

The Power of Peer Pressure:

Fossil Fuel Divestment as a Force for Change (The Good Kind)

Fossil fuel divestment offers private parties—from the single individual to the largest investment firms—an opportunity to take a position on fossil fuels without significant personal risk. As a result, fossil fuel divestment should continue to be seen as a positive non-state method of encouraging the transition away from fossil fuels. This paper will first examine the primary underpinning and goals of the fossil fuel divestment movement. Then, the paper will discuss several arguments against divestment and the responses of the fossil fuel divestment movement to those arguments. Finally, this paper will conclude by supporting the moral justifications behind divestment.

I. The Basics of the Fossil Fuel Divestment Movement

The fossil fuel divestment movement is unique in the financial system because of its simplicity of messaging and goals. Many financial sector initiatives related to climate change deal with complex disclosure discussions, multifaceted insurance decisions, or proposals for intricate securities regulations. In contrast, fossil fuel divestment takes advantage of its straightforwardness to appeal to actors outside the financial sector. As will be demonstrated, it is the simplicity of fossil fuel divestment that underpins the movement's movement.

At its core, fossil fuel divestment advocates use strategies to “shame, pressure, facilitate, and encourage” investors to divest fossil fuel holdings in favor of climate-friendly investments.¹

The movement does not use specific emissions benchmarks to frame its campaign. In fact, it

¹ Julie Ayling & Neil Gunningham, *Non-State Governance and Climate Policy: The Fossil Fuel Divestment Movement*, CLIMATE POL'Y 2 (2015).

seems the most scientific portion of the divestment movement is in determining its targets.² The 200 companies that comprise the primary targets of the fossil fuel divestment movement are essentially a list of the world’s top emitters. The list is updated annually and includes the “top 100 public coal companies globally and the top 100 public oil and gas companies globally, ranked by the potential carbon emissions contented of their reported reserves.”³ The organization that maintains the *Carbon Underground 200* also provides analysis of mutual funds and ETFs to help investors find out what *should* receive investment as well as what companies to *not* invest in.⁴ By approaching fossil fuel divestment from both perspectives—where to divest and where to invest—the message of the movement is not to only divest, but instead to also support companies that are actively helping combat climate change.

The general model used by the fossil fuel divestment movement is one of “social steering”⁵ which combines strategy with the social process of consensus, collective action, and evolution of social structures.⁶ The model of social steering makes sense for an issue as diverse and complex as climate change because it focuses on the power of momentum. Essentially, social steering movements try to appeal to greater society in order to bring people into the movement and gradually steer societal consensus in a certain direction. And so naturally, in application to the fossil fuel divestment movement, its members are trying to slowly steer society as a whole away from divestment in fossil fuel companies.

² See *id.*; *The Carbon Underground 200*, FOSSIL FREE FUNDS, <https://fossilfreefunds.org/carbon-underground-200> (last visited May 7, 2021); *The Top 200 Fossil Fuel Companies*, GO FOSSIL FREE, <https://gofossilfree.org/top-200/> (last visited May 7, 2021).

³ *The Top 200 Fossil Fuel Companies*, *supra* note 2.

⁴ See *Search for Mutual Funds*, Fossil Free Funds, <https://fossilfreefunds.org/funds?dsc=false&srt=c2f5coogutweight> (last visited May 7, 2021).

⁵ Ayling & Gunningham, *supra* note 1, at 2.

⁶ Borut Rončević & Matej Makarovič, *Societal Steering in Theoretical Perspective: “Social Becoming” as an Analytical Solution*, 176 POLISH SOCIOLOGICAL REV. 457, 457–58 (2011).

On the ground, the movement uses college and university campus movements, public appeals to businesses, protests, marches, and other forms of public action to gain recognition and membership. The movement on college campuses was especially influential, because of the power of students to speak directly to their school administrations in a way that the average consumer is unable to speak to the average corporate investor.

Another significant benefit of the fossil fuel divestment as a financial measure to combat climate change is its lack of sophistication. In a world where political conflicts are increasingly overlaid on conflicts between science and non-science viewpoints, fossil fuel divestment is appealing in part because of its simplicity.⁷ To participate actively in the fossil fuel divestment movement, no special knowledge is needed to understand the goal and purpose. One need not be able to access the Federal Register, submit comments on proposed rules, or read regulations. There is no need to spend time reading complex scientific articles and documents in order to understand the scientific justification for a decision. Instead, the movement uses a generally accessible element of the financial system—the stock market—and a readily identifiable target—fossil fuel emitters. This simplicity makes the fossil fuel divestment ripe for use of social steering.

Fossil fuel divestment as a movement frames itself as more of a moral crusade than financial tool, recognizing that divestment on its own (at this point) will not lead to economic ruin.⁸ This moral crusade framing goes beyond the divestment advocates to the major carbon-producing companies. Specifically, Richard Heede argues that the major carbon-emitters have an ethical obligation to help address climate change because of the disproportionate contribution of

⁷ See Ayling & Gungham, *supra* note 1, at 3.

⁸ *Id.* at 3.

those companies to the climate crisis.⁹ This framing as a moral and ethical campaign is similar to previous divestment campaigns, such as that against the South African apartheid regime in the 1970s and 1980s.¹⁰ In that movement, advocates sought to call on the ethical obligation of companies to not support the apartheid regime by doing business with them. At the time, the divestment movement was taking place in conjunction with various sanctions and other political action.

There are a few key differences between the fossil fuel divestment campaign and previous campaigns that are both worth noting and make the current movement more promising. First, the international and multi-layered depth of the fossil fuel divestment movement means there is greater awareness for it at almost every level of society. In nearly every segment of society—such as education, institutional investment, policy, government, and private parties—there have been several significant backers of the divestment movement.¹¹ Though the movement began in certain venues—such as college campuses—it has expanded into an international movement, with entire non-profit organizations dedicated to fossil fuel divest.¹² This demonstrates that at least to a certain extent the social steering goals of the movement are working; the social imperative of fossil fuel development has garnered significant international support.

⁹ See *id.* at 4; Richard Heede, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Production, 1854–2020*, CLIMATIC CHANGE, at 122, 229–241 (2014).

¹⁰ Mikko Rajavouri, *Divestment of Fossil Fuel Assets*, RESEARCH HANDBOOK ON CLIMATE FINANCE AND INVESTMENT LAW 2 (Harro van Asselt & Michael Mehling eds., forthcoming 2021).

¹¹ *Id.* at 3.

¹² See, e.g., FOSSIL FREE FUNDS, <https://fossilfreefunds.org/funds?dsc=false&srt=c2f5coogutweight> (last visited May 7, 2021); 350.ORG, <https://350.org/> (last visited May 7, 2021); DIVESTINVEST, divestinvest.org (last visited May 7, 2021).

Second, rather than have a single priority, the fossil fuel divestment movement seeks to prompt structural, long-term change and discussions around the damaging effects of fossil fuels.¹³ The fossil fuel divestment movement is under no illusion that it can single-handedly eliminate fossil fuels from society's energy consumption. Instead, the movement sees itself as part of the ethically driven part of the larger climate change finance structure. By not judging its success any one marker of success or failure, and instead using social steering to influence public opinion, the movement can more easily frame itself as always succeeding by using incremental change.

Finally, the fossil fuel divestment movement has not attached itself to government regulation as a method of forcing divestment.¹⁴ By focusing on private investors and the moral imperative behind divestment, the fossil fuel divestment movement allows itself to evolve with other activist movements and keep up with changing priorities. Government regulation can be a lengthy, fraught, and politically charged process that involves compromise. By not associating or aligning closely with any one legislative goal, the movement can move as quickly as its momentum will take it. Even though fossil fuel divestment is generally associated with traditional Democratic values rather than Republican ones, the movement can more easily welcome supporters from both political parties by not fervently associating with the Democratic party. Of course, there are individuals in the Democratic party—both politicians and influential individuals—who vocally support the movement and have fossil fuel divestment regulation on their legislative agendas. However, it seems members of the fossil fuel divestment movement would consider those efforts an added benefit; not the goal, but a good side effect.

¹³ Rajavuori, *supra* note 10, at 3.

¹⁴ *Id.* at 4.

Together, these characteristics of the fossil fuel divestment demonstrate why its chances for success, though they ebb and flow with news cycles, are consistently strong. However, there are naturally detractors from the movement. These will be explored in the next section.

II. Primary Arguments Contesting the Fossil Fuel Divestment Movement's Potential for Positive Change

Like any newly effective social and financial movement, there are detractors who argue against the movement for economic, moral, governance, and impact-related reasons. Some naysayers simply support fossil fuels in the face of increasing scientific evidence about the damage they can do to our climate. But others provide a more nuanced argument against divestment, from a position of sustainability and support of the climate change prevention movement.

Put briefly, there are five primary arguments against fossil fuel divestment—or, at the very least, arguments that it will not be effective.¹⁵ First, the status of fossil fuel firms as public companies make them less vulnerable to the pressure of divestment because they have robust backing.¹⁶ Though this argument has merit from a financial perspective, it does not detract whatsoever from the moral and social emphasis behind the movement. That public companies have robust backing does not combat negative press and ethical criticism from environmental advocates.

Second, detractors argue the portion of the fossil fuel firm investment susceptible to divestment is small, and therefore not very impactful.¹⁷ Again, this argument focuses on the financial aspect of fossil fuel divestment. Members of the movement are under no illusion that they can single-handedly deprive fossil fuel emitting companies from all funding.

¹⁵ Ayling & Gunningham, *supra* note 1, at 4–5.

¹⁶ *Id.*

¹⁷ *Id.* at 5.

Third, the realistic divestment prospects are minimal.¹⁸ Though true, in a social steering movement like fossil fuel divestment momentum is more significant than complete success. Fourth, once investors divest, they lose the power—as a shareholder—to influence the operations of the fossil fuel firm.¹⁹ This argument reflects a common issue in investment strategy. If someone disapproves of the conduct of the business they invest in, it is easier to sell and you're your support elsewhere than stay and try to create change as a shareholder. However, the reality of most shareholder influence today is that no one shareholder has any significant say in a company.

Fifth, and most importantly, once an investor divests, the invested funds will be reinvested elsewhere and someone else will purchase the divested holdings—probably someone with less of a concern for carbon emissions and climate change prevention.²⁰ This last argument will be explored in depth here.

Kate Neville's 2020 forum article on reinvestment highlights and explores the issue of reinvestment.²¹ In covering reinvestment in other profit-generating sectors, Neville cautions against three potential consequences. First, the reinvestment is frequently in sectors that “cause environmental damage.”²² In her article, Neville explores the agriculture and renewable energy sectors.²³ Second, Neville warns that supply chains for commodities other than fossil fuels can themselves contain “histories of social exploitation that intensify environmental injustice.”²⁴ And

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*; Kate J. Neville, *Shadows of Divestment: The Complications of Diverting Fossil Fuel Finance*, 20 GLOB. ENV'T POL. 3 (2020).

²¹ See generally Neville, *supra* note 20.

²² *Id.* at 5.

²³ *Id.*

²⁴ *Id.*

last, additional investment in growing and profitable sectors can consolidate corporate control through a diversification of investment portfolios.²⁵ In making her arguments, Neville strategically uses the renewable energy sector, which at first glance would be prime target for re-investment for the fossil fuel divestment movement. Neville's short article frames a dismal prospect for using divestment and re-investment as a tool for combatting climate change. However, the piece fails to address a few important markers of the divestment movement that break down her arguments.

Primarily, Neville's article focuses exclusively on the economic and scientific aspects of divestment, wholly ignoring the primary goal of the divestment movement: moral authority and righteousness. In a passing comment on the goal of the divestment movement, Neville doubts that the purpose of divestment is anything but "fundamentally rerouting finance," and then calls into question the purpose of divestment, saying, "[e]ven if divestment is 'primarily a moral and normative initiative'"²⁶ This language demonstrates Neville's skepticism regarding the moral and social steering underpinnings of the divestment movement.

In discussing what fossil fuel divestment should be used for, Neville says divestment may provide a "short-term strategy to unsettle the current dominance of fossil fuels and create a space for envisioning new futures."²⁷ In a way, this statement is the entire goal of the fossil fuel divestment movement. As discussed previously, the movement does not pretend it will deprive companies involved in fossil fuels of all funding. The example of divestment campaigns on college campuses provides an excellent foundation for this goal. Students, acting as major universities' moral compass, are unsettling the entrenched endowments that reap profits for the

²⁵ *See id.*

²⁶ *Id.* at 8.

²⁷ *Id.*

institutions, insisting that the funds supporting their education be invested in a sustainable future. It is a social steering movement and, as Neville says, it proves promising in achieving those goals.

Neville's closing remark tells the reader that "divestment campaigns must be accompanied by more critical questions about the role of finance and the forms of political economy that underpin a more just future."²⁸ Naturally, she is correct. Of course, any movement must be placed within a broader plan of creating a more just world that creates a sustainable future for both people and the planet. But this statement does not propose a path forward for investment. Investment will always be a part of the economy, and those with significant funds need to be given an option to use that investment strategically. By targeting renewable energy as a sector that investors should be wary of, Neville deprives these investors of what appeared a safe option for investment without offering any valuable alternatives.

III. Social Consensus and Movement Is More Meaningful than Giving Up

The worry about less scrupulous investors replacing those who divest is a problem in every boycott-style movement. It is, unfortunately, inevitable. But the divestment movement should not be dissuaded by this prospect. Instead, by focusing on the moral and ethical goals of the movement, and building consensus and momentum through public action, the advocates of fossil fuel divestment can shed good light on progress and bad light on those who jump at the chance to support fossil fuels.

In contrast to other climate finance initiatives—such as SEC disclosures—fossil fuel divestment has garnered significant media attention. The less public nature of regulatory initiatives may reflect either an intense industry focus or an aversion to complex regulations.

²⁸ *Id.*

Finding a way to bring the more industry-heavy and complex climate finance initiatives into the mainstream will benefit the social momentum behind divestment. The other areas of climate finance such as disclosure, insurance, and banking seem ripe for simplification so the average consumer can feel like part of the movement. The robust backing of companies that have intense fossil fuel emissions can only break down if the financial success of those firms is endangered from multiple perspectives at once.

Even when fossil fuel companies refuse to stop exploiting fossil fuel reserves and investing in searches for new reserves, the tone they use to defend their actions has evolved, suggesting the divestment movement has an impact. When companies like Royal Dutch Shell and Exxon Mobil feel the need to now defend the type of business they have undertaken for decades,²⁹ it is not difficult to find a hint of change.

At times, for the reasons discussed in this article, fossil fuel divestment can feel like a fruitless endeavor. Yet, I found this quote from the Rockefeller Brothers Fund inspiring: “You start with the symbolic gesture because you have to lead with your morals and your principles, and then you also build the financial case for doing it . . . it is increasingly risky not to be willing to make this sort of important gesture for our future.”³⁰ After learning and reading more about the fossil fuel divestment movement, I believe the statement captures well the social steering foundation of the movement and the use of momentum in creating lasting social and environmental change. Momentum led to the explosion of fossil fuel use that put us in the position we are in today, and hopefully we can use momentum to reverse that trend.

²⁹ Ayling & Gunningham, *supra* note 1, at 7.

³⁰ *Id.*; *Rockefeller Fund Joins Global Divestment Movement*, ABC RADIO NATIONAL (Feb. 17, 2015), Rockefeller fund joins global divestment movement, www.abc.net.au/radionational/programs/breakfast/rockefeller-fund-joins-global-divestment-movement/6125112.