

# Fossil Fuel Divestment at Yale

Correcting Social Injuries of Climate Change, Extraction,  
and Democratic Distortion through Coordinated Action



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## Introduction

**The fossil fuel industry causes mass damage to human health and the environment through its contributions to climate change, harmful extraction and refinement processes, and campaigns to mislead the public and produce socially suboptimal governmental policy.**

These harms constitute a grave social injury, defined by *The Ethical Investor* (1972) as “activities which violate, or frustrate the enforcement of, rules ... intended to protect individuals against deprivation of health, safety or basic freedoms.” In response to these injuries, *The Ethical Investor* advocates for shareholder engagement. However, the social injuries associated with climate change and extraction are inherent to the business model of the fossil fuel industry. As a result, shareholder engagement has limited potential to effect sufficient and lasting change. Rather, Fossil Free Yale argues that divestment is the most effective response. By contributing to a global movement, **divestment has the ability to influence a consciousness shift among consumers and thus contribute to meaningful political change.** To maximize these outcomes, **Fossil Free Yale proposes that Yale University divest from those companies that cannot, without changing their identity, change their business model from one that is inherently dependent on the extraction of fossil fuels.**

## The Fossil Fuel Industry and Social Injury

This report builds upon Fossil Free Yale’s 2013 report to the Advisory Committee on Investor Responsibility (ACIR) by arguing that the industry’s participation in and contributions to climate change, fossil fuel extraction, and political corruption constitute a grave social injury that is inherent to the business model of the fossil fuel industry.

## Climate Change

Scientists agree that anthropogenic greenhouse gas (GHG) emissions are causing Earth’s climate to warm. Fossil Free Yale’s 2013 report outlined this science in detail. Scientific consensus on climate change and its causes has only strengthened since then. A June 2015 study by the National Oceanic and Atmospheric Administration (NOAA) and NASA found that multiple indicators indicated that 2014 was the warmest year on record. The report compiled data from 413 scientists from 58 countries to independently confirm that 2014 broke greenhouse gas, temperature, and sea level records.<sup>1</sup>

As temperatures increase, global warming affects communities around the world:

- **Extreme Weather Events:** Rain storms, hurricanes, tornadoes, and snowstorms are becoming more common and destructive. Long-term events like droughts and heat waves are also more frequent and severe.

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<sup>1</sup> Thiéblemont, R., Matthes, K., Omrani, N.-E., Kodera, K., Hansen, F. (9/15/2015). Solar forcing synchronizes decadal climate variability North Atlantic. *Nature Communications*. doi: 10.1038/ncomms9268

- **Sea Levels:** Sea levels may rise by 0.1 to 0.4 meters by the end of the century due to climate change, according to the Intergovernmental Panel on Climate Change.<sup>2</sup> Scientist James Hansen and his colleagues predict a more significant sea level rise that could exceed 1 meter in this century.
- **Ocean Acidification:** As the concentration of carbon dioxide increases in the atmosphere, the world's oceans become more acidic. Resulting harm to pH-sensitive organisms could endanger the 4 billion people in the world who receive 15 percent of their animal protein intake from seafood.<sup>3</sup>
- **Ecosystem Change:** Ecosystems shift and change as the climate warms, affecting the distribution of vector-borne diseases,<sup>4</sup> including malaria and dengue fever,<sup>5</sup> and shortening pathogen incubation periods. Ecosystem changes may also contribute to desertification, aridification, and other phenomena that harm the natural resources within a region.

These effects are observable on a global and regional level and disproportionately harm marginalized and disadvantaged communities. Those who lack access to health care, disaster relief, and infrastructure improvements such as storm-resilient homes are the most vulnerable.<sup>6</sup> These populations are also the least able to effect change. This constitutes a unique ethical obligation.

In light of this obligation, Fossil Free Yale argues that fossil fuel industry is uniquely responsible for the unsustainable release of greenhouse gas emissions for two reasons:

- 1) **Fossil Fuel Reserves:** In order to limit warming to livable levels, 82 percent of known coal reserves, 49 percent of known gas reserves, and 33 percent of known oil reserves must be left underground.<sup>7</sup> Rather than keeping these resources underground, the fossil fuel industry has a business incentive to extract and sell these reserves.
- 2) **Dependence:** The fossil fuel industry promotes fossil fuel dependence through market and political manipulation and by establishing doubt on climate change, much as the tobacco industry promoted cigarettes.

While other actors, including consumers, share in the responsibility for climate change, the fossil fuel industry plays a unique role because of (a) their power to change climate outcomes, and (b)

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<sup>2</sup> Intergovernmental Panel on Climate Change (IPCC). (2014). Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. *IPCC, Geneva, Switzerland*, 151 pp.

<sup>3</sup> Food and Agriculture Organization (FAO). (2012). The State of World Fisheries and Aquaculture. *FAO Fisheries and Aquaculture Department*.

<sup>4</sup> The UN Refugee Agency. (2008). Climate Change, Natural Disasters, and Human Displacement: A UNHCR Perspective. *The UN Refugee Agency*.

<sup>5</sup> The Guardian Press Association. (12/31/2009). Climate Change Increasing Malaria Risk, Research Reveals. *The Guardian*.

<sup>6</sup> A. Sena, A., Corvalan, C., Ebi, K. (7/11/2014). Climate Change, Extreme Weather and Climate Events, and Health Impacts. Global Environmental Change: Handbook of Global Environmental Pollution, pp. 605-613. doi: 10.1007/978-94-007-5784-4\_101

<sup>7</sup> McGlade, C., Ekins, P. (1/7/2015). The geographical distribution of fossil fuels unused when limiting global warming to 2 °C. *Nature*, 507, pp. 187-190. doi: 10.1038/nature14016

their promotion of fossil fuel dependence, which hinders any attempt by consumers to move away from fossil fuels. If the price of fossil accounted for the external cost of carbon, it is likely that consumers could use price-competitive renewable energy. Divestment is necessary to enable consumers to correct their social injury.

## Extractive Industry

The fossil fuel industry also harms public health, the environment, and social equity through extraction practices. Fossil Free Yale's 2013 report detailed the methods and consequences of conventional and unconventional methods of extraction, including mountaintop removal, hydraulic fracturing, and extraction from oil sands. These varied techniques used cause consistent impacts:

- **Air Pollution:** The removal of fossil fuels from the ground releases particulate matter into the air. Particulate matter may contain heavy metals and other toxins that contribute to short-term and chronic health problems upon entering the human respiratory system. Chemicals used during extraction are also released into the air, causing additional health effects. These problems are exacerbated by practices such as flaring.<sup>8,9,10</sup>
- **Water Pollution:** Extraction processes may lower or contaminate water tables through the removal of earth, waste disposal, chemical use, or spills of fossil fuels, chemicals, or other fluids. Surface water supplies may be similarly affected. In aqueous environments, contaminants may react, producing additional pollutants. Since chemical combinations are often guarded as trade secrets, the risk of such reactions cannot be evaluated.<sup>11,12,13,14</sup>
- **Natural Resource Degradation:** Extraction often requires that surrounding land be cleared for mining, infrastructure development, or waste disposal. The resulting damage to soil, flora, and fauna can have far-reaching implications for ecosystems and the natural resources they provide. Similarly, some extraction processes, particularly hydraulic fracturing, require significant amounts of water that may deplete local supplies.<sup>15,16,17</sup>

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<sup>8</sup> Osborn, S.G., Vengosh, A., Warner, N.R., Jackson, R.B. (5/9/2011). Methane contamination of drinking water accompanying gas-well drilling and hydraulic fracturing. *Proceedings of the National Academy of Sciences of the United States of America*, vol. 108, no. 20, pp. 8172-8176. doi: 10.1073/pnas.1100682108

<sup>9</sup> Lustgarten, A., Kusnetz, N. (9/16/2011). Science Lags as Health Problems Emerge Near Gas Fields. *ProPublica*.

<sup>10</sup> U.S. Geological Survey. (8/4/2015). Oil Wells Produce More Than Just Oil - Environmental Impact of Produced Water. *USGS Toxic Substances Hydrology Program*.

<sup>11</sup> U.S. Department of the Interior, Bureau of Land Management, Minerals and Realty Management Directorate, Argonne National Laboratory. (2012). About Tar Sands. *2012 Oil Shale and Tar Sands Programmatic Environmental Impact Study*.

<sup>12</sup> Osborn et al.

<sup>13</sup> Lustgarten et al.

<sup>14</sup> U.S. Geological Survey.

<sup>15</sup> U.S. Department of the Interior et al.

<sup>16</sup> Elliott, E.G., Ettinger, A.S., Leaderer, B.P., Bracken, M.B., Deziel, N.C. (1/6/2016). A systematic evaluation of chemicals in hydraulic-fracturing fluids and wastewater for reproductive and developmental toxicity. *Journal of Exposure Science and Environmental Epidemiology*. doi: 10.1038/jes.2015.81

<sup>17</sup> U.S. Geological Survey.

- **Geologic Impacts:** The displacement of soil, rock, and other resources from the earth may have significant impacts for local geologic integrity. For example, tailings basins often require the construction of dams. These dams, which are often built of natural materials, pose a multifaceted risk to local communities, as they may break or leak, releasing toxic materials into local ecosystems. Moreover, scientists have linked processes such as hydraulic fracturing to an increased incidence of earthquakes.<sup>18</sup>
- **Energy Use:** The energy required to extract and process fossil fuels increases the full life-cycle greenhouse gas emissions associated with a fuel. For example, while natural gas may have lower tailpipe emissions than other fuels, the extraction process is energy intensive, resulting in total emissions similar to that of other fossil fuels.<sup>19</sup>

As with climate change, these impacts disproportionately affect the marginalized communities who are the least able to avoid or change their circumstances.<sup>10</sup>

### Political Corruption

Fossil fuel corporations undermine democracy by manufacturing doubt and funding climate inaction:

**Manufacturing Doubt:** The fossil fuel industry actively generates public uncertainty on climate change, despite complete knowledge of existing scientific consensus. Evidence of these efforts is detailed in the Union of Concerned Scientists' *The Climate Deception Dossiers*, which reveals that fossil fuel companies knew of the dangers of climate change over 30 years ago.<sup>20</sup> Rather than promoting clean energy alternatives, the industry spread doubt about climate change.

Consider the following examples:

- In a memo distributed to the American Petroleum Institute in 1995, a Mobil climate scientist wrote that the science behind anthropogenic climate change is "well established and cannot be denied."<sup>21</sup> Three years later, the American Petroleum Institute detailed a campaign to erode public confidence in climate science, stating that "unless 'climate change' becomes a non-issue, meaning that ... there are no further initiatives to thwart the threat of climate change, there may be no moment when we can declare victory for efforts."<sup>22</sup>
- The American Petroleum Institute paid Harvard scientist Wei-Hock Soon over \$1.2 million between 2001 and 2012 to write about the role of solar variation in climatic

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<sup>18</sup> Physicians for Social Responsibility (PSR). (n.d.). Hydraulic Fracturing. *PSR*.

<sup>19</sup> U.S. Geological Survey. [U.S. Geological Survey](#).

<sup>20</sup> Mulvey, K., Shulman, S., Anderson, D., Cole, N., Piepenburg, J., Sideris, J. (July 2015). *The Climate Deception Dossiers*. *Union of Concerned Scientists*, pp. 26. Retrieved from: <http://www.ucsusa.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>

<sup>21</sup> *Ibid.*, pp. 44.

<sup>22</sup> *Ibid.*, pp. 38.

changes. Soon failed to disclose the source of his funding and only published his work following API review. His work has since been discredited.<sup>23</sup>

**Funding Climate Inaction:** The fossil fuel industry lobbies and contributes to political representatives who deny climate change and oppose policies to regulate emissions. Consider the following:

- 38 senators in the 114<sup>th</sup> Congress denied anthropogenic climate change. Those senators received, on average, \$732,788 each from fossil fuel interests, roughly four times the amount received by non-deniers.<sup>24</sup> In sum, the energy and natural resource industry spent nearly \$350 million on lobbying in 2014, compared to the \$128 million spent by the defense industry.<sup>25</sup>
- During debates on the American Clean Energy and Security Act in 2009, lobbyists working for the American Coalition for Clean Coal Electricity sent 13 letters of opposition to the bill to congressmen, posing as groups like the NAACP, the American Association of University Women, the American Legion, and the Jefferson Area Board on Aging. While the firm claimed that the man responsible for the letters was a rogue employee, the president of ACCCE admitted that he had known about the fraudulent letters but waited to notify the congressmen until after the vote.<sup>26</sup>

While marketing doubt and lobbying may be legal, Fossil Free Yale maintains that it is wrong for corporations to use their outside resources to manipulate public policy to produce socially suboptimal or harmful outcomes. Political efforts by the fossil fuel industry may provide affordable energy to the public in the short term, but the obstruction of environmental and energy policy has significant immediate and long term environmental and health costs, as outlined in the previous sections.

## University Response

The fossil fuel industry harms the public and the environment through its contributions to climate change, its extraction practices, and its use of substantial resources to mislead the public and political representatives. These harms compel Yale to divest its endowment from the industry.

In Fossil Free Yale's 2013 report to the ACIR, we presented an argument based on the principles outlined in *The Ethical Investor*. The report presented a detailed summary of the harms associated with the extraction industry and climate change, and outlined the application of the Kew Gardens Principle to these impacts. It then proposed a specific procedure to evaluate the

<sup>23</sup> Ibid., pp. 6-8.

<sup>24</sup> Tiffany, G., Ellingboe, K., Kroh, K. (1/8/2015). The Anti-Science Climate Denier Caucus: 114th Congress Edition. *ThinkProgress The AntiScience Climate Denier Caucus 114th Congress Edition Comments, Climate Progress*.

<sup>25</sup> Center for Responsive Politics. (n.d.). Energy/Natural Resources. *Opensecrets RSS*.

<sup>26</sup> Kaplun, A. (8/4/2009). Coal Industry Group Linked to a Dozen Forged Cap -And-Trade Letters. *The New York Times*.

social injury of investments in the 100 coal and 100 oil and gas companies with the largest total carbon reserves. The proposal also recommended a procedure for engagement with companies that did not meet the standards set by the Ethical Investor.

In *The Ethical Investor*, John Simon, Charles Powers, and Jon Gunnemann wrote that “life is fraught with emergency situations in which a failure to respond is a special form of violation of the negative injunction against social injury: a sin of omission becomes a sin of commission.” In this spirit, Fossil Free Yale maintains that the fossil fuel industry is uniquely responsible for the consequences of climate change, extraction, and political corruption, and that these damages constitute an emergency situation in which the Yale Corporation is obligated to act. Moreover, the use of this text to justify inaction in the face of these global crises points to the inability of *The Ethical Investor* to respond to this social injury.

### The Context of *The Ethical Investor*

John Simon, Charles Powers, and Jon Gunnemann wrote *The Ethical Investor* in 1972 in response to a growing demand for universities and other nonprofits to consider the social consequences of their investments. Movements responding to various social injuries, including South African apartheid, environmental damage, and discrimination in hiring practices, called for these institutions to divest from the companies they found responsible (including South African companies, Eastman Kodak, and Middle South Utilities). In each case, those calling for divestment could identify a specific or localized harm, isolate the responsible company or companies, and identify a set of actionable alternatives to the company’s damaging behavior.

In response to these localized and remediable injuries, *The Ethical Investor* argued that Yale should capitalize on its power as a shareholder. By recommending a set of alternative behaviors through shareholder resolutions, *The Ethical Investor* argued that Yale could effect change within the harmful companies. Divestment, which was seen as symbolic measure, was recommended only as a last resort.

Fossil Free Yale argues that this logic fails in the context of the fossil fuel industry. Our 2013 report outlined in detail the rationale behind this failure. In one notable example, the grandchildren of John D. Rockefeller, founder of the company that would become Exxon, used shareholder resolutions to request in 2008 that ExxonMobil issue a public statement acknowledging the dangers of climate change. Although the request required no change in company practice, ExxonMobil denied the resolutions.<sup>27</sup> Resolutions by other stakeholders have asked Exxon to invest in renewable energy, cut GHG emissions, provide carbon risk

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<sup>27</sup>Goldenberg, S. (3/27/2015). Rockefeller family tried and failed to get ExxonMobil to accept climate change. *The Guardian*.

assessments, and add a board member with climate expertise. ExxonMobil routinely rejects these requests.<sup>28</sup>

These examples point to a trend: the failure of shareholder resolution to effect change within the fossil fuel industry. As a strategy, shareholder engagement is predicated on the notion that a company can, without significantly changing its identity as a business, alter its behavior to reduce social injury. The fossil fuel industry is not capable of such a change. While a fossil fuel company may promote limited sustainability initiatives, it must continue to extract resources from the ground in an unsustainable manner and at an unsustainable rate to remain profitable. There are no technological outcomes or behavior changes that could alter these outcomes while preserving the business model of a fossil fuel company. As long as it remains profitable, companies will continue to extract, process, and burn fossil fuels, regardless of the ethical arguments of concerned shareholders. In each of the three social injuries identified, shareholder negotiation will fail:

- **Climate Change:** The extraction and burning of fossil fuels is inextricably linked to an unsustainable rise of greenhouse gas concentrations in the atmosphere. Yet, the fossil fuel industry relies on the exploitation of this natural resource to remain in business; the only means by which a fossil fuel company may significantly decrease their contribution to climate change is by going out of business. While shareholder engagement may affect limited change within a business, no company will adopt a resolution that will sabotage its profitability and long-term sustainability as a business.
- **Extraction:** Industrial removal of fossil fuels from the earth inherently damages the environment and thus human health. While engaging with companies about their extraction practices may reduce some of these impacts, it can never sufficiently improve performance to achieve acceptable levels of social injuries.
- **Political Corruption:** The political actions taken by fossil fuel corporations and trade organizations are evidence of the industry's fundamental unwillingness to transition away from a business model that necessarily harms communities and the planet. An industry that spends \$350 million a year to lobby Congress is invested in the status quo, and unlikely to reform based on shareholder engagement.

## Divestment

The grave social injuries caused by the fossil fuel industry require that Yale take action to maintain its standards of ethical investing. In the absence of precedent or theoretical justification for shareholder engagement, an alternate response is necessary. Fossil Free Yale argues that divestment is the most effective method to preserve Yale's ethical standards and affect change in

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<sup>28</sup> Douglass, E. (n.d.). Exxon's Gamble: 25 Years of Rejecting Shareholder Concerns on Climate Change. *in Climate Accountability Project*.

the fossil fuel industry. The particular efficaciousness of divestment lies in three mechanisms that are not accounted for in *The Ethical Investor*:

- 1) **Movement Building:** To date, 501 institutions around the world have divested \$3.4 trillion from fossil fuel companies. Yale's divestment would occur in the context of this campaign, and would simultaneously amplify and be amplified by the global movement.
- 2) **Political Action:** Social movements influence democratic governments. An Oxford University report found that "in almost every divestment campaign ... reviewed ... divestment campaigns were successful in lobbying for restrictive legislation." The report argued that divestment campaigns stigmatize targeted industries, resulting in shifts in public opinion that lead to corrective policies.
- 3) **Consciousness Shift:** The global divestment movement raises awareness of environmental and climate justice issues. By divesting, Yale would contribute to a consciousness shift within its community and beyond. This change could have long-term demand-side effects on the fossil fuel industry.

The benefits of divestment are amplified by Yale's position within global and investment communities. Because Yale is a pioneer in endowment management and a global academic leader, its ethical investment decisions have significant influence. For example, on the question of Sudan divestment, Princeton University stated that "the Committee recommended that Princeton follow the standard Yale developed to deal with companies doing business in Sudan."<sup>29</sup> Similarly, David Swensen's letter to his investment managers on climate change has influenced other schools' approach to divestment.<sup>30</sup> It is likely that divestment from fossil fuel companies would have similar influence in academic and investing communities.

To maximize the effect of divestment, Fossil Free Yale proposes that Yale University divest from those companies that cannot, without changing their identity, change their business model from one that is inherently dependent on the extraction of fossil fuels. This proposal is built upon an understanding that the fossil fuel industry is inherently damaging. It also recognizes that attempts to treat the social injuries associated with the fossil fuel industry as isolated events will inevitably fail. Consider in turn the importance of broad-based divestment for extraction, climate change, and political corruption:

- **Extraction:** It is impossible to evaluate fossil fuel companies on a comparative ethical scale. Who is more ethical: the mountaintop-removal mining company who contaminates water supplies in a small, rural community, or the crude oil refinement company who pollutes the air in the suburbs of a city? To the affected communities, both companies represent threats, and it is impossible to assign each with a distinct ethical value.

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<sup>29</sup>Princeton University Investment Company. (May 2006). Report of the Resources Committee Regarding Investment in Companies Conducting Operations in Sudan. *Princeton University*.

<sup>30</sup> Columbia University Advisory Committee on Socially Responsible Investing (ACSRI). (11/17/2015). Response of the ACSRI to the CDCJ Proposal of October 2015. *Columbia University ACSRI*.

- **Climate Change:** Fossil fuel companies must collaborate to keep existing reserves in the ground. To avoid a tragedy of the commons, every company must be held accountable for their ability to contribute to the extraction of more fossil fuels than earth can sustain. Moreover, companies across the fossil fuel industry support and benefit from consumer fossil fuel dependence. As an industry reliant on the continued use of fossil fuels, it plans to continue to work within this business model, despite scientific consensus that this will push the world past a point of no return.
- **Political Corruption:** The fossil fuel industry's wealth and political power is dependent in part on formal and informal collusion across the industry both in direct lobbying endeavors and in efforts to maintain consumer dependence on fossil fuels. While the responsibility of certain corporations may be easier to identify, Fossil Free Yale emphasizes that the fossil fuel industry collaborates formally and informally to provide industry-wide benefits. This cooperation is often facilitated by trade organizations like the American Petroleum Institute and the American Coalition for Clean Coal Electricity, the member groups of which can be found on the groups' websites, but can also occur outside of these confines.<sup>31, 32</sup>

In the interest of supporting this proposal, Fossil Free Yale also requests the following:

1. The ACIR publicly release its recommendation to the Corporation on the content of this proposal;
2. The Corporation Committee on Investor Responsibility (CCIR) allow Fossil Free Yale to directly present its new proposal.

There is precedent for each of these requests. In the first case, Professor Jonathan Macey, Chair of the ACIR, published an op-ed in the Yale Daily News on 15 November 2013 that disclosed his personal views on divestment as well as the Advisory Committee's approach to requests for divestment. In the second case, the Office of the President facilitated a meeting on 18 April 2015 between Mr. Neal Keny-Guyer, who was at the time a member of the CCIR, and representatives of Fossil Free Yale. Fossil Free Yale finds that these requests are logical extensions of these events.

## Conclusion

The fossil fuel industry is incapable of and uninterested in changing its business model. Divestment is necessary to stigmatize the industry, strengthen a global movement, and empower political change. Moreover, divestment is the only option if Yale University wishes to be consistent with the ethics of its guiding documents, students, faculty, and community. Fossil Free Yale proposes that Yale University divest from those companies that cannot, without

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<sup>31</sup> American Petroleum Institute (API). (n.d.). API Member Companies. *API*.

<sup>32</sup> America's Power. (n.d.). Members. *America's Power, American Coalition for Clean Coal Energy*.

changing their identity, change their business model from one that is inherently dependent on the extraction of fossil fuels. It further requests that the ACIR publicly release its recommendation to the Corporation on the content of this proposal, and that the group be allowed to present its proposal directly to the CCIR. If Yale indeed seeks to foster the “intellectual, moral, civic, and creative capacities” of students, it should begin by leading the way and taking immediate action on fossil fuel divestment consistent with the urgency of the crises facing the world. These requests are an important first step.