



## Global Governance, Human Needs, and Values

**Winston P. Nagan**

Sam T. Dell Research Scholar Professor of Law, Emeritus, University of Florida, USA;  
Chairperson, Board of Trustees, World Academy of Art & Science

**Brittany M. DiCaprio**

Junior Fellow, Institute for Human Rights, Peace & Development,  
University of Florida, USA

### Abstract

*The anthropological literature has given us a key to understanding life in a very elementary community. Life revolves around human beings energized to satisfy human needs. Anthropologists also identify the structures that emerge from society which are specialized in whatever degree of efficacy to facilitate securing those needs. When we map needs onto institutions, we emerge with a social process\* that is based on the interaction of energies directed at securing needs through institutions. These institutions direct human energies, in some degree, to the satisfaction of those needs. We can now begin to identify basic human needs as the goods, services, honors, and gratifications that people in society desire or need. Moreover, we can classify these desires/needs in terms of the basic values that the individual social participant pursues to secure for himself and those dependent on him. Thus, we may emerge with a model of social process in which human beings pursue values through institutions based on resources. Now, this is a purely descriptive inquiry, but it is possible to observe that the needs/values and the institutions specialized to secure them are, generally speaking, identifiable. What are these values and what are the institutions specialized to secure them in any social process? This essay concludes with an overview of some of the central global governance issues of the climate change crisis.*

### 1. Human Perspective and Consciousness<sup>†</sup> in the Evolution and Interdetermination of Values in the Human Social Process

In this representation, values and institutions are represented descriptively in order to describe the system of community order as it is. It should, however, be understood that the social process of the community is a dynamic process in which there is an energy flow between the participators, values, institutions and the results. Some of the results are generative of conflict. Other results are generative of the success of institutions functioning optimally. What is important is that social process is a generator of problems, and these problems are about the acquisition and distribution of values. This means that the dynamism of society requires a decision process<sup>1</sup> that is frequently challenged to produce a solution to the problems of

\* Winston P. Nagan, *Contextual-Configurative Jurisprudence The Law, Science and Policies of Human Dignity* (Vanderplas publishing) 2013

† Philip Perry, *Harvard researchers have found the source of human consciousness*, <http://bigthink.com/philip-perry/harvard-researchers-have-found-the-source-of-human-consciousness>

value conflict, value deprivation, or value over-indulgence. Thus, the community's response to the problems that values pose for community order invariably must implicate a normative dimension about the optimal allocation of values in society. Indeed, some political scientists describe political science as concerned with the authoritative allocation of values in society. The intimate link between the politics of power and the political economy of wealth is this: power may serve as a base of power to get more power. It may serve as a base to get more of all the other values extant in social process. Even more importantly, every value may serve as a base of power to get and keep power. Wealth may serve as a base of power to acquire power and keep it. It may serve as a base to get more wealth. It may serve as a base to get a lion's share of all the values extant in social process. Thus, *homoeconomico-politicus* is an intimate association influencing the production and distribution of value needs in the social process.

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*“The authority for the international rule of law, and its power to review and supervise important global matters, is an authority not rooted in abstractions like ‘sovereignty’, ‘elite’, or ‘ruling class’ but in the actual perspectives of the people of the world community.”*

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In reviewing this map of values and institutions of social process, it is important to keep in mind that it is the human perspective that gives meaning and life to the values and institutions in society. The human perspective comes with the perspective of identity, ego-demands, and the value ideals of expectation. These perspectives are driven by deep drives for self-actualization, self-realization and psycho-social fulfillment. In this sense, the private motives of personality, even when displaced on public objects and rationalized in the public interests, still represent an underlying force that moves the personality in all social relations. This underlying force may be the force of self-affirmation for self-determination and is the most foundational energizer of the demand for human rights and dignity. The relationship between personality and value achievement may itself generate a sense of inner-fulfillment, which, in turn, becomes the driver of still greater levels of value creation and achievement.

## **2. Consciousness in the Identification & Allocation of Values in Society**

The problem of the allocation of values implicates the idea that there may be different standards which justify one form of allocation over another. Historically, at least in law, there has been an assumption that legal interventions are meant to discriminate between the claims for values that are just and those that are unjust. It is this challenge that has given rise to the great traditions of jurisprudence and, most importantly, the jurisprudence of natural law<sup>2</sup>. Natural law, however, could only generate procedures, not substantive rules, to facilitate the use of right reason in the resolution of value conflicts. Two of the most enduring of these natural law-based rules have survived and are essentially matters of procedural justice: *audi*

*alteram partem*\* [the obligation to hear both sides] and *nemo iudex in causa sua*† [no one should be a judge in his own cause]. However, we had to await the aftermath of the tragedy of the Second World War before we got a kind of official code of natural law in the form of the Universal Declaration of Human Rights‡. Although couched in the form of rights, the Declaration may be reduced to nine fundamental value-needs categories. The adoption of a code of moral priority, intended to bind all participants in the international system, limited the speculation about the role of values in the social process. Although most intellectual and scholastic speculation stresses the notion that values are somewhat opaque, difficult to distill, and even more difficult to clarify, the adoption of the United Nations Charter has served as a political impetus for the development and clarification of values. As a starting point, therefore, we may reduce the Charter [a legally binding instrument of global salience]³ to several comprehensible and clearly articulated keynote precepts. We list them as follows.

### 3. Global Values, the UN Charter§: the Normative Value Guidance for Science and Society

1. The Charter's authority is rooted in the perspectives of all members of the global community, i.e. the peoples. This is indicated by the words, '[w]e the peoples of the United Nations.' Thus, the authority for the international rule of law, and its power to review and supervise important global matters, is an authority not rooted in abstractions like 'sovereignty,' 'elite,' or 'ruling class' but in the actual perspectives of the people of the world community. This means that the peoples' goals, expressed through an appropriate forum (including the United Nations, governments and public opinion), are critical indicators of the principle of international authority and the dictates of public conscience.
2. The Charter embraces the high purpose of saving succeeding generations from the scourge of war. When this precept is seen in the light of organized crime syndicates' involvement in the illicit shipment of arms, the possibility that they might have access to nuclear weapons technologies and chemical and biological weapons, the reference to 'war' in this precept must be construed to enhance the principle of international security for all in the broadest sense.
3. The Charter references the 'dignity and worth of the human person'. The eradication of millions of human beings with a single nuclear weapon or policies or practices of ethnic cleansing, genocide and mass murder hardly values the dignity or worth of the human person. What is of cardinal legal, political and moral import is the idea that international law based on the law of the charter be interpreted to enhance the dignity and worth of all peoples and individuals, rather than be complicit in the destruction of the core values of human dignity.

\* See "audi alteram partem" James Edelman, *Why Do We Have Rules of Procedural Fairness?* <http://www.fedcourt.gov.au/digital-law-library/judges-speeches/speeches-former-judges/justice-edelman/edelman-j-20150904>

† See "nemo iudex in causa sua", James Edelman, *Why Do We Have Rules of Procedural Fairness?* <http://www.fedcourt.gov.au/digital-law-library/judges-speeches/speeches-former-judges/justice-edelman/edelman-j-20150904>

‡ UN General Assembly, *Declaration of Human Rights* <http://www.un.org/en/universal-declaration-human-rights/>

§ UN General Assembly, *The UN Charter* <http://www.un.org/en/charter-united-nations/>

4. The Preamble is emphatically anti-imperialist. It holds that the equal rights of all nations must be respected. Principles such as non-intervention, respect for sovereignty, including political independence and territorial integrity, are also issues that remain under constant threat of penetration by alienated terrorists or organized crime cartels.
5. The Preamble refers to the obligation to respect international law (this effectually means the rule of law) based not only on treaty commitments but also on 'other sources of international law'. These other sources of law include values, which complement efforts to promote ethical precepts built into expectations of the universal ideals of morality.
6. The Preamble contains a deeply rooted expectation of progress, improved standards of living, and enhanced domains of freedom and equality for all human beings on the planet.

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Based on the keynote precepts in the UN Charter, the world community also adopted an International Bill of Rights. The central challenge to a scholastic understanding of the International Bill of Rights is the need to clarify and distill its basic, underlying values. It may now be stated with confidence that we can distill at least nine functional values that underlie the entire international bill of rights. In a general sense, these rights, when considered collectively, represent the integrated, supreme universal value of human dignity. The central challenge then is that those charged with decision-making responsibility must prescribe and apply a multitude of values in concrete instances and hope that their choices contribute to the enhancement of human dignity and do not, in fact, disparage it. At an abstract philosophical level, distinguished philosophers such as Sir Isaiah Berlin have maintained that it is futile to attempt to integrate these values with the abstract principle of human dignity because fundamentally, these values are incommensurable<sup>4</sup>. Not everyone agrees with this. Specialists in decision- and policymaking acknowledge that human dignity based on universal respect represents a cluster of complex values and value-processes<sup>5</sup>. Therefore, the challenge requires that ostensibly conflicting values be subject to a deeper level of contextualized social insight and a complete sensitivity to inter-disciplinary knowledge, procedures and insights. Thus, decisions in these contexts are challenged with the task of broader methods of cognition and a better understanding of abstract formulations of value judgments. Disciplined intellectual procedures have been developed to provide better guidance in particular instances of choice to approximate the application and integration of values in terms of the human dignity postulate. Does the ethic of universal respect and human dignity demand absolute, universal compliance at the expense of other universally accepted values? Ensuring that the values of respect, democratic entitlement, and humanitarian law standards are honored requires fine-tuned analysis and great subtlety in the structure and process of decisional interventions.

Rules of construction and ‘interpretation’ are painfully worked out, which hold, for example, that even if a peremptory principle (*ius cogens*\*) of international law embodies an obligation *erga omnes*†, it should be evaluated, appraised, and construed to enhance rather than disparage similar rights, which may also have to be accommodated. The currency behind the universal ethic of essential dignity and respect is that it provides practical decision-makers with goals, objectives, and working standards that permit the transformation of law and practice into a greater and more explicit approximation of the basic goals and standards built into the UN Charter system itself. This prescribes a public order committed to universal peace and dignity for the people of the entire earth-space community.

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The most important thing to keep in mind here is that from a global perspective, politics and economics are intimately connected to the critical questions of the nature of global governance. In short, they are critical to an understanding of the allocation of basic value needs in the planetary social process as it is and the challenges concerning the allocation of values for an improvement of the human prospect. This requires a challenge to scientific consciousness as well as a challenge to the consciousness of *homoeconomico-politicus*<sup>6</sup>.

### **3.1. Consciousness, Values and Public Order**

It is useful to approach the questions of value in terms of the nature of the public order that the rule of law system seeks to promote and defend. The system of public order secures the complex values that it is committed to defend by making an essential distinction between the minimum-order aspects and the optimum-order aspects of the system of public order.

### **3.2. Consciousness, Values and the Minimum Order**

The problem of scientific responsibility, values and the prospect of at least realizing a system of minimum order in the global governance of humanity now represents a critical challenge for scientific consciousness. We may understand the relationship between community, minimum order, and values by imagining a society without an expectation that agreements and exchanges made in good faith and according to law will be honored; that wrongs (delicts) inflicted upon innocent parties will be compensated; that basic interests and expectations of entitlement [as in fundamental norms of right and wrong] shall be sanctioned by a collective community response; or that basic structures of governance and administration will respect the rules of natural justice such as *nemo iudex in sua causa* or *audi alteram partem*, and will in general constrain the abuse of power and thus the prospect of caprice and

\* “*Ius cogens*” Bassiouni, M. Cherif, ed. *International Criminal Law, Volume 2: Multilateral and Bilateral Enforcement Mechanisms*. Brill, 2008.

† “*erga omnes*” Bassiouni, M. Cherif, ed. *International Criminal Law, Volume 2: Multilateral and Bilateral Enforcement Mechanisms*. Brill, 2008.

arbitrariness in governance. The necessity of minimum order in a comparative, cross-cultural, historic reality is that human beings interact within and without community lines. In doing so, they commit wrongs intentionally or unintentionally, they require some security over their possessions and entitlements, and their systems of governance aspire invariably to constrain the impulse for abusing power. These are the minimum values of social co-existence. It is in this sense that law as minimum order confronts the idea of justice and potentiality. It is commonly thought that minimum order is a critical, but not absolute condition of a more just, more decent, more optimistic human prospect. The rule of law precept is uncontroversial in the sense of minimum order and its 'boundaries'. Peace, security, and minimal standards of human rights are reflections of these values in international, constitutional, and municipal law. Fundamentally, the quest for the maintenance of a minimum order in society would appear to be an essential condition for the individual or aggregate of individuals to evolve toward a social process that maximizes value production and distribution. It is possible to see in this an evolutionary idea of progressive change relating to production and distribution, optimally for all social participants. It is imperative that in the education of scientists and technology innovators, their sense of social responsibility is at least minimally influenced by the global values of a minimum sustainable system of world order.

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### **3.3. Consciousness, Values and the Optimum Order**

This challenge to the public order raises the question of the production and the distribution of values beyond the minimum for social coexistence. This is an insight that is more challenging to the question of scientific responsibility and the values that ought to guide it. Clearly, a great deal of science will have an imprint that goes beyond minimum order and will be let loose in the domain of optimal possibilities and prospects. Here, it is critically important that value clarification be a component of the definition of scientific social responsibility. This is the challenge of the unequal distribution of opportunities or results. Human beings exist not only spatially, but also in terms of the duration of time and events. There is hopefully a tomorrow, a next week, next month, next year, and next century. Human beings, such as scientists, are also transformative agents who make things happen, and in doing so underline the question embedded in the nature of law and community that we can change things for better or worse, for the common good or the special interests, for the sense of expanding human dignity or the prospect of a negative utopia, the rule of human indignity. This is a critical challenge for scientific consciousness<sup>7</sup>. The central challenge for values posed by the optimum order precept is the problem of the procedures and methods

for producing values as well as the procedures, methods and normative ideas about the fair distribution of the values that are produced in society. At the back of the concern for human values is the belief in human capacity for the essential, energized generation of value at every level of the social process and the human resource as a producer of ideas, insights, and values of exponential salience. At the back of the human dignity idea is the belief that widespread human dignity flourishes when the dignity of the individual flourishes and reproduces values of exponential importance for the common interest of all. Fellows of the World Academy of Art and Science have suggested that the nine values embedded in the International Bill of Rights [power, wealth, respect, rectitude, enlightenment, skill, affection, health and well-being, and aesthetics] are the key to the notion of a public order of human dignity<sup>8</sup>. They postulate that the maximal production and distribution of these values on a universal basis are the key to improving the human prospect and approximating a public order of human dignity. This means that the prescription, application, and enforcement<sup>9</sup> of the fundamental values behind human rights remain a major professional challenge to *homoeconomico-politicus* and its focus on the importance of global governance remains for the global processes of governance charged with the defense of global public order. We may conclude that value needs are a condition and a consequence of focusing and directing the energy of the human perspective into *conc frete* operations that establish institutions concentrated on and specialized to value realization. In this sense, values and needs are incentives that generate a self-directed force, which ultimately evolves into institutions of effective power crucial to the allocation of values. It is possible to see these generalizations in the evolution of the sovereign authority of the nation-state and its own evolution from state absolutism to sovereignty rooted in people's expectations. Another insight of this model is found in the notion that the power process<sup>10</sup> itself is energized by human expectations, especially expectations of demand. Without demanding or claiming an aspect of social power, society would be static. Thus, we see in the power process, the social activist. In the United States, Rosa Parks resented segregation in public transportation, so she staked a claim to repudiate racial discrimination in public transportation. Gandhi was thrown off a train in South Africa because he was not white. He initiated a claim to challenge the power of the state to impose unjust discriminatory laws. His challenges to the power process<sup>11</sup> brought him to India as a leader of the Indian Independence Movement. Nelson Mandela challenged apartheid and indicated in open court that he was committed to human dignity and democracy and that these ideals were ones that he was prepared to die for. Therefore, it is important that we have a clear understanding of the process of effective power, and what the limits and strategies are of mobilizing bases of power, to effect meaningful social change. It is quite obvious that scientific consciousness, driven by a commitment to scientific social responsibility, will have to carry a significant level of commitment in utilizing social power so that the results of technology serve human purposes that are constructive and avoid those that are destructive. As Einstein suggested, the development of science and technology should be a blessing and not a curse on humankind.

From the perspective of an enlightened *homoeconomico-politicus* concerned with science, consciousness and values, the following framework is provided as value conditioned guidance for the technological innovators of our time and the immediate future.

#### 4. Value Frameworks to Guide Scientific Consciousness and the Social Responsibility of *Homoeconomico-politicus*

1. The value of life: This is centrally valued human subjectivity. It is referred to not in the “pro-life” sense (that a pregnant woman must bear a child), but in the Bill of Rights sense (that a person has the right to personhood and autonomy). The value of life, therefore, includes the respect and deference given to the individual in the global community.

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2. The status of the value of power and security: Should it be narrowly or widely shared? Is the common interest of all honored in a system that seeks to secure the widest possible participation in all key areas of the power process? One of the central values identified in the Atlantic Charter was the freedom from fear. This concern for freedom has evolved so much that today no one denies that there is a critical interdependence between the concept of peace as a human right and all the other values in the UDHR. Peace and security might well be included under the functional category of power. However, peace is recognized as a complex peremptory component of the human rights value system. It is of value to again recognize that there are complex ways in which all human rights values have an influence on peace and security, recognizing as well that peace and security at all levels are critical conditions for the effective mobilization of human rights values. A central aspect of the values of peace and security relates to the connection between the mobilizing force of strategy for the realization of human rights goals and the realization of these goals themselves. For example, is it appropriate to deploy violent strategies of action to achieve human rights objectives? Is it appropriate to disengage the value discourse involving strategy and struggle on the one hand and idealistic value objectives on the other hand? Gandhi, for one, insisted that the morality of struggle was even more important than the morality of distant idealistic objectives<sup>12</sup>. Indeed, he also insisted that a disconnect between struggle, strategy, and goals was morally indefensible.
3. The status and value of economic and wealth processes: Is the common interest of all better secured by optimizing the capacity to produce and distribute wealth or is it the opposite?
4. The status and value of respect and equalitarian values: Should invidious discrimination be fully prohibited (covering all areas of race, gender, alienage, etc.)? Can equality be meaningful if it is only a formal, juridical idea without regard for the legacy of exploitation, repression, and discrimination? The repression of equal opportunity is also an invidious denial of liberty.



5. The status and value of educational and enlightened values: Should these values be widely produced and distributed or narrowly experienced? In the context of science, the critical value that secures scientific innovation and the liberation of scientific consciousness is the freedom of inquiry. The challenge posed by dramatic technological innovation is that further scientific consciousness will generate an internal process focused on scientific responsibility and a deeper sense of the value implications and consequences of technological innovation. The problem with regulating science is the problem that it will be regulated by a politically ignorant constituency, which may seek to appropriate technology with selfish special interests. *Homoeconomico-politicus* has a critical role to play in the transmission of shared enlightenment.
6. The status and value of skills and labor values: The centrality of skills and labor values to the human condition indicates that these are central and fundamental values implicated in the rights and expectations of those who seek to create and sustain these rights and labor values. Should these rights and expectations be widely shaped or narrowly shared? The global crisis of massive unemployment would seem to impose a special responsibility on *homoeconomico-politicus*.
7. The status and value of health and well-being values: The delivery of reasonably formulated and accessible healthcare and social services to all is now widely regarded as a crucial entitlement, if the most basic standards of decency in politics and society are valued. Today, unemployment aid, social security, Medicare, and other social services are considered crucial to a society that cares for its people.
8. The status and value of the family and other affective values: Because the family is the basis of collective existence and is central to the human rights of children, the public policies of a society that destroys family (and other affective ties) pose a problem for a wide generation of affective values, including the loyalty values of patriotic deference.
9. The status and value of moral experience and rectitude: A system that endorses the centrality of moral experience to the legal and political culture and seeks to maximize the spiritual freedom of all is yet another of the central themes of human rights. Rectitude should never be a foundation for sectarian and ethnic conflict.
10. The status and value of cultural and aesthetic experience: The term “cultural” includes the concept of the aesthetic. In fact, the word “cultural” could encompass all the value preferences that we might extract from the UDHR. There is, however, a narrower meaning that the term “culture” might carry. That meaning ties in with the notion of human rights as also emblematic of the diversity of human experience, experience that reflects the cultural richness of humanity as a global community. There is great controversy about the issue of culture and tradition, culture and creativity of the present, culture and the elaboration of the aesthetic, which may capture and nurture the cultural narrative of creativity and beauty which may in fact be the critical psychological view of how the glue of social solidarity promotes creativity. The boundaries of this discourse are controversial. Sensitive matters of sexual regulation which may differ widely may be justified by culture and yet here the culture of tradition may not be compatible

with the culture and creativity of the present or the future in human rights terms. For example, female genital mutilation justified by cultural tradition is not justified by either religion or by the science of human sexuality. Human rights thus provide a process by which these boundaries may be appropriately protected and expanded according to the normative challenges of human dignity. The current discourse often suggests that universality trumps cultural relativity or vice versa. This is not necessarily helpful unless one sees these ideas as only the starting point for value clarification and application from a human rights perspective. Aesthetics should never be a foundation for demonizing vast sectors of humanity.\*

11. The status and value of the ecosystem: Today, we recognize a complex right to a viable eco-system on what theorists have seen as Spaceship Earth<sup>13</sup>. The values embedded in the protection and promotion of a healthy ecosystem are, like many other values, issues of complex interdependence and interdetermination. However, implicit at least, in the concern for the integrity of the ecosystem, is clearly the notion that there are no human rights if there is no environment in which human beings can survive and possibly even improve the human prospect. But this insight suggests an even higher level of moral consciousness in the sense that the ecosystem (with its plant life and animals, wild and domesticated) is part of a complex cycle, in which human beings are both custodians and also utterly dependent as individuals and as society. This means that we now see in nature not something irresponsibly exploited and destroyed but something that is central to our identity as a sentient species. To take a simple example, for all the vaunted technology of human progress and human egotism, no one has seen a dog or a cat or a rat or indeed the most elemental of recognizable life forms outside of this lonely and unremarkable planet called Earth. Thus, as humanity, we now look at life even in its most humble forms as not only indispensable to the interconnected chain of life on this planet but we see in it something new and utterly connected to the very consciousness of being human and being alive. In short, we know that our dogs identify with us. We may now know those ordinary pets in terms of how they and all other living forms have shaped our identity both psychologically and physiologically. The integrity of the ecosystem requires a form of identification from *homoeconomico-politicus* that is sufficiently comprehensive to cover the entire Earth Space System.

## 5. *Homopolitico-economicus*, Governance, and the Challenge of a Green Economy as a Critical Ecosystem Value

In this paper we seek to clarify the salience of *homoeconomico-politicus* and the challenge of climate change. Climate Change is a good tool to better understand the idea of *homoeconomico-politicus*, consciousness and social responsibility for values. Climate change floundered at the Copenhagen conference because of the determined efforts of the climate change deniers lobby. Among the former spokesmen of that lobby were right-wing Republican senators, fanatically moved by the idea that climate change would require

\* Haddad, Aitza M., and Nagan, Winston P. "Aesthetics and Human Rights". *Montenegrin Academy of Sciences and Arts*, Proceedings: International Conference on Humanities and the Contemporary World (2012).

the mandatory regulation of corporate polluters. It is a maxim of modern Republican politics to oppose governmental regulation and in particular, the governmental regulation of environmental matters. The most vocal voice in the United States was the Republican senator from Oklahoma, Senator Jim Inhofe. The senator came with a record challenging the integrity of the entire climate-science community; this community he felt, was a self-interested one and uncommitted to genuine science. The senator himself is an ignoramus on science, any science. According to Oil Change International, Inhofe has received over \$1.3 million dollars in contributions from the oil and gas industries\*. His attacks on climate change were sheer political opportunism. He remains unrepentant and continues to lead the charge in the American congress to undo the environmental regulations of the Obama administration.

*“With all of the hysteria, all of the fear, all of the phony science, could it be that man-made global warming is the greatest hoax ever perpetrated on the American people? It sure sounds like it.” – Senator Jim Inhofe*

Indeed, he has demanded that the climate change agreement be brought before the Republican-controlled congress in order for the congress to kill it. Inhofe is unduly influenced by the fossil fuel industry. This industry is, in effect, responsible for the overwhelming contribution of greenhouse gases to the looming crisis of climate change. Inhofe is an excellent example of the political-power oriented personality type. His private motivations driving his antagonism to climate change are rooted in the financial support he receives from the fossil fuel industry to secure his position in the Senate of the United States. Of these industries, ExxonMobil remains the world’s largest oil and gas company. According to Forbes Magazine, Exxon is the most profitable publicly traded company in world history<sup>14</sup>. The company generated revenue of over \$1.6 trillion dollars from 2009-2012 alone. Exxon is a notorious climate change denier, so notorious in its actions that Greenpeace has created a website detailing the company. Other republican senators are also beholden to the plutocratic establishment and its infusion of money into American politics.

Apart from the right-wing lobby, the concern for the development of a global mandate on climate change through the good offices of the UN had to confront a longstanding global problem: the division of the world community of states between the rich and the impoverished. Since a lion’s share of the carbon emissions in the atmosphere was generated by the rich industrialized countries, there was a lingering concern about the price and distribution of the price for reducing carbon emissions in the world community. Since the poor states made a negligible contribution to greenhouse gases in the atmosphere, a question of justice and fairness seemed to emerge. Why should they share in the cost of the reduction of greenhouse gases when they are not responsible for the crisis? More than that, the predictions of the crisis could spell catastrophe for poor states.

Perhaps these states should be the beneficiaries of financial assistance from large states to convert themselves to green economies, and to compensate for the damages they suffer. Clearly, in attempting to move forward there needs to be some formula for allocating

\* Matt Maiorana, *Hypocrite Alert: Senator Inhofe Complains about Money in Politics*, <http://priceofoil.org/2014/06/03/hypocrite-alert-senator-inhofe-complains-big-money/>, June 3, 2014

responsibility as fairly and as universally as possible. Perhaps the most important outcome of the Paris Accord\* is that every country is a stakeholder in the problem and must commit itself to a constructive role in reducing greenhouse gases in the future. Most countries were persuaded to come up with plans as to how the economy would respond to cutting carbon emissions through 2025-2030†. In this context, every state is required to come up with a plan without a specification of the extent to which individual countries would cut emissions.

The agreement is not in the form of a treaty. It will only become technically and legally binding as an international treaty when at least 55 states which together represent 55 percent of global greenhouse emissions adopt the agreement within their own legal systems as a form of treaty ratification‡. Even assuming that this happens, the question would still remain as to what the legal responsibilities are of the other approximately 100 states. We would contend that the agreement as it now exists is not without an element of a juridical *imprimatur*. In effect, the agreement contains in terms of its background, the core elements of the creation of a form of international soft law. This would appear to have an approximation to the development of a form of customary international law. The reasoning is as follows.

This agreement depends upon the good faith obligation that international law imposes on states, which establish public declarations of the nature and scope of their duties. The good faith obligation implies that these will be legally binding on the states. Thus, the binding effect of the agreement is not in the agreement itself but a matter of the customary international law dealing with the rights and duties of states. The agreement contains a legal expectation that states are required to reconvene in good faith every five years starting in 2020 indicating in good faith their updated plans to strengthen their emissions cuts. States were also required to reconvene every five years starting in 2023 to publicly report how they are achieving their emissions cuts, compared with their stated plans. Moreover, the agreement requires states in good faith to monitor and report the state of their emissions levels and reductions using a universally accepted counting system. This approach was achieved largely because the Obama administration did not want an agreement specifying specific levels of emissions reductions. Of course, such an agreement would in effect resemble the form of a treaty and the U.S. administration would have to submit it to the senate for its advice and consent. There are at least thirty nativistic and ideologically driven right-wing Republican nutcases in the senate of the United States. That is all that is needed to kill the treaty if its jurisdiction was submitted to them. The Obama Administration would therefore want to avoid the Senate at all costs.

In short, the standard of emissions set in good faith by states is voluntary but there is a legal requirement that they publically monitor, verify, and report on their progress. This model seems to work on the principle of transparency as a foundation for global peer pressure on states. States therefore will not want to be embarrassed by falling short of their own

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\* United Nations General Assembly, *The Paris Agreement*, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

† IEA. World Energy Outlook 2017. Organisation for Economic Co-operation and Development, *OECD*, 2017 [https://www.iea.org/media/weo/website/2017/Chap1\\_WEO2017.pdf](https://www.iea.org/media/weo/website/2017/Chap1_WEO2017.pdf)

‡ Alex Gray, *What is the Paris Agreement on Climate Change?*, <https://www.weforum.org/agenda/2016/09/what-is-the-paris-agreement-on-climate-change/>

commitments. It is by no means clear that these steps are both necessary and sufficient to avert continued disasters triggered by the climate change process. In the United States itself, various states have experienced massive floods, including the states of major climate change deniers. To get the poorest countries onboard, the preamble of the agreement indicates that \$100 billion dollars is promised to help the poor countries adapt to a desirable green economy and to mitigate some of the damages of climate change\*.

The principal feature of the climate change agreement is the target of holding the average global temperature to a figure below 2 degrees centigrade above pre-industrial levels<sup>15</sup>. In practical terms this means that the temperature increase on the planet should not increase above 1.5 degrees centigrade above pre-industrial levels. The idea of limiting the global temperature to 1.5 degrees above preindustrial levels means that there is a concrete goal to stay well below 2 degrees. Scientists believe that this would likely ward off the worst effects of climate change. No one is exactly sure what the triggering point is that would melt the entire Greenland ice sheet as well as the West Antarctic ice sheet. It is possible that staying below 2 degrees centigrade would trigger such a catastrophe. However, the odds are much better if we stay at 1.5 degrees centigrade. It is not necessarily clear that the 1.5 target will be achieved by purely relying on voluntary state action. Even if it is achieved, it is only a scientific guess that this will be sufficient to avert the worst consequences of climate change. The position of this economic forum is that the target of 1.5 is a bare minimum to be attained and if it could be improved upon, it would secure a greater safety net for humanity. Additionally, the fact that the agreement is not a treaty of hard law does not mean that it has no juridical effect whatsoever.

In this regard to this target, the target temperature aspiration is not mandated as a matter of international treaty law. It therefore does not have the status of hard international law. However, it does have important juridical characteristics, sometimes defined as international soft law. The idea of soft law means that the binding character of the agreement is a matter reinforced by indirect methods designed to give the agreement the force of international obligation. First, the agreement comes with a consensus of 150+ states. It comes with strong support from the international scientific community as well as important scepters of learned societies of the international social process. It comes with a strong support of a multitude of organizations constituting the civil society of the planet committed to environmental integrity. The agreement is supported not only by states, but also by civil society, learned societies in the arts and sciences, specialist communities in the sciences, and those committed to environmental integrity.

Additionally, the agreement comes with the institutional support of the foundations of authority of the United Nations system itself as well as other organizations of nation-states at different levels of global society. Specialist aspects of civil society concerned with human rights and humanitarian values are also lined up in support of this agreement. This adds up to considerable strength in the foundations of the authority component, which is a critical part of the dynamics of international lawmaking. The other important component of international

\* John Upton, The \$100 Billion Climate Question *Climate Central* <http://www.climatecentral.org/news/the-100-billion-climate-question-19726> November 25, 2016

lawmaking is the component loosely described as the controlling intention designed to give prescriptive force to the obligation. Here, the controlling intention is reflected in part in the good faith expression of intent to abide by the agreement of at least 190 sovereign states. In general, the good faith expression by a sovereign state that it intends to respect a prescription that it has openly supported or advocated is enough to secure the notion that the agreement has sufficient controlling intention, which along with the authority signal gives it the force of law. Additionally, the agreement requires a public commitment to the scope of the obligation with regard to emissions reduction that the states openly subscribe to. This public commitment includes a threshold publication of the state's plan of action in the future, and a reporting of the results of its action, which requires global transparency. This provides an additional lever to support the seriousness of the controlling intention of the sovereign states' commitment to emissions reduction. The active monitoring of the process by the United Nations itself, as well as a vast constituency of members of civil society including specialists in local politics, environmental advocacy, scientific expert knowledge, human rights organizations, and highly respected learned societies, reinforces the controlling intention of states.

Finally, international law making does require clarity in the expression of the specific prescriptive expectations that the agreement entails. Since the states have stated what the prescriptive expectations are, this provides a degree of clarity in terms of the prescriptive expectations that a state is obliged to honor. Thus it would seem that at least in the context of the specific objectives of state action in reducing carbon emissions there is without a doubt a binding obligation on the part of states and their subjects to respect their agreements that the states have agreed to as having the force of binding international soft law.

The most important aspect of giving the human efficacy is the recognition that within states major corporate and industrial enterprises are largely responsible for greenhouse gases. This puts the controlling intention of the state against the self-interest of the corporate and industrial sectors within a state. This is a challenge that has to be confronted. The most significant cause of pollution lies with the fossil fuel industry. Modern society owes progress to energy. To change this confronts not only corporate interests, but also the interest of workers dependent on the fossil fuel industry. There has to be an alternative and that alternative would depend in part upon radical new thinking, envisioning new economic thinking behind the policy and progress of the global sustainability movement. The fundamental challenge lies in the shift on a global basis from the total dependence on the fossil fuel process to an alternative approach to meeting global energy needs as well as producing energy that eliminates the flow of greenhouse gases into the atmosphere. Experts maintain that the fundamental challenge of stabilizing global climate via green economic growth is a matter of fundamental policy choices. Those policy choices have to be made on the basis of new economic thinking which makes as its fundamental postulate, the vital importance of human capital. Green growth can be achieved by the recognition of human capital's basic resource, human creativity. We must therefore creatively take stock of how to make buildings, transportation systems, and industrial processes energy-efficient. This would have to extend to offices, homes, residences, cooking equipment, automobiles, and public transportation.

The recognition of human creativity must be sustained by a commitment to major investments in clean and renewable energy. This includes solar, wind, geo-thermal, and various scales of hydroelectric power. If we are willing to recognize the genius of human creativity in creating a carbon-neutral environment, experts estimate that an investment of 1.5 percent of the global GDP will generate effective and alternative energy policies for all countries at any level of development. Such large-scale investment in clean energy would help raise efficiency standards in buildings, expand public transportation, and replace fossil fuels with clean and renewable energy. It is further estimated that such investments will pay for themselves in 3-5 years. These investments will have to come from both the public and private sectors. The attractiveness of green energy would mean that energy costs would be reduced for all. If a carbon tax is placed on fossil fuels, then the price of fossil fuels will be far more expensive than green energy<sup>16</sup>. A policy commitment to green energy would enormously expand job opportunities. It is estimated that if the U.S. spent \$200 billion a year on the green energy economy, the country's emissions would drop by 40 percent in 20 years and there would be a net increase of 2.7 million jobs. If India spent 1.5 percent of its GDP on the economy, a 20-year program with these investments would create more than 10 million jobs a year. Other illustrations are equally impressive.

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*“Scientific leadership must be more articulate in the defense of values that sustain a creative, dynamic, and responsible scientific, economic and political culture as an indispensable foundation for an improved world order based on human rights and human dignity.”*

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The real losers will be the fossil fuel industry and the mega-corporate giants that own it. It is estimated that they stand to lose \$3 trillion in values over the next 20 years. Clearly, the petroleum industry will not take this lying down. Hence, the real problem is with green energy and greed energy. The losses of the fossil fuel sector may be somewhat tolerable if the losses are averaged out over 20 years coming to about \$150 billion a year. One major issue that the mega-giants of the fossil fuel industry must consider is that the holdings of the largest 200 corporations in the fossil fuel sector hold assets, which indicates that 60 percent of those assets are unburnable. This is an important issue for investors and already some 456 institutions investing some 2.6 trillion dollars have committed themselves to this investment, or to reinvestment in clean energy. Others have already looked at diversification of their investments. For example, Warren Buffett, a famous corporate investor, doubled his holdings in solar and green energy companies in the amount of some \$50 billion\*. It is important that this economic forum use its good offices to illustrate to the major players in the fossil fuel industry the importance of them diversifying their energy enterprise in the direction of green clean energy<sup>17</sup>.

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\* Zacks Equity Research, Invest Like Buffett with These Top Ranked Solar Stocks- Stocks in the News, <https://www.nasdaq.com/article/invest-like-buffett-with-these-top-ranked-solar-stocks-stocks-in-the-news-cm360536>, June 10, 2014

## 6. Conclusion

This paper has sought to clarify the salience of the difficult concept of scientific consciousness and its implications for *homoeconomico-politicus*, and the importance of cultivating that consciousness not only in creative ways but in ways that are morally and ethically compelling. This means that consciousness should be alert to the dynamics of positive and negative sentiment in the shaping of the technological paradigm of the future. Even more importantly, it is crucial for scientific consciousness to self-regulate itself by being better informed about the values it seeks to promote and defend. Successful self-regulation of science avoids the danger of control and regulation by forces completely ignorant of the implications of science and technology. This means that scientific leadership must be more articulate in the defense of values that sustain a creative, dynamic, and responsible scientific, economic and political culture as an indispensable foundation for an improved world order based on human rights and human dignity. This issue is made practically relevant by the challenges demanded for an economics and politics equal to the challenge of climate change for the earth-space community.

### Authors Contact Information

**Winston P. Nagan** – Email: [nagan@law.ufl.edu](mailto:nagan@law.ufl.edu)

**Brittany M. DiCaprio** – Email: [dicapriob@ufl.edu](mailto:dicapriob@ufl.edu)

### Notes

1. Myres S. McDougal, Harold D. Lasswell, and W. Michael Reisman, "The world constitutive process of authoritative decision," *Journal of Legal Education* 19 (1966): 253.
2. Winston P. Nagan, *Contextual-Configurative Jurisprudence The Law, Science and Policies of Human Dignity* (Florida: Vanderplas publishing, 2013)
3. Nagan, *Law, Science and Policies of Human Dignity*, 262
4. Winston P. Nagan and Samantha R. Manausa, "The Context and Values Inherent in Human Capital as Core Principles for New Economic Theory," *Cadmus* 3, no.4 (2018): 69-88.
5. Winston P. Nagan and Garry Jacobs, "New Paradigm for Global Rule of Law," *Cadmus* 1, no. No.4 (2012): 130-146
6. Winston Nagan and Megan Weeren, "Homoeconomico-politicus, Scientific Consciousness, and the Defense of Fundamental Values in the Context of the Climate Change Crisis: The Challenge of Scientific Responsibility for the Future of Economic and Political Science," *Cadmus* 2, no.6 (2016): 168-195
7. Nagan and Weeren, "Homoeconomico-politicus"
8. Nagan, *The Law, Science and Policies of Human Dignity*, 553
9. Harold D. Lasswell, *The Decision Process: Seven Categories of Functional Analysis* (College Park, Maryland: University of Maryland Press, 1956)
10. Nagan, Contextual, *The Law, Science and Policies of Human Dignity*, 93
11. Harold Lasswell, *Power and personality* (London: Routledge, 2017).
12. Winston Nagan, John A.C. Cartner, and Robert J. Munro. *Human rights and dynamic humanism* (Leiden: Brill Nijhoff, 2016), 140
13. Kenneth E. Boulding, "The economics of the coming spaceship earth," *Environmental Quality Issues in a Growing Economy* 1966 <http://www.ub.edu/prometheus21/articulos/obsprometheus/BOULDING.pdf>
14. Corinne Journey, "America's Top Public Companies In 2017: A Buffett Buy List," *Forbes* May 2, 2017 <https://www.forbes.com/sites/corinnejourney/2017/05/02/americas-top-public-companies-in-2017/#7852b0204ad2>
15. Lavanya Rajamani and Jacob Werksman. "The legal character and operational relevance of the Paris Agreement's temperature goal," *Philosophical Transactions of the Royal Society*. 376. No. 2119 (2018): 20160458.
16. Tomoo Machiba, "Eco-innovation for enabling resource efficiency and green growth: development of an analytical framework and preliminary analysis of industry and policy practices," *International Economics and Economic Policy* 7, 2-3 (2010): 357-370.
17. Nagan and Weeren, "Homoeconomico-politicus."