

**POLITICIAN, LOBBYIST, AND CORPORATE EXECUTIVE: THE CASE FOR CRIMINAL
NEGLIGENCE AND CONSPIRACY IN THE VANDALISM OF THE PLANET**

BY

CITIZEN X

If the attorney entrusted to preserve your family's generational wealth were recklessly ruining the estate through extravagant bad judgment, those who lose—you and your descendants—would be aggrieved and be right to take legal recourse. Were it proven the attorney was not merely stupid and ignorant but intended to benefit personally, the ante likely goes up to criminality.

Facing, at the very least, degradation of the common wealth of the planet, evident in the polluting of natural resources and mass ecocide, it's clear most if not all of the world's industrial and political leaders are negligent at best. They have been entrusted a legacy of value, based on resources inextricably part of the common wealth. Their mandates are to generally improve our lot with the implicit condition that the achievement not be at greater cost than benefit. Ignoring the ethical gap of 'we' usually being OK with 'our' benefit at 'your' greater cost, existential destruction is absolutely a greater cost than any narrow-constituency benefit. This cannot be disputed.

Note that I am not a lawyer, so what seems to me a reasonable argument in the following could be off legally. Which does nothing to change the fact that the conscious destruction of the wealth being stewarded for future generations is an absolutely immoral if not criminally unlawful act deserving of prosecution and punishment.

Attempting to prosecute for actions allowed by law is spectacle. Where there is no breach of environmental laws—and, for the sake of argument, assume none—there is no guilt. Polluting and ecosystem destruction, even where there is real harm, is not criminal where the law doesn't specifically call it out.

Moreover, politicians are improbably competent or unsophisticated about their assigned task of stewarding the wealth of the nation. As tribunes of the people, they are obliged only to represent the will and intent of the electors. Even for gross malfeasance and incompetence, there is no recourse against a politician doing his/her level best except, of course, not re-electing.

It's also good to be aware that "climate change," in scare quotes, has become an abstract, illicit subterfuge of industry, its agents, and of politicians; and, in fairness, of opposing political lobbies. Climate change, the noun, is an abbreviation for more definitive and precise descriptions of how the Earth's climate tendencies respond to various man-made corruptions and indignities in ways that distort the expectations and reliability required by the many industrial and biological systems upon which we depend. Make no mistake, there is harm today resulting from climate change, and there will be more harm tomorrow. Evidence of degradation of resources over which we—and, more specifically, our government and industrial leaders—are stewards, is all around.

Something has to be done. The *status quo* is inadequate and unfulfilling. Let's explore the moral roots and familiarize ourselves with some key concepts to be used.

The Tragedy of the Commons

The “commons” is the natural wealth available to all. The tragedy is the inevitable destruction and demise of these shared resources that leaves everyone worse off. This psycho-economic moral concept, the *Tragedy of the Commons*, is germane because it postulates there is every incentive and no barricade to prevent individuals from destroying collective assets.

The path from abundance to extinction is:

- With abundance, no single participants’ shared resource extractions impinge upon any other participant and are insufficient to affect self-recovery.
- As the resource becomes less abundant, participants extract at relative cost to others. The system strains under the burgeoning demand but stubbornly recovers.
- Under more intense competition, all individuals take more because others do *or may* take more than their limited share. The system’s ability to self-regenerate diminishes below recovery capacity.
- The system collapses. All participants lose, as do all others with any interest in this common wealth.
- Dependent systems are adversely affected, and their own tragedies may begin unfolding (faster).

The psychology is self-interest, which reliably powers the philosophy and economics of capitalism itself. The sad truth of the Tragedy is that without external safeguards to keep our natural impulses in check, destruction and loss is inevitable. It should be obvious why regulations—especially those containing the word “protection”—are dedicated to protecting ourselves *from ourselves*.

Negligence

I said earlier “negligence *at best*.” Let me explain. Negligence is not necessarily about breaking statutory law *per se*. It is about one’s role in causing harm. For instance, there is no crime in leaving a loaded firearm on the kitchen table.¹ Say a child uses that weapon to kill herself accidentally. Still no crime: not homicide because the child did it to herself; not suicide because the child didn’t intend it. It’s not even clear cut that manslaughter or other lesser charge would succeed.

But might it succeed as criminal negligence resulting in death? The adult was neglectful of his responsibility regarding that weapon. He’s certainly culpable in causing or creating the conditions for harm. Negligence is commonly a tort addressed by justice that attempts to make the victim as whole as possible. That is, to repair the situation to a state as though the accident had not happened. Criminal negligence applies the idea of culpability but not commission to criminal outcomes. Often in these cases being made whole is irrelevant or insufficient: the neglectful party must be more harshly penalized, up to and including incarceration.

The key ingredient needed to make negligence criminal, not merely stupid, is known to lawyers as *mens rea*—the guilty mind. The state of mind is the distinction between bad luck and bad act. *Mens rea* is the culpability gauge. In descending order of severity, its four grades are: intent, knowledge, recklessness, and—finally—negligence.

- Intent is acting with the *goal of* the criminal outcome.
- Knowledge is acting with *awareness of* the likely criminal outcome.
- Recklessness is acting with *disregard for* a possible criminal outcome.

¹ Some would argue that the Second Amendment to the US Constitution demands it.

- Negligence is action *without making oneself aware of* any criminal outcome.

The higher on the scale, the more irrefutable the culpability—ending at actual commission of the crime—and, typically, severe the punishment. Obviously, negligence is the lowest threshold of guilt. Bear in mind and consider that while in this incipient ecological cataclysm *intent* and even *knowledge* may be refuted, however spuriously, most guilty action is surely *reckless* and certainly *negligent*.

If those upon whom leadership is bestowed have a duty to create positive benefits beyond cost, they have been at least negligent in their care of the common wealth. Given the abundance of reasonable warnings, their behavior certainly appears reckless. The harm inflicted is the result of known (knowable, anyway) externalities and risks that affect more severely those who share the common wealth without fiduciary dependence on these leaders(s). Thus they are recklessly creating *collateral* damage.

Conspiracy

Let's take a moment's pause to augment the context for groups and not just individuals. The purpose will soon be evident. According to Black's Legal Dictionary, actual conspiracy is

A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is innocent in itself, but becomes unlawful when done by the concerted action of the conspirators.

In some jurisdictions there has to be at least some small act toward the criminal activity for a conspiracy. In others, mere communication of intent is sufficient; it assumes collective plotting. At least in these jurisdictions, conspiracy is a good path for prosecuting a cabal of separate parties that may have done nothing criminal individually but colluded and caused harm.

Vandalism

Back to our clear and present danger: early incidents of actual harm to the environmental common wealth—that legacy passed to us by prior generations and expected to be passed on by us to future generations. For so many reasons, it is a fool's errand to pursue remedy for environmental harm as a common tort. Even if such a case were to succeed, money and specific action remedies are inherently inadequate.

So, we need a crime. A grand crime befitting the generational, universal havoc perpetrated would be most satisfying. In title alone, *Crimes Against Humanity* would seem apropos. Alas, at least until there is an obvious, direct connection between the ruination of the planet and a mass kill off of a distinct people, ecocide does not rise to the level of genocide. (If, one day, islanders or low country inhabitants are consumed by rising seas, maybe. But by then, what's the point?)

Thus we must set our sights on something less satisfying. But that's OK. Al Capone was brought down by tax evasion, which is considerably less sexy than the murders, extortion, and larceny attributable to him. But it was effective enough.

Clearly, the underlying crime here is *vandalism*. Yes, to those readying to scoff, it is typically petty: graffiti tagging and window breaking. But vandalism is, "Mindless and malicious harm and injury to another's property."² While Defense may argue a lack of malice *in some cases*, the environmental ravages being perpetrated by leaders of nations and businesses is mindless. Planetary harm inflicted only since the evidence for climate change became irrefutable (except by willful denial of fact or spurious allegations of illegitimacy), shows a pattern of scope, magnitude, and persistence of *criminal* vandalism

² Black's Legal Dictionary.

that may actually rise to the level of malice. And the number of instances of vandalism could be breathtaking.

The property of humanity

Here is an inconvenient truth: without property there can be no vandalism.

That makes the question: when people and institutions conspire to vandalize the water we drink, air we breathe, climates that sustain us, and anything deriving therefrom, who's property is at stake? Clearly fracking in a national park or nature reserve harms state property, and since the state is its people, that is your property and mine.³ That is easy to delineate compared to the air, the oceans, and the sun's energy, which have no such (public) owner—at least not by traditional definition.

If the climate situation is the existential issue so many of us believe it to be, traditional definitions no longer up to the task must be modified. Basic math can help us think this through. Something cannot belong to nobody, but nobody can own the atmosphere, the vast oceans, or the climate. If *everything* has to belong to *somebody*, but *nobody* can own *some* things individually, then it stands to reason that *those* things are owned (equally) by *everybody*. The concept of public property bears this out. The argument leads to unownable property being owned by humanity collectively. So the environment is property *with* an owner that can suffer harm: humanity.⁴

³ Whether the "public" chooses to prosecute or is aiding and abetting is part of our evaluation here.

⁴ Unlike for public property, the (modest) complication here is the absence of an administrative body to represent all owners as a government—or condo board—might do. In addition, it would organize and inhibit the untenable circumstance where any of the 8-billion people on the planet could raise claims and charges against anyone else. That, however, is a practical legal matter for another day.

Elements of our common wealth, the scope and scale of impact on *all* of humanity belying the fact that some are under the control of nation states, are under attack and signaling capitulation. Consider only a most recent obvious few.⁵

- Forests set ablaze in South America and Indonesia;
- Glaciers melting in North American and Europe;
- Water to irrigate and drink disappearing in Africa;
- Wildfires;
- Alaska at 90-degrees;
- Arctic and Antarctic ice sheets falling away and melting;
- Permafrost that's no longer so permanent and belching methane and viruses into the air;
- Species dying off due to habitat change;
- 100-year floods/flooding, hurricanes, tornadoes, every year.

These and so many more directly diminish environmental richness. More importantly, they create trillions of dollars of annual current costs and economic losses from specific damage and sectoral ruin. Farming and fishing industries/stocks are being decimated by climate inhospitability at worst, and geographically displaced at best. These are, of course, the low hanging—dying—fruit. Even airplanes are not staying aloft as higher temperatures thin the air.

Apparently, reliable old science cannot guide us because too many leaders are too willing to deny the science *because it negatively affects their dollars*. Sad (to coin a word). But if scientists and their mathematical models can't pull us all out of this ditch, maybe

⁵ For more, feel free to read the prevailing most transparent scientific diagnoses and prognoses.

other mathematics will push us (read: our leaders) out. Not just any math; actuarial math. Actuarial math is simply the application of probability calculus and payoff to the insurance business and casino operations—but I repeat myself.

The actuaries have taken an interest in climate change. You see, they set premium rates for—among other types—*property* insurance. And lately the insurance industry has been battling to *not* payout on a plethora of claims resulting from once in a hundred years floods/hurricanes/tornados/wildfires/etc. happening every year. Insurance executives may *want* to deny the reality and impacts of climate change as a matter of religion or politics. But they can't because they feel the economic brunt of the impacts of harm.

So, more insurers are factoring in the reality and cost of the harm. This, in turn, results in coverage exclusions and payment limitations. It's just business. The good news is this is the language of our commercial and political leaders. When insurance companies factor climate change into their risk evaluations, at least somebody is putting a value to the risks of climate change. When a major, respectable analytics firm acquires a climate change assessment specialty firm, it's certain that clients and investors are interested. Money talks. All this is an excellent turn of events despite getting to the right place for the wrong reasons.⁶

Forced in the same way as the insurance industry, local and provincial/state governments are starting to react to the rising impact on and cost to their infrastructures. They are encouraging and subsidizing people and businesses to move out of harm's way—away from beachfronts and riverbanks, for instance. Airport authorities in many places, including the USAF, now fear rising sea levels will render their runways as guides for

⁶ It's sad and a little pathetic that our society and especially our leaders in all spheres view the world through only this one lens. But, so be it.

seaports. Again, whatever the cause, even reluctant acknowledgment of the stubbornness of climate change fact is a good thing.

The evidence already mounted—and denied by self-serving industries and the politicians residing in their pockets, or in some other time and place entirely—no longer has to be compelling on its own. It is irrefutable and, more significantly, it is being acted upon broadly through these and other independent actions. Those charged with governmental and industrial responsibility could not but be abundantly aware. In fact, almost all make public utterances supporting environmental action. But the prospect of actual action makes cowards of them all.

In the best of circumstances, the say-one-thing-do-another stance would be typical and expected hypocrisy. These are not, however, the best of circumstances. These leaders' vandalism no longer merely mars the veneer of our structure. It weakens the entire edifice from its core. Which is to say the world's governmental and industrial leadership is not vandalizing only its own parts of the planet. The ever-expanding, general fallout is causing real harm now and may, it is conjectured, soon threaten our very existence. Yet even though they *know* it and *see* it, and surely recognize their respective parts in it, *they continue anyway*.

Criminality

But is any of this criminal? Let's poke around.

At least as regards vandalism, even today there is obvious harm to the property we've established is the universal patrimony of humanity. Evidence of harm much diminishes denials and the what-me-worry response that time and not-yet-invented technology will address any problems before they are realized. That ought to disable the

strategy of kicking the can down the road so others can bear its burden. Though I doubt it will be that potent.

In any case, here we have another of those rare instances where even modest current harm (potential) must be extrapolated to an obvious, yet unrealized conclusion. A conclusion based on current evidence and reasonable evolution, not magical thinking and wished for innovation. To not do so and look back from five decades hence is to conduct an academic exercise and arrive at an answer of no value to anyone. Thus, even ignoring the real harm accruing, our determination must be pre-emptory.

The problem is that it is not the habit of justice and the law—which are the same from time to time in the West... at least for now—to render judgment in *anticipation* of crime that *might* happen. I should not be pursued, indicted, convicted, and punished for grand theft larceny despite standing in your safe with my hands on your jewelry and art. That crime has not occurred. But where actions have high causal probability of dire—criminal—outcomes, and those actions *have* been taken, it is at least *morally* responsible to anticipate and pre-empt the inevitable consequence. We do this all the time for the public or individual good.

For example, a man stands on a building ledge. It's uncertain but possible he'll jump. The consequence is not certain either, though the easily imagined one is highly probable and unquestionably dire. Even if he jumps—or falls, he *could* yet not succeed in dying. So the state always opts to intervene in this situation, presumably to interrupt a catastrophic outcome. The crime? Disturbing the peace and any of several other, lesser charges. The effect is not punishment of a successful act but alternative punishment to avoid a greater harm.

This scene illustrates why arguments to wait for the consequence of climate change because *some* people deny the obvious, rings hollow.

A crowd gathers and television trucks arrive. First responders are called to assist. What are these public officials doing there? For sure, they are trying to prevent harm coming to the person on the ledge. The moral implication is that no matter how desperate, life is worth living. But they are also trying to protect people and property from the consequence of one person's choosing to exercise free will. Not to put too fine a point on it, the public intercession on the ledge and on the ground is *wholly anticipatory*.⁷

It has to be because following a successful jump, the only response is a variation of: "Sorry. Tough luck." The stain on the sidewalk can't be prosecuted and it is too late to save person and property from risk that's become manifest. The goal is to avoid this outcome because, "All the king's horses and all the king's men" can't put Humpty—or any unwitting victims—together again.

If we all work from the same facts—even with differing derived opinions, the inescapable conclusion of the climate situation is that reckless denial and resulting (in)action by people in high places creates undue risk for innocent bystanders below (read: the world's population). This is the logic for why society has to act against these offenders now.

The crime to prosecute today: *vandalism* of the planet, which creates the greater risk to be addressed. This gateway is a starting point for a broader campaign to stop and maybe even reverse the damage, harm, and risk. How about *conspiracy* to vandalize? That would certainly increase the campaign's breadth and impact.

⁷ While noble, the second reason is a bit precious. After the first onlookers spot the jumper, only an idiot pedestrian will step into the fall zone. Those that do may be well rewarded for their wanton recklessness. On the other hand, property always stands a fair chance of damage by the 180 lb. projectile accelerating at 9.8m/sec².

Is there conspiracy? If your imagination goes to furtive dalliances and opaque communications among a shady members of a secret cabal, then no. This conspiracy is utterly, shamelessly transparent. The brazenness is so shocking we tend to overlook it. But it's plain to see. It always has been. Today though—in the USA anyway... with Trump in the White House—there seems to be desire to conspire.

As I'm merely pointing the way not charting the course through the wealth of overwhelming evidence, we'll merely tease out the shape of the conspiracy by limited example.

- The Koch brothers directly and indirectly fund think tanks to generate climate change opinions (among other things) that fail academic review but succeed in confusing settled science, justifying denial.
- Fossil fuel corporations pursue Koch-like tacks while (a) giving lip service to supposedly climate sensitive activity, and (b) quietly torpedoing innovations that would depress demand for their products.
- Public relations firms spin the think tanks' and their sponsors' good news, "not settled," skeptical climate change narrative as a counterpoint to the horrifying things they say would affect consumers if action were taken.⁸
- On behalf of think tanks and their sponsors, and industry players, government relations firms (lobbyists) donate and otherwise make politicians beholding to their clients. The bargain is to defend their patrons' interests politically when laws and regulations threaten. Democrats are hardly immune to this, but

⁸ These horrifying things include those that result from affected fossil fuel-based secondary demand. Think plastics and other petroleum-based manufactures, airlines, and so on. In the case of airlines and travel, the domino to fall after them is the hospitality industry. "Vacations are fun and business travel essential... do you really want them to stop drilling?"

Republicans are Olympic-level graft-takers, willing to shamelessly do what is absolutely wrong for their constituents but very good for their benefactors.

- All politicians, but dominantly the Republican organization, use talking points provided by benefactors to propagate denial of scientific evidence and experience.
- Influential individuals—especially the president in 2019—parrot denial, lending credence to it and confusing with absurd and oxymoronic language (e.g., “clean coal”).
- Industry, with government support, keeps prices lower than innovative alternatives with excess supply.
- The 45th president appoints former lobbyists to lead critical areas of the EPA where they succeed in not only pilfering the system to their personal benefit, but dismantling regulations and guardrails that hinder the fossil fuel business. To wit: eliminate drilling/fracking prohibitions, open protected public areas, lower national fuel consumption targets, retreat on energy efficient light bulbs(!), and on. They even threaten to sue California, to revoke the right to set higher standards.
- The Administration sues external and gags internal voices that dissent from the denial narrative. Their tactics are as galling as defunding pesky research and analysis that challenges the wisdom of denial, like NASA and the NOAA.

There would certainly seem to be a clear, if not compelling narrative that points to a wide-ranging conspiracy to commit real crimes, let alone *ruin the planet* and threaten life as we know it.

Conclusion: a case for vandalism and conspiracy to vandalize

So here we are: as a species we are lashed together (along with lemmings and all other species) and brought to the ledge by a small, identifiable part of society whose economic and power interests compel them to deny climate change. We have been cajoled and coerced to this point, our weaknesses such as bias toward easier gain and greater comfort—used against us. We are unrelentingly gaslighted to believe no harm will come if we just sleepwalk over the edge.

Shall we go? Or is it time for an intervention to pull us back from the precipice? Maybe, in fact, we are all sensible and really need only to break the inertia for some much needed perspective.

It is possible everything will be fine. It's possible we will rally ingenuity to innovate a remedy. It's possible angels will save us. But it's at least equally possible we will succeed in damaging this rock to the point where life will be even more solitary, poor, nasty, brutish, and short than Hobbes could ever have imagined. Prudence ought to tell us the downside risk of denial and condoning further planetary vandalism is too high not to take seriously. The stake we have to cover is practical annihilation. On the other hand, the upside of denying and doing nothing is just more of the same which, according to global economic and unhappiness statistics, is not all *that* great for the majority of humans in any case.

The benefit to acting now is not merely survival within a debased economy. History tells us progress always comes... if we have the environment to realize it. In this case just an environment at all. Yes, the cost is a temporarily more expensive petroleum economy. Temporary because innovation already in the pipeline (so to speak) will expose better alternatives that will become cheaper with scale. The dilemma—to believe or deny; to act or not—has no cost-free choices or easy resolution. But, and this is a life-and-death "but": for each choice, the timing and magnitude are of epically different scales.

Will criminally prosecuting leaders solve the climate crisis? It will not. But then again, neither do marches, strikes, or any of the other typical tools and tactics used by environmentalists. What this would do, however, is make manifest the decided criticality of the situation and humanity's resolve. It would compel a true debate and decisions based on very real, very present, and very personal consequences rather than on the ephemeral "someday to somebody else" catastrophe that doesn't even register any more—if it ever did.

We will make a choice, now or later. Now we have options for action or inaction. Later we may not. If it takes this sort of action to focus attention, so be it. As Samuel Johnson said, "Depend upon it sir, when a man knows he is to be hanged in a fortnight, it concentrates the mind wonderfully."

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