thank the staff at Edward Elgar for their unwavering support for the journal and for those of us involved in its conception and production. I would also like to convey my thanks to all of those authors and reviewers who have given of their time, effort and creativity to make the editorial process a thoroughly stimulating one. Above all, I express my gratitude to the rest of the editorial team: Evadne Grant; Louis Kotze; formerly Ben Richardson; and more recently Jacinta Ruru, for being simply wonderful to work with. Last, but by no means least, to my co-editor-in-chief, Anna Gear, my heartfelt thanks for inviting me to join you in this exciting and timely project – I shall be cheering you on as you take the journal forward.

2. Oscar Wilde, *The Picture of Dorian Grey*, Gutenberg EBook, 2008, Chapter 4, accessed 9 May 2014.

3. J Rockström, W Steffen, K Noone, Å Persson, FS Chapin III, E Lambin, TM Lenton, M Scheffer, C Folke, H Schellnhuber, B Nykvist, CA De Wit, T Hughes, S van der Leeuw, H Rodhe, S Sörlin, PK Snyder, R Costanza, U Svedin, M Falkenmark, L Karlberg, RW Corell, VJ Fabry, J Hansen, B Walker, D Liverman, K Richardson, P Crutzen and J Foley, 'Planetary Boundaries: Exploring the Safe Operating Space for Humanity' (2009) 14(2) *Ecology and Society* 32 <<http://www.ecologyandsociety.org/vol14/iss2/art32/>> accessed 9 May 2014.

4. The nine planetary boundaries are: the stratospheric ozone layer; biodiversity; chemicals dispersion; climate change; ocean acidification; freshwater consumption and the global hydrological cycle; land system change; nitrogen and phosphorus inputs into the biosphere and oceans; and atmospheric aerosol loadings (ibid).

5. See <<http://www.stockholmresilience.org/images/18.587b3d0a1325af354a580001346/1381790876077/planetary-boundaries-credit-Azote+copy.jpg>> accessed 9 May 2014.

solution to the global economic crisis that has shaped world affairs for most of the last decade. In 2008 UNEP's call for a 'Global Green New Deal' was one of the nine Joint Crisis Initiatives undertaken by the Secretary-General of the UN and his Chief Executives Board in response to pressing global financial problems. One of the most influential documents in pursuing this agenda and in setting the scene for the United Nations Conference on Sustainable Development (UNCSD) in 2012 (Rio+20) was UNEP's report, 'Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication'⁶ (GER), and it is to this that I will turn for a working conception of ecosystem services that encapsulates the broad range of what they entail. The GER outlines the benefits provided by ecosystem services as including: water and its related functions, biosphere regulatory functions, soil, raw materials, food, fuel, genetic resources and a range of intangible values many of which are discussed in the contributions to this edition. The GER however also unequivocally states that: 'The economic values associated with these ecosystem services, while generally not marketed, are substantial.'⁷ This approach placed ecosystem services (and payment for them) at the heart of the green economy agenda that dominated the run-up to Rio+20. While not sufficiently warmly embraced by the international community as a whole at the UNCSD to make a great deal of substantive progress at the time, the Green Economy remains a strong strand in the conference's outcome document, 'The Future We Want',⁸ and interest in it and its constituent elements, not least PES, is set to continue to shape policy debate and law in this area.

Reid and Nsoh in their contribution to this edition demonstrate important aspects of current debate and innovation in this area and as a consequence raise important considerations centring on the relationship between PES and related innovative biodiversity conservation tools and their ramifications for existing legal relationships between land, wildlife and people. Their article focuses primarily on developments in law and practice in the United Kingdom and particularly in Scotland. They point to the tensions evident in this area in past litigation under the European Convention on Human Rights generated by restrictions on individual property rights in land in the cause of wildlife conservation in the public interest (itself an area of considerable controversy) and contrast this to PES approaches to biodiversity, which instead are predicated on the creation of new property rights – and indeed new types of property rights over nature at the expense of viewing nature as a matter of 'common heritage'. While the authors acknowledge that it is easier to restrict existing rights than it is to create new obligations (or even to add new dimensions to existing obligations) they point to the fact that PES and related approaches will require legal innovation in order to be viable. One difficulty that this raises, however, is an almost inevitable disjuncture between legal mechanisms that necessarily focus on landowners and their discrete parcels of land, and ecosystems that do not fit these man-made systems nor the temporal constraints within which they operate – nor the perceived need somehow to deliver harmony between them. Reid and Nsoh outline a thought-provoking range of possible approaches, from entitlements or credits models to more radical suggestions such as rights for nature and variations on trusteeship, all of which, as with any human endeavour in this regard, have potential but are also problematic.

6. 2011 at <http://www.unep.org/greeneconomy/Portals/88/documents/ger/ger_final_dec_2011/Green%20EconomyReport_Final_Dec2011.pdf> accessed 9 May 2014.

7. GER, 18.

8. At <<https://sustainabledevelopment.un.org/content/documents/733FutureWeWant.pdf>> accessed 26 October 2018.

Pardy's and Read and Cato's contributions to this edition serve to demonstrate the hugely divergent approaches that can be taken to PES approaches to biodiversity conservation and to the relationship between ecosystem services and capitalism. These contributions adopt diametrically opposed and, in their own very distinct ways, controversial perspectives on the central issues that will likely polarize opinion among readers, and they will certainly offer a very thought-provoking read. Pardy's focus is on law and economics and seeks to apply a pure theory of capitalism (very much in the vein of classical economics) as an appropriate lens through which to view ecosystems. Indeed, he argues that in its pure form 'capitalism is a system of governance [largely] based upon the logic of ecosystems'. Many readers will doubtless find this approach somewhat unpalatable and more are likely to disagree with his repeated assertion that 'ecosystems have no purpose, interests or objectives' and his view that 'ecosystems themselves cannot be harmed, only changed'. Pardy's perspective is determinedly anthropocentric, stressing the centrality of the value of ecosystem services to humans. He also interprets value in purely economic terms, which is unlikely to appeal to environmental lawyers and will also prove problematic for many human rights lawyers. Nonetheless, readers are likely to find themselves intrigued by an argument that problematizes several key elements of the application of economic valuation to ecosystems (not least the need to subject ecosystem services to what he terms 'rights that can be bought and sold') and might also find their views challenged by Pardy's view of the role of individual rights vis-à-vis the public interest. In this, Pardy approaches some of the same issues as Reid and Nsoh, though from a more theoretical perspective.

Read and Cato's article focuses attention on the demands of ecological economics. They point to what they term 'the natural capital controversy' that results from the explicit commodification of ecosystem services promoted by PES approaches to biodiversity protection and also to the inherent (but in this context fallacious) notion of commensurability that is thereby transplanted from economics into ecology. The authors further argue that the degree of homogenization required in order to accord value to ecosystem services is conceptually flawed from a theoretical point of view, hitting at the heart of sustainability, and rendering it meaningless in practical terms. Read and Cato argue that the starting point for PES is wrong and that '[a] true ecological economics nests the economy within the ecosystem and does not attempt to re-expand the economy back out to encompass the ecosystem'. This view is certainly appealing on an ecological basis, positioning the economy within the constraints of the biosphere – but it is also very idealistic and far removed from current international law and policy debate in the area. Despite this, their argument offers a useful counterpoint to the current hegemony by signalling the need for a new starting point in our consideration of the value of the natural world.

Despite the obvious tension between their basic starting points, Pardy and Read and Cato all conclude that PES is problematic and signal the need for a more principled engagement with the issues. They disagree entirely, however, concerning which values should inform this endeavour. Therein lies the rub with PES – in seeking to marry the economic with the ecological, PES approaches seem to sit well with neither. There is, it seems, a fundamental impasse at the heart of the relationship between ecosystem services and capitalism – one unlikely to be resolved while neoliberal valuations are in the ascendancy.

Wilkinson's contribution to this edition reflects core difficulties with the current dominance of neoliberal capitalist conceptions of ecosystem value. Wilkinson looks at PES approaches to biodiversity conservation through the lens of ecofeminism.

In so doing she explicitly exposes the shared impact of neoliberalism and the dominance of the market that it propagates and reinforces as aspects of a masculine hegemony that serves to devalue and marginalize both women and nature, arguing that PES approaches are in effect a continuance (and possibly even a reinforcement) of, rather than a corrective to, existing trajectories. Wilkinson focuses her discussion on the REDD+ (originally Reducing Emissions from Deforestation and Forest Degradation (REDD), now extending its focus to conservation, sustainable management and the enhancement of forest stocks) and REDDES (Reducing Deforestation and Forest Degradation and Enhancing Environmental Services in Tropical Forests) regimes and their attempts to integrate PES in a forestry context into the global economic system, which rather than offering new approaches in fact embrace and augment current frameworks, thus failing to counteract their inherent problems. Wilkinson argues that the approaches adopted by PES will therefore perpetuate and exacerbate existing environmental problems, rather than ameliorate them. Furthermore, she demonstrates the current very variable approach taken towards the social dimensions of sustainability in these PES schemes by focusing specifically on their gender implications. She points out that, whereas REDD+ seeks in principle to engage specifically with public participation agendas and gender issues, at least acknowledging systemic inequalities in the sector, REDDES, on the other hand, is gender 'blind' and fails to address gendered exclusion from decision-making processes. It is apparent from Wilkinson's analysis that in each of these early international manifestations of PES, economic priorities predominate – with identifiably negative impacts.

While Hassan and Azfar's contribution to this edition does not sit explicitly within the ecosystem services theme (being a unique, autobiographically informed account of the separate and increasingly interlinked development of human rights and environmental law in South Asia and international law and policy, and of the contribution that the former has made to the latter through innovative domestic jurisprudence), it raises several thematic considerations that echo those raised by the other contributors to this edition. Prominent among these is the North/South divide and its ramifications for the development of the law in these areas, with the traditionally Northern-dominated human rights regime increasingly intersecting with the much more global international environmental law regime that has been as strongly shaped by the South as by the North, an intersection that is once again made manifest in the current PES debate. Hassan and Azfar point to the concrete manifestation of this intersection/convergence in cases that pit collective interests against individual and individualistic rights claims when environment and human rights meet, raising concerns that are also evident in PES and related contexts, as discussed by Reid and Nsoh. Rights protection for the excluded and the importance of procedural protection is also a thematic concern for Hassan and Azfar, and they share common ground in this regard with Wilkinson. Hassan and Azfar also recognize that the ongoing challenges posed by biodiversity conservation share common ground with established areas of concern and controversy and point specifically to the imperative need to 'find the right balance between economic growth and the health of the planet and its marginalized communities' through using human rights as a critical tool.

Having begun by quoting from one celebrated author, and writing from Swansea amid the celebrations of the centenary of the birth here of another, the Welsh poet Dylan Thomas, it seems appropriate to begin my final words with him. Thomas, as is often the case with those exercising the poetic vocation, saw much to be learned from the natural world if we are able and willing to do so. He observed:

A worm tells summer better than the clock,
 The slug's a living calendar of days;
 What shall it tell me if a timeless insect
 Says the world wears away?⁹

While poets have always been at least observant of the natural world, listening, as Thomas did, creatively to what it communicates and in consequence giving voice to concern about its well-being, society as a whole has long conveniently divorced consideration of human actions from their damaging consequences for the environment. It is only belatedly, having reached the stage where the practices whereby society is perpetuated pose existential threats to our environment and to ourselves, that we have really begun to focus on the need to address these impacts at a systemic level as a practical challenge for all, rather than as an artistic indulgence for the few. It is my own view that, while viewing humanity as an integral part of the biosphere and its constituent ecosystems is a good start, PES approaches to biodiversity conservation, as several papers in this edition show, attempt to shoehorn these relationships into an obviously flawed economic paradigm by reducing them to the subject of payment for mere services rendered to humanity, rather than by altering our understanding of their basis and sustainable operation. This seems to be a retrograde step. In addition to perpetuating environmentally unsustainable practices, by extending the existing inequitable economic system yet further, PES also raises the spectre of perpetuating and exacerbating a socially unjust and unsustainable paradigm. It runs the risk that marginalized groups and individuals in society who depend most closely on vulnerable ecosystems will be further disempowered as their livelihoods are increasingly commoditized and governance of the natural resources upon which they depend is delegated to the so-called invisible hand of the market. If we can, as some would suggest, only accord value to what we can price – a core plank of the edifice of neoliberal dogma – then we are as imaginatively bankrupt as a species as we are financially straitened. Clinging to this reductionist market ideology will perpetuate and exacerbate current ills with dire consequences for humanity and for much of the rest of life on Earth, for to paraphrase that most poetic of scientists, Albert Einstein, we cannot solve problems by using the rationale that created them in the first place. The ecosystems services debate certainly gives us cause to think again about the environment/human relationship – and it is to be hoped that it ultimately does much more, prompting us to seek to think far beyond the limitations of the dominant neoliberal capitalist paradigm.

Karen Morrow (Co-Editor in Chief)
 Centre for the Environment and Energy Law and Policy,
 Swansea University, UK

9. From 'Here in This Spring', Dylan Thomas: *Dylan Thomas Omnibus* (Phoenix, London 2014) 36.