IS REGULATORY CAPTURE BY FOSSIL FUEL INTERESTS, CLIMATE ACTIVISTS OR ESG ACTIVISTS DANGEROUS TO CANADA'S ECONOMY?

Abstract

Regulatory capture is an economic theory that regulatory agencies become dominated by the interests that they regulate rather than the public interest. The issue is complex and nuanced since the "public interest" is subjective and in democracies reflects either the desire of the voting base or a philosophical or political ideology promoted by elected leaders. Industries lobby governments and regulators while ordinary citizens lack the resources to compete with lobbyists. Political parties promote ideological views targeted at garnering the most votes, using their campaigns to persuade voters what is in their interests and claim they are uniquely qualified to deliver against those interests.

Fossil fuel interests, climate activists and activists promoting Environment, Social and Governance (ESG) issues have spent billions of dollars and collided in the war for regulatory support of their views with each side hoping to persuade legislators and regulators to enact new laws or interpret existing laws to promote their point of view, a clash that has the potential to improve social outcomes or damage the Canadian economy. This paper explores the actions of the key combatants and the current state of the underlying disputes, with a conclusion that economic damage is the outcome.

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BACKGROUND AND ISSUES

Regulatory capture is an economic theory that regulatory agencies become dominated by the interests that they regulate rather than the public interest.[1] The issue is complex and nuanced since the "public interest" is subjective and in democracies reflects either the desire of the voting base or a philosophical or political ideology promoted by elected leaders. Industries lobby governments and regulators while ordinary citizens lack the resources to compete with lobbyists. Political parties promote ideological views targeted at garnering the most votes, using their campaigns to persuade voters what is in their interests and claim they are uniquely qualified to deliver against those interests.

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The motivations of fossil fuel companies and companies engaged in producing so-called "renewable energy" to influence regulation is purely economic. The oil & gas and coal industries are large and powerful and comprise a measurable portion of Gross Domestic Product (GDP) in most countries. In the United States the oil & gas industry alone comprises 8

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[1] Regulatory Capture Definiton
<https://www.investopedia.com/terms/r/regulatorycapture.asp>

percent of GDP employing 10.3 million[2] and the renewable energy industry employs an estimated 9.3 million Americans[3]. In Canada, oil & gas developers directly and indirectly employ about 600,000 people or about 3% of Canada's 18.7 million strong labour force. By lobbying governments at all levels, both oil & gas and renewable energy companies hope to reduce taxes and royalties or increase subsidies, gain approval for major projects, and obtain right-of-way access for pipelines, transmission lines and deep-water ports for energy development, transportation, and transmission.

The motivations of climate activists and ESG proponents are more complex.

Some climate activists have ties to renewable energy companies and investors in those companies and are economically motivated; others are sponsored by competing fossil fuel producers hoping to gain a market advantage by using climate alarm to stifle competitors' production or access to pipeline infrastructure. Evidence of such motives was surfaced by research by journalist Vivian Krause[4] and by the Allan Report from the Public Inquiry into anti-

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[2] Oil & Natural Gas Contribution to U.S. Economy Fact Sheet <https://www.api.org/news-policy-and-issues/taxes/oil-and-natural-gas-contribution-to-us-economy-fact-sheet>

[3] US 'green economy' generates $1.3 trillion and employs millions: Study (cnbc.com) <https://www.cnbc.com/2019/10/16/us-green-economy-generates-1point3-trillion-and-employs-millions-new-study-finds.html>

[4] Over a barrel: Documentary breaks down foreign funding of opposition to Canadian oil and gas - JWN Energy <https://www.jwnenergy.com/article/2019/10/10/over-barrel-documentary-breaks-down-foreign-fundin/>

Alberta energy campaigns[5]. Others fear climate change is a threat to humanity and want to benefit society through emission reductions believing that CO_2 emissions cause or contribute to dangerous levels of climate change. Some set up as charities see climate change as an opportunity to encourage donations.

ESG activists want to change corporate governance by making corporations directly responsible not only to shareholders but also to governments, communities, employees, and the environment in which they operate. They share a belief that unfettered capitalism is damaging the fabric of society and that existing corporate and securities laws allow corporate managers freedom to operate in ways that do not satisfy legitimate expectations of society. The ESG movement implies that existing corporate, securities, human rights and environmental laws are insufficient and that a re-imagination of the role of corporations in society offers benefits. Like some climate activists, they believe their activism is in the public interest.

Public Interest

People with power define "public interest" to suit their ideology and perpetuate their retention of power. History is rife with examples of societies whose leaders defined "public interest" in ways that the historical record demonstrates as monstrous. Incas and Aztecs believed it was in the public interest to sacrifice the lives of children to change the weather. Catholic leaders including the Pope in the middle-ages believed it was in the public interest to torture heretics to compel them to admit their heresy and earn entry into heaven. Communist leaders in Russia allowed

[5] Report of the Public Inquiry into Anti-Alberta Energy Campaigns, J. Stephens Allan, July 2021, page 13 <https://open.alberta.ca/dataset/3176fd2d-670b-4c4a-b8a7-07383ae43743/resource/a814cae3-8dd2-4c9c-baf1-cf9cd364d2cb/download/energy-report-public-inquiry-anti-alberta-energy-campaigns-2021.pdf >

mass starvation to perpetuate their rigid view that a peasant who withheld even one grain of wheat suffer execution for his crime against that state.

There are frequent divergences from what political parties promote as being in the public interest and what the population wants or what would benefit most of the people from an economic point of view. Climate change policies are such an issue in Canada, an argument I will develop throughout this paper. Climate change risks are at the center of the debate pitting fossil fuel interests against climate activists and ESG activists. ESG activists concern themselves not only with climate change but also with broader social goals they include in their definition of the "public interest". This paper is in three two parts - Fossil fuel activism, Climate change activism and ESG activism - despite their obvious overlap.

Part I: Fossil Fuel Activism

The size and scale of the fossil fuel industry and its economic contribution to Canadian and American societies make it a focal point for regulators and activists alike. Changes to environmental legislation, tax, and royalty regimes and right of way permits for drilling and pipelines can materially benefit or penalize these industries whose fortunes are tied to commodity prices beyond their control. To influence related laws and regulations, fossil fuel interests employ lobbyists and spend billions on lobbying efforts.

In an October 2021 press release, the House Committee on Oversight and Reform of the United States Congress reported that Exxon, Chevron, Shell, and British Petroleum employed forty lobbyists and spent a total of $375 million lobbying the federal government and the American

Petroleum Institute employed forty-eight lobbyists and spent a $78 million.[6] Chairman Carolyn described the industry efforts as "greenwashing" motivated by their desire to retain "lucrative tax breaks".[7] Fossil fuel companies pay an estimated $138 billion in federal, state and local taxes according to a report by Resources for the Future, a Washington-based non-partisan economics group.[8]

It is hard to parse which of the scientists who dispute climate change theory between those associated with the fossil fuel lobby and those who hold independent views, but there is no shortage of so-called "deniers". A 2007 report of the U.S. Senate Committee on Environment and Public Works listed over four hundred prominent scientists who dispute climate change theory.[9] That number grew to over 650 scientists in 2008.[10] Many of the scientists named were participants in the United Nations IPCC reports.[11]

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[6] House Committee on Oversight and Reform press release, October 28, 2021 <https://oversight.house.gov/news/press-releases/committee-analysis-of-fossil-fuel-industry-s-lobbying-reveals-public-praise-for#:~:text=The%20four%20oil%20%E2%80%8Bgiants,year%20and%20spent%20%2478%20million.>

[7] Ibid

[8] In U.S. States struggle to replace fossil fuel tax revenue, Mead Gruver and Morgan Lee, Seattle Times, May 16, 2022. <https://www.seattletimes.com/business/in-us-states-struggle-to-replace-fossil-fuel-tax-revenue/>

[9] U.S. Senate Report: Over 400 Prominent Scientists Disputed Man-Made Global Warming Claims in 2007, Press Release, U.S. Senate Committee on Environment and Public Works, December 20, 2007. <https://www.epw.senate.gov/public/index.cfm/press-releases-all?ID=f80a6386-802a-23ad-40c8-3c63dc2d02cbandIssue _id>

[10] Ibid

[11] Ibid

Scientists who dispute the climate change theory are labeled as “deniers” and accused of being shills for the fossil fuel industry regardless of their credentials. Under the Trump Administration, they had a voice. Key executives of environmental components of the Trump Administration were filled with so-called “deniers”.[12] While labeled as deniers, no one questioned their scientific credentials or offered any evidence they were connected to the fossil fuel industry. In the case of the appointment of David Legates[13], a scientist who teaches at the University of Delaware and who argues that increases in atmospheric CO2 levels are beneficial, his appointment unleashed a vicious attack by climate activists.

Fossil fuel lobbying of the United States government is finding new life since Russia invaded the Ukraine and a global energy shortage has crippled parts of Europe and the United Kingdom, with Russia recently cutting off gas supplies to Bulgaria and Poland.[14] They may enjoy a warmer reception in a world now enveloped by energy shortages and high fossil prices. Climate change activism is challenging when citizens can’t afford to heat their homes or fuel their vehicles.

[12] Scientists who do not believe in climate change are now leading a top environmental agency, Charlotte Klein, Vanity Fair, October 28, 2020, <https://www.vanityfair.com/news/2020/10/trump-climate-change-denial-noaa>

[13] David R. Legates | Department of Geography & Spatial Sciences | College of Earth, Ocean & Environment | University of Delaware (udel.edu) <https://www.udel.edu/academics/colleges/ceoe/departments/gss/faculty/david-legates/>

[14] US Fossil Fuel Lobbying Ramps Up as Russia Cuts Gas to Bulgaria and Poland (truthout.org) <https://truthout.org/articles/us-fossil-fuel-lobbying-ramps-up-as-russia-cuts-gas-to-bulgaria-and-poland/>

Part II: Climate Change Activism

Climate change is one of the most controversial issues that faces legislators in Western democracies. The theory of anthropogenic global warming (AGW) is based on a thought experiment first published by Svante Arrhenius, a Nobel prize winning chemist, in a paper he published in 1896.[15] Arrhenius published an amended paper in 1906 concluding a doubling of CO_2 levels would cause less warming and be beneficial.[16] His work and subsequent studies by a plethora of scientists have yet to demonstrate empirical evidence of AGW but that has not stopped the issue from capturing the minds of politicians worldwide. Former British Prime Minister the late Margaret Thatcher said: "Global warming 'provides a marvelous excuse for worldwide, supra-national socialism."[17]

Arrhenius' predictions had negligible impact on geopolitics until the mid-1970's when it became fashionable to predict the next ice age, an issue garnering the cover of Time Magazine. The 1970's saw the rise of Pierre Elliot Trudeau as Canada's Prime Minister ("PET"). PET was a member of the Club of Rome [18], a group dedicated to the establishment of a post-national global

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[15] On the Influence of Carbonic Acid in the Air upon the Temperature of the Ground (rsc.org), Svante Arrhenius, The London, Edinburgh and Dublin Philosophical Magazine and Journal of Science, Fifth Series, April 1896 Accessed at <https://www.rsc.org/images/Arrhenius1896_tcm18-173546.pdf>

[16] Die Vermutliche Ursache der Klimaschwankungen, Svante Arrhenius, Meddalanden Fran. Vetenskapsankademenians NobelInstitut BAND i No.2, 1906

[17] Margaret Thatcher: Global warming provides excuse for 'worldwide, supra-national socialism', Marita Noon, Townhall website, April 14, 2013. Accessed at <https://townhall.com/columnists/maritanoon/2013/04/14/margaret-thatcher-global-warming-provides-excuse-for-worldwide-supranational-socialism-n1567176 >

[18] Homepage - Club of Rome <https://www.clubofrome.org>

socialist government and a staunch supporter of AGW and the need for a global response. Members [19] included billionaire George Soros [20], Klaus Schwab and the late Maurice Strong, who PET made Chairman of PetroCanada, a crown corporation created under PET's Liberal government as part of the controversial National Energy Program ("NEP") enacted by the PET government in October 1980. PET embraced Communism and, in his youth, joined an organization seeking to overthrow capitalism.[21]

The evidence that AGW is political rather than scientific is overwhelming. No prior scientific advance divided society along political party lines but AGW is embraced by left wing leaders and denounced by right wing parties. Political parties of all stripes embrace the law of gravity, the theory of relativity and the properties of electricity but dispute AGW. It is worthwhile to examine why.

Public statements by proponents of AGW provide some insight. The late Christine Stewart, Minister of Environment in Canada's Liberal government between 1997 and 1999, is quoted as saying: "No matter if the science of global warming is all phony . . .climate change provides the greatest opportunity to bring about justice and equality in the world".[22] Timothy Wirth, while President of the United Nations Foundation, reportedly said: "We have got to ride this global

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19 Elitists have created the myth of climate change to eliminate national sovereignty | The Altamont Enterprise <https://altamontenterprise.com/09252019/elitists-have-created-myth-change-eliminate-national-sovereignty>

20 Plutocrats, Chrystia Freeland, Penguin Books, 2012,

21 Like Father, Like Son. Robert Morley, Philadelphia Trumpet, January 2016. Accessed at <https://www.thetrumpet.com/13321-like-father-like-son>

22 In Their Own Words: Climate Alarmists Debunk Their Science, Larry Bell, Forbes Magazine, February 5, 2013. <https://www.forbes.com/sites/larrybell/2013/02/05/in-their-own-words-climate-alarmists-debunk-their-science/?sh=1993e8eb68a3 >

warming issue. Even if the theory of global warming is wrong, we will be doing the right thing in terms of economic and environmental policy"[23] Dr. Ottmar Endenhofer, co-chair of working group three of the Intergovernmental Panel on Climate Change ("IPCC") said during an interview on November 13, 2010: "We [UN-IPCC] redistribute *de facto* the world's wealth by climate policy. . ." "One has to free oneself from the illusion that international climate policy is environmental policy. This has almost nothing to do with environmental policy anymore . . . ". ("Another Climate Alarmist Admits Real Motive Behind Warming Scare")24

This paper is not intended to resolve the scientific dispute over AGW nor could it, but it is nonetheless useful to point to the inconsistency between the IPCC claims of material global warming and the application of the laws of physics to the degree to which a doubling of atmospheric CO2 levels could cause warming, something I covered in a short paper published on Substack on December 2, 2021.[25] Francois-Marie d'Arouet (known popularly by his pen name Voltaire") wrote in his 1765 work "Questions sur les miracles" "Those who can make you believe absurdities can make you commit atrocities".[26] There is ample evidence that AGW is an absurdity, beyond the scope of this paper.

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[23] The UN's Global Warming War on Capitalism: An Important History Lesson, Larry Bell, Forbes Magazine, January 22, 2013, <https://www.forbes.com/sites/larrybell/2013/01/22/the-u-n-s-global-warming-war-on-capitalism-an-important-history-lesson-2 /?sh=240cf08a29be>

[24] Global Warming Alarmism: When Science IS Fiction, Larry Bell, Forbes Magazine, May 29, 2012. <https://www.forbes.com/sites/larrybell/2012/05/29/global-warming-alarmism-when-science-is-fiction?sh= 30a18ff 77012>

[25] How much warmer can CO2 make Earth, Michael Blair, 2021 <https://michaela34.substack.com/p/how-much-warmer-can-co2-make-earth?s=w >

[26] Questions sur les miracles, M. Claparede, Gale Ecco Print Editions, 2010

Policy makers in Canada and the United States ignore the evidence that CO2 is in a dangerous secular decline.[27] Grade school arithmetic demonstrates that the popular NetZero goal if realized would result in CO2 concentrations falling below the level needed to support plant life.[28]

The motive for advancement of AGW appears to be political and economic power rather than a genuine desire to protect society from any threat. As part of that political movement, it has become fashionable to claim fossil fuels are "dirty" and there is an urgent need to "transition" to "clean" sources of energy like wind and solar. Investors in wind and solar companies have a lot to gain from promoting this agenda and fossil-fuel based companies a lot to lose. Both groups seek to influence legislation broadly and securities regulation specifically. They are engaged in a race to "capture" legislators and regulators for their own respective economic benefits.

The ability to capture legislators and regulators conforms with the findings of behavioural economists regarding the tendency of environmental laws to reflect flawed judgments about the risks posed by environmental harms. In an article by Christine Jolls, Cass Sunstein and Richard Thaler the authors comment on what they describe as "Anecdote-Driven Environmental Legislation"[29] writing: "Judgment errors by boundedly rational individuals play a significant role in predicting and explaining the content of law. In particular, people seek law in areas such as environmental protection on the basis of their judgments about the probabilities associated with

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[27] PA Environment Digest Blog: Presenter Tells House Committee 140 million Years of Data Shows Greenhouse Gases Are in A Significant and Dangerous Decline <http://paenvironmentdaily.blogspot.com/2019/03/presenter-tells-house-committee - 140.html?m=1>

[28] Will NetZero save Humanity? - by Michael Blair (substack.com) <https://michaela34.substack.com/p/will-netzero-save-humanity?s=w)

[29] A Behavioral Approach to Law and Economics, Jolls et. al, Behavioral Law & Economics edited by Cass Sunstein, Cambridge University Press, 2000 at page 37.

certain harmful activities. Their judgments about probabilities will be affected by how "available other instances of the harm in question are, that is, by how easily such instances come to mind." With left wing political leaders incessantly blaming every hurricane, flood, forest fire or heat wave on mankind created "climate change" people are easily persuaded that climate change is caused by CO_2 emissions despite conclusions that such weather extremes are unrelated to rises in atmospheric CO_2 levels in the periodic reports of the Intergovernmental Panel on Climate Change (IPCC).[30] The clash between fossil fuel interests and proponents of renewable energy is a battle of titanic proportion. The motives for both the fossil fuel industry and the promoters of renewable energy to capture legislators and regulators is economic. Billions of dollars are at stake and there are going to be winner and losers.

Climate activists include legal scholars who advocate changes to Canada's constitution and constitutional framework. Writing in the Alberta Law Review in 2018, legal scholar Jason MacLean writes:

"Global climate change is at the point where politics as usual is not sufficient to combat it. The author argues that a new conceptualization of constitutionalism and federalism will be required to respond to this change. What the author calls federalism 3.0 will be a bottom-up approach to politics, where individuals are empowered by governments and institutions to shape climate policy. This bottom-up approach is encapsulated in the Paris Climate Change Agreement. Canadian Prime Minister Justin Trudeau has publicly declared Canada's commitment to climate leadership through mobilizing all elements of Canadian society. However, the author argues

[30] IPCC — Intergovernmental Panel on Climate Change < https://www.ipcc.ch>

Trudeau's policies to date are merely an example of formalistic, check-the-box constitutionalism, rather than substantive, federalism 3.0."[31]

In parallel with the capture of legislators and regulators by climate activists and proponents of renewable energy technologies such as wind and solar, there has been a growing trend among political and business leaders to try and re-imagine capitalism as "stakeholder capitalism" by imposing on corporations' obligations beyond the lawful management of the businesses they host to include a broad and poorly defined range of environmental, social and governance ("ESG") goals. As with AGW, the proponents of stakeholder capitalism seek the benefit of regulatory capture to promote their world view. Given the prominence of climate change concerns in the Environmental portion of ESG, there is bound to be some overlap between pure climate change and ESG activists and both groups will face off against corporate interests including fossil fuel companies.

This paper will explore the progress and degree of success of the parties seeking to capture Canadian and American regulatory bodies based on views on climate change, ESG and fossil fuel development.

Regulatory Capture by Proponents of AGW and fossil fuel interests

The proponents of AGW are legion. They include political parties (Liberals, New Democrats and Greens in Canada, Democrats in the United States), non-government organizations[32] ("NGO's")

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31 Jason MacLean, Will We Ever Have Paris? Canada's Climate Change Policy and Federalism 3.0, 2018 55-4 Alberta Law Review 889, 2018 CanLIIDocs 86, <https://canlii.ca/t/29xk>, retrieved on 2022-05-15

32 Non-governmental organizations - Canada.ca < https://www.canada.ca/en/environment-climate-change/corporate/transparency/briefing-materials/corporate-book/non-governmenta - organizations.html>

and activists (Greenpeace, Sierra Club, World Wildlife Foundation, Canadian Environmental Law Association, David Suzuki Foundation, Ecojustice, Environmental Defence Canada, Equiterre, International Institute for Sustainable Development, and Ocean Wise among others). These organizations are well-funded, well-organized, and determined. They lobby our government, organize protests and demonstrations, and initiate litigation to promote their world views. Regulatory capture has occurred in both Canada and the United States at several levels.

The Public Inquiry into Anti-Alberta Energy Campaigns (the "Allan Report) reported that foreign funding of NGO's bent on land-locking Alberta oil comprised a total of $1.28 billion in the period from 2003-2019, with $352 million of that funding directed towards anti-pipeline protests.[33] Numerous American entities provided most of the funding for the anti-Alberta Energy activism including (Allan report, pages 136 to 506) with another $414 million contributed directly or indirectly by the Canadian federal government or its Provincial or Municipal counterparties:

Tides U.S. Foundation
Rockefeller Brothers Fund, Inc.
Campion Foundation
The Oak Foundation U.S.A.
William and Flora Hewitt Foundation
Wilburforce Foundation
The Bullitt Foundation
Pew Charitable Trusts

Researcher Vivian Krause published extensive research tracing this funding from the American sponsors to Canadian NGO's and First Nations recipients and surfacing information that the

[33] Report of the Public Inquiry into Anti-Alberta Energy Campaigns, J. Stephens Allan, July 2021, page 13 < https://open.alberta.ca/dataset/3176fd2d-670b-4c4a-b8a7-07383ae43743/resource/a814cae3-8dd2-4c9c-baf1-cf9cd364d2cb/download/energy-report-public-inquiry-anti-alberta-energy-campaigns-2021.pdf >

Trudeau Government had repealed direction to Canada Revenue Agency to tighten up rules of what comprised a "charity" to facilitate tax free status for both the donors and recipients of the American funding of the attack on Canada's energy industry. [34] Fossil fuel companies and related downstream infrastructure companies are similarly well-funded and well-organized for this face off.

Capture of the legislative bodies

The most obvious and to some the most pernicious form of capture has been the capture of the legislative branch of government in the United States and of Parliament in Canada. Both fossil fuel lobbyists and advocates of so-called "renewables" have spent countless millions of dollars lobbying members of Congress. The Committee on Oversight and Reform's Republican Chairwoman Carolyn Maloney released a report in October 2021 which disclosed that the four largest oil companies and the American Petroleum Institute employed 40 lobbyists and had spent $452.6 million since 2011 lobbying the U.S. federal government.[35] The Committee found the fossil fuel lobby was "greenwashing" the industry by paying lip service to climate change while advocating for lower taxes and less regulation for the oil industry.

The "renewables" industry spends considerably less but has more success with its efforts aimed at "regulatory capture." A 2021 report showed the industry comprising wind and solar companies had spent $71.7 million on their lobbying efforts since 2015 but received benefits

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[34] Corbella: Researcher exposes U.S.-based campaign to kill the oilsands | Calgary Herald <https://calgaryherald.com/news/local-news/corbella-vivian-krause-should-become-a-household -name-across-Canada>

[35] Committee Analysis of Fossil Fuel Industry's Lobbying Reveals Public Praise for Climate Policies Is Not Backed by Meaningful Action | House Committee on Oversight and Reform <https://oversight.house.gov/news/press-releases/committee-analysis-of-fossil-fuel-industry-s-lobbying-reveals -public-praise-for>

estimated at $36 billion [36] in federal and state subsidies. Lobbying is big business in the United States and the payoffs are enormous.

The most successful part of the renewables lobbying efforts has been its support for the Democratic party. Donations of a record $11.1 million to the Democratic party in 2017 returned a staggering $11.6 billion to the “green” industry that year, compared to a paltry $4.6 billion in subsidies to the much larger fossil fuel industry. The election of Joe Biden as President in 2020 was an even larger victory as the Biden administration replaced the heads of key regulatory bodies with climate activists. The appointment of environmentalist and climate activist Tracy Stone-Manning to the top job in the Bureau of Land Management in October 2021 put the fox in the henhouse. The Bureau of Land Management is the regulatory body that controls the issuance of drilling permits and oil & gas development on Federal lands. Rest assured that decisions made by the Bureau of Land Management will no longer be based on whether there is any immediate environmental issue but on a presumption that CO2 emissions contribute to climate change.

Canada has not escaped lobbying by fossil fuel companies or climate activists in efforts to capture the legislative branch of our government. The Canadian Centre for Policy Alternatives (“CCPA”) published a report on November 8, 2019, to demonstrate that fossil fuel companies had made persistent efforts to influence federal government regulation of the oil & gas industry, citing 11,452 lobbying contacts on behalf of the oil & gas industry in the seven year period from

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[36] Green Energy Scores a 76X ROI for Their Lobbying Efforts - Texas Articles - Transparency USA.<https://www.transparencyusa.org/article /green-energy-lobby-roi>

2011 to 2018.[37] The report entitled “Big Oil’s Political Reach: Mapping Fossil Fuel Lobbying from Harper to Trudeau” was itself a lobbying effort by the CCPA which advances arguments supporting AGW theory and claiming climate change is an urgent problem for Canada. There is no shortage of climate activist organizations in Canada. The Climate Action Network, which brings together many Canadian activist organizations dedicated to lobbying for more comprehensive climate action, lists over 130 members.[38]

The Climate Action Network and the CCPA ignore the reality that even complete elimination of Canadian fossil fuel emissions would be a rounding error in global emissions and make no measurable difference to global warming on any theory of the case. Global fossil fuel emissions have averaged about thirty-five gigatons per year for the past decade and Canadian fossil fuel emissions have been flat at about 730 megatons per year since the turn of the century according to data from the Canadian government[39] comprising about 2% of global emissions. Those emissions, negligible by any measure, are more than offset by the carbon dioxide captured by the 1.3 billion acres of Canada’s boreal forests.[40] One acre of boreal forest sequesters approximately

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[37] Canada’s fossil fuel lobby influences policy and decisions for major federal government projects | Canadian Centre for Policy Alternatives, Graham, Carol and Chen.<https://policyalternatives.ca/publications/commentary/canada%E2%80%99s-fossil-fuel-lobby-influences-policy-and-decisions-major-federal>

[38] Climate Action Network Members < https://climateactionnetwork.ca/meet-ou r-members/>

[39] Canadian Greenhouse Gas Emissions < https://www.canada.ca/en/environment-climate-change/services/environmental-indicators /greenhouse-gas-emissions.html>

[40] Canada’s Boreal Forests < https://naturecanada.ca/discover-nature/canadas-different-environments/canadas-boreal-forest/#:~:text=At%201.3%20billion%20acres%2C%20the,wetland%20ecosystems%20remaining%20on%20earth.>

180 tons of CO_2[41] according to a report prepared for the Congressional Research Service in 2009. Canada is not a source of global emissions but is a carbon dioxide sink. Whether climate activist lobbying efforts comprise "regulatory capture" requires a determination as to whether suppression of Canada's oil & gas industry is in the public interest.

Canada is home to an estimated 165 billion barrels of oil reserves, one of the largest sources of fossil fuels on the planet. Development of those reserves in a manner like what Norway has done with its five billion barrels of reserves has the potential to generate taxes and royalties greater than all taxes collected at all levels of government in Canada, a bit of arithmetic I published in a paper on Substack a few months ago. [42] From an economic point of view, it is not debatable that Canadians would be better off developing rather than suppressing its oil & gas industry.

Capture of the legislative branch in Canada was complete with the election of Justin Trudeau as Prime Minister in 2015. Trudeau appointed resolute climate activists to key cabinet positions including Catherine McKenna as Minister of Environment in his 2015, Jonathan Wilkinson in his 2019 cabinet and cabinet and Steven Guilbeault as Minister of Environment in his 2022 cabinet. Trudeau is an active member of the World Economic Forum [43], a group led by Klaus Schwab whose stated objective is to create a new world order based on stakeholder capitalism he calls

[41] Carbon Sequestration in Forests (fas.org) <https://sgp.fas.org/crs/misc/RL31432.pdf>

[42] Is Norway's Success a Model for Canada? Michael Blair, Substack. <https://michaela34.substack.com/p/is-norways-success-a-model-for-canada?s=w >

[43] Justin Trudeau | World Economic Forum (weforum.org) < https://www.weforum.org/people /Justin-Trudeau>

"The Great Reset."[44] [45] [46] Stakeholder capitalism is another topic I will address later in this paper when I discuss ESG activism.

Capture of the Judiciary

Canada is a constitutional democracy, having benefited from the repatriation of 1867 Constitution Act of the British parliament (called the British North America Act at that time) amended by the 1982 Constitution Act of the British Parliament which granted full independence to Canada with Canada's enactment of its own Constitution Act in 1982. To fully "capture" the legislative bodies in Canada, activists in and outside of Parliament and Provincial legislatures had also to "capture" the judiciary. This proved to be a simple task, involving no more than incessant public statements, protests and propaganda aided and abetted by the federal Liberals, New Democrats and Green parties whose climate propaganda knew no bounds. Our justices were not immune to this barrage of so-called "science" repeated daily in Canadian mainstream media who promoted the AGW theory but gave no ink to opposing voices.

Canada's court system is based on judgments made by independent justices based solely on evidence in the record before them in every case. The role of the judge is spelled out in The Canadian Superior Courts Judges Association website which says *inter alia* "The judge, however, remains above the fray, providing an independent and impartial assessment of the facts

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[44] Our Mission | World Economic Forum (weforum.org) , <https://www.weforum.org/ about/world-economic-forum>

[45] Now is the time for a 'great reset' of capitalism | World Economic Forum (weforum.org) <https://www.weforum.org/agenda/2020/06/ now-is-the-time-for-a-great-reset/>

[46] COVID 19: The Great Reset, Klaus Schwab, and Thierry Malleret, 2020

and how the law applies to those facts."[47] It is a reasonable inference that a judge who basis a ruling on information received outside the courtroom has been "captured" by the source of that information, regardless of its reliability. Judges may to "take judicial note" of facts so widely known and uncontroversial that they require neither evidence nor proof. AGW theory would not qualify.

Evidence of the capture of the Canadian judiciary by climate activists manifests itself in the existence of findings of fact by Canadian judges based on no evidence which support the AGW activism. That may sound far fetched but is demonstrable.

On June 21, 2018, the Trudeau government enacted the Greenhouse Gas Pollution Pricing Act ("GGPPA"), sometimes referred to as the carbon tax legislation. Saskatchewan, Alberta, and Ontario challenged the GGPPA as being outside of federal authority. The respective courts of appeal of these Province heard those challenges.

Thirteen parties sought and received intervenor status[48] in the Court of Appeal for Ontario, including activist groups Canadian Environmental Law Association, Environmental Defence, Sisters of Providence St. Paul, Ecofiscal Commission, David Suzuki Foundation, Equiterre, Intergenerational Climate Coalition, and International Emissions Trading Association. The matter before the Court of Appeal for Ontario was the narrow issue of whether the GGPPA violated the Canadian Constitution. The Court of Appeal for Ontario heard substantive arguments June 28, 2019, and in a split decision dismissed Ontario's challenge. [49] Written

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[47] The Role of the Judge – The Canadian Superior Courts Judges Association (CSCJA) <https://cscja.ca/judges/the-role-of-the-judge/>

[48] *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 29

[49] *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544 (CanLii)

reasons for decisions released by Chief Justice George Strathy included as findings of fact the following:

"*Greenhouse gas emissions and climate change*

[6] **Climate change was described in the *Paris Agreement* of 2015 as "an urgent and potentially irreversible threat to human societies and the planet". It added that this "requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response"**. [page71]

[7] **There is no dispute that global climate change is taking place and that human activities are the primary cause**. The combustion of fossil fuels, like coal, natural gas and oil and its derivatives, releases GHGs into the atmosphere. When incoming radiation from the Sun reaches Earth's surface, it is absorbed and converted into heat. GHGs act like the glass roof of a greenhouse, trapping some of this heat as it radiates back into the atmosphere, causing surface temperatures to increase. Carbon dioxide ("CO2") is the most prevalent GHG emitted by human activities. This is why pricing for GHG emissions is referred to as carbon pricing, and why GHG emissions are typically referred to on a CO2 equivalent basis. **Other common GHGs include methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride.**

[8] At appropriate levels, GHGs are beneficial. They surround the planet like a blanket, keeping temperatures within limits at which humans, animals, plants, and marine life can live in balance. **The level of GHGs in the atmosphere was relatively stable for several million years**. (""Textbook Climate Denialism": A Submission to the Public Inquiry into ...") However, since the beginning of the industrial revolution in the 18th century, and more particularly since the 1950s, the level of GHGs in the atmosphere has been increasing at an alarming rate.

Atmospheric concentrations of CO2 are now more than 400 parts per million, a level not reached since the mid-Pliocene epoch, approximately three to five million years ago. Concentrations of other GHGs have also increased dramatically. ("CCS #6: Controlled Opposition "Conservatives" Take Act To ... - Canuck Law")

[9] **As a result, the global average surface temperature has increased by approximately 1.0 degree Celsius above pre-industrial levels** (*i.e.*, prior to 1850). It is estimated that by 2040, the global average surface temperature will have increased by 1.5 degrees Celsius." **[emphasis added]**

These findings in total including those highlighted were made on no evidence and no experts were called to give evidence. There is a vibrant and sophisticated dispute whether human activities cause climate change or whether global average surface temperatures have increased 1.0 degrees Celsius above pre-industrial levels or at all. The list of "other common GHG's" noted by Justice Strathy excludes water vapour, the most prevalent of the gases labeled as "GHG's" comprising between 25,000 and 50,000 ppm of atmosphere compared to the approximately 400 ppm of CO2 noted by his Lordship in his reasons. Justice Strathy found an "urgent and potentially irreversible threat" that "requires the widest possible cooperation by all countries," findings that align with the rhetoric of the World Economic Forum and the Trudeau Liberal government but are unsupported by science.

Had Justice Strathy heard from experts he might have heard from Dr. Patrick Moore, a founder of Greenpeace and a staunch environmentalist or Dr. Richard Lindzen, who served as the head of the Department of Atmospheric Physics at the Massachusetts Institute of Technology, or Dr. Ivar Giaever, a Nobel Prize winning physicist, or any of the 60 Nobel laureates who dispute the AGW theory. Dr. Moore testified before the United States Senate Environment and Public Works

Committee in 2014 and in his written testimony stated: “There is no scientific proof that human emissions of carbon dioxide (CO2) are the dominant cause of the minor warming of the Earth’s atmosphere over the past 100 years. If there were such a proof, it would be written down for all to see. No actual proof, as it is understood in science, exists.” (“Greenpeace Founder: 'No Proof' That 'Minor' Warming Is Man-Made - Newsmax”)[50] Dr. Lindzen and Dr. Giaever dispute AGW and both have stated: “How can you measure the average temperature of the Earth? I don't think that's possible.”[51] At least 60 Nobel laureates dispute the validity of AGW theory.[52] Dr. Moore puts the AGW theory in perspective in his 2021 book “Fake Invisible Catastrophes and Threats of Doom”.[53] The AGW theory has now become so political that opposing views are dealt with as heresy, their proponents called “deniers” and “anti-science” and expert views of qualified physicists like Dr. Lindzen dismissed out of hand with AGW proponents insisting that AGW was a “scientific consensus”. This is not a new phenomenon. When astrophysicist Cecilia Payne-Gaposhkin discovered that stars were made of hydrogen and helium, one of the most important discoveries of the twentieth century, her work was dismissed out of hand because it did not line up with the

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[50] Dr. Patrick Moore Senate testimony <https://www.epw.senate.gov/public/_cache/files/4/1/415b9cde-e664-4628-8fb5-ae3951197d03/01AFD79733D77F24A71FEF9DAFCCB056.22514hearingwitnesstestimonymoore.pdf>

[51] Climate skeptics don’t ‘deny science’ - The Boston Globe <http://archive.boston.com/lifestyle/green/articles/2011/09/25/climate_skeptics_dont_deny_science/>

[52] Skepticism Rising, James Matkin, Academia. < https://www.academia.edu/36440866/SKEPTICISM_RISING_150_scientists_including_60_Nobel_Prize_winners_doubt_that_climate_change_is_caused_by_humans_Shoddy_science_ is_the_main_factor_Prof_Matthews_Science_is_not_about_consensus_rather_it_disproves_theories_>

[53] Fake Invisible Catastrophes and Threats of Doom, Dr. Patrick Moore, 2021, Ecosense Environmental Inc.

prevailing consensus and because she was a woman.[54] The pretense that "consensus" is scientific proof was made clear in the words of Nobel prize winning physicist Richard Feynman who stated: "It does not matter who you are, or how smart you are, or what title you have, or how many of you there are, and certainly not how many papers your side has published, if your prediction is wrong then your hypothesis is wrong. Period."[55] All of the predictions published by the IPCC regarding climate change have been wrong.

Dr. Steven Koonin, former Undersecretary for Science, U.S. Department of Energy under the Obama Administration, and himself a renowned physicist currently teaching at New York University, sets out the deficiencies in AGW theory and its misuse for political gain by leading politicians in his meticulously documented book "Unsettled" [56], a single authoritative source for information on climate science. Had Justice Strathy heard from Dr. Koonin it is unlikely he would have made his inaccurate comments in his appeal judgment on the "carbon tax" appeal.

Climate change denial is vilified and punished by withdrawing research funds for scientists studying atmospheric physics, public opprobrium and in some cases loss of employment. [57]

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[54] Cecilia-Payne-Gaposhkin: The Woman Who Found Hydrogen in the Stars, Sidney Perkowitz, Physics World March 8, 2022, <https://physicsworld.com/a/cecilia-payne-gaposchkin-the-woman-who-found-hydrogen- n-the-stars/>

[55] Richard P. Feynman Quote: "It does not matter who you are, or how smart you are, or what title you have, or how many of you there are, and certainly..." (quotefancy.com) <https://quotefancy.com/quote/1185635/Richard-P-Feynman-It-does-not-matter-who-you-are-or-how-smart-you-are-or-what-title-you>

[56] Unsettled, Steven E. Koonin, BenBella Books Inc, 2021

[57] How Academic "Blacklists" Impede Serious Work on Climate Science. Roger Pielke, Forbes Magazine, February 9, 2020, <https://www.forbes.com/sites/rogerpielke/2020/02/09/a-climate-blacklist-that-works-it-should-make-her-unhirable-in-academia/? sh=201a597e6368h>

Money flowing to scientists who disagree with AGW is attributed to fossil fuel companies and "dark money" sources not made public.[58] Without scientific debate about climate change the actual causes of climate change will remain unanswered and the AGW theory unquestioned. Democracy can withstand problems that cannot be answered but it cannot survive answers that cannot be questioned.

The Court of Appeal for Ontario in its reasons for decision at paragraph 75 notes that the preamble of the GGPPA states:

> "Whereas there is broad scientific consensus that anthropogenic greenhouse gas emissions contribute to global climate change"[59].

No such consensus exists. A widely distributed study by Cook et. al claimed a 97% consensus often reported as the foundation of the "scientific consensus" that mankind's CO2 emissions caused climate change.[60] The Cook study conclusion appeared false in a subsequent paper climate scientists Legates, Soon, Briggs and Brenchley. [61].

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[58] Climate Change Deniers: A Research Paper on the Misinformation Campaigns Spread by the Fossil Fuel Industry. Jasmyn Herrel, 2016. < https://faculty.etsu.edu/odonnell/2016fall/engl1028/ student_essays/climate_change_denial.pdf)>

[59] *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544 (CanLII)

[60] Quantifying the consensus on anthropogenic global warming in the scientific literature, John Cook *et al* 2013 *Environ. Res. Lett.* 8 024024, < https://iopscience.iop.org/article/10.1088/1748-9326 /8/2/024024>

[61]Climate Consensus and Misinformation: A Rejoinder to Agnotology, Scientific Consensus and the Teaching and Learning of Climate Change, Legates et. al, 2013, Springer <https://link.springer.com/article/10.1007/ s11191-013-9647-9>

The idea that "consensus" comprises proof is wrong. Scientific proof is not a vote. The emphasis on consensus ignores a reality first observed by economist and sociologist Vilifredo Pareto that in any group half of the advances in all fields of endeavour result from people equal to the square root of the number in the group.[62] The opinions of the majority are scientifically irrelevant.

Common sense should convince anyone that the claim of one-degree Celsius warming over 150 years is nonsense - it is unlikely it was possible to measure the temperature of a specific location within one degree Celsius 150 years ago let alone to produce a valid figure for the average surface temperature of the Earth for 365 days. There is little doubt that climate activists have "captured" the Ontario Court of Appeal.

The Supreme Court of Canada upheld the Ontario judgment that the GGPPA was constitutionally valid as is their role. But the Supreme Court could not help itself from repeating in paragraphs 7 and 8 of its reasons for judgment the findings of the Court of Appeal for Ontario that humankind caused climate change through carbon dioxide emissions.[63] Once again, activists had captured our judiciary, this time at the highest level. I am old enough to remember when we thought judges left their private opinions at the door to the Courtroom and made their judgments based on the evidence before them.

The degree to which climate change activism has captivated the judiciary is seen in the rift between decisions of the Court of Appeal for Alberta and the Supreme Court of Canada, the latest of which will surface when the Supreme Court is asked to overturn the Alberta Court of

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[62] Lessons from the Pareto Principle <https:// appofknowledge.blogspot.com/2017/05/lessons-from-pareto-principle.html>

[63] References re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11 (CanLII)

Appeal decision finding the *Impact Assessment Act* unconstitutional. According to one legal scholar, David Wright who teaches at University of Calgary, that judgment will turn on climate change issues as did the reference to the Supreme Court in respect of the so-called "carbon tax".[64] I am reminded of the deference paid to the Pope by the Tudor Kings of England in the 18th century in enacting laws governing lineage to the throne. Climate change theory is weak on science but has all the hallmarks of a religion. Capture of the legislative branch and judiciary in the United States by climate activists parallels the Canadian experience. The Congressional Research Service in 2017 published a summary of the history of climate change regulation and litigation which need not be repeated here.[65]

Commenting on the capture of the legislature by climate activists (in addition to the media and the U.N. IPCC, Steve Koonin writes: "It is clear that the media, politicians, and often the assessment reports themselves blatantly misrepresent what the science says about climate. Those failures indict the scientists who write and too-casually review the reports, the reporters who uncritically repeat them, the editors who allow that to happen, the activists and their organizations who fan the fires of alarm, and the experts whose public silence endorses the deception. The constant repetition of these and many other climate fallacies turns them into accepted "truths".[66]

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[64] Supreme Court likely to find federal impact law constitutional: expert (msn.com) <https://www.msn.com/en-ca/news/other/supreme-court-likely-to-find-federal-impact-law-constitutional-expert/ ar-AAXLVFe?ocid=msedgdhp&pc=U531&cvid=1c2642e18d794d029b2249109dc1d5d0>

[65] U.S. Climate Change Regulation and Litigation: Selected Legal Issues, Linda Tsang, Congressional Research Service, April 3, 2017, < https://sgp.fas.org/crs/misc/ R44807.pdf>

[66] Koonin *supra*, page 183

Cabinet Minister Catherine McKenna stated:

Capture of Securities Regulators

The Security and Exchange Commission recently approved by a three to one vote the idea of mandating disclosure of "climate risks" by public corporations.[67] The three Democrats on the SEC voted in favor of the proposal and the one Republican, Hester Peirce, voted against it.[68] The move must be adopted by legislators before becoming law, but is nonetheless seen as a victory for climate activists.[69]

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67 SEC.gov | SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors <https://www.sec.gov/news/press-release/2022=46>

68 SEC Proposes Climate Change Disclosure Rules Applicable to Public Companies | Perspectives & Events | Mayer Brown < https://www.mayerbrown.com/en/perspectives-events/publications/2022/03/sec-proposes-climate-change-disclosure-rules-applicable-to-public-companies#: ~:text=On%20March%2021%2C%202022%2C%20the, the%20"Proposal"). %20Comments>

69 Big Business witnessing backdoor scheme to dig, shame, and harass (afn.net)< https://afn.net/science-tech/2022/03/22/big-business-witnessing-backdoor-scheme-to-dig-shame -and-harass/>

A similar move is a possibility in Canada. On October 18, 2021, Canadian Securities Administrator (CSA) tabled a draft National Instrument 51-107 proposing to mandate climate related disclosure.[70] Public comments are open for 90 days from October 18, 2021. If adopted as a National Instrument following the public comment period, the regulatory capture of the Canadian securities regulators will be complete, forcing companies to pay lip service to an unproven theory of AGW and incur the costs and inconvenience of analysis of the CO2 emissions from their operations where those emissions are irrelevant to the operation of their businesses. The outcome cannot improve the profitability of Canadians issuers and must necessarily reduce their returns on capital employed by at least he cost burden of the reporting and the squandered management and boards of directors' time taken up pretending CO2 is harmful. In addition to less profitable businesses, this sort of regulation is likely to accelerate the trend of businesses and investors to avoid the public markets altogether. If that happens, the objectives of securities regulation to ensure liquid markets and promote innovation will be frustrated.

A critique of the SEC proposal and by implication the forthcoming change contemplated by CSA was recently published by Bernard Scharfman in the Ohio State Business Law Journal online[71] in which Scharfman argues that disclosure whose purpose is limited to providing investors with information facilitating their ability to avoid issuers they merely think of as objectionable falls

[70] 51-107 - Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters (osc.ca) < https://www.osc.ca/sites/default/files/2021-10/csa_20211018_51-107_disclosure -update.pdf>

[71] Non-Material Mandatory Climate Change Disclosures, Scharfman, Ohio State Business Journal Online, 2021 <https://moritzlaw.osu.edu/sites/default/files/2021-12 Non-Material%20Mandatory%20Climate%20Change%20Disclosures%20%28Author%20Final%20Clean%29.pdf/ >

outside of the authority of the SEC, writing: ". . . requiring such climate change disclosures would be an arbitrary and capricious act under the APA [Administrative Procedures Act]. Simply put, promulgating such disclosures is not currently within the SEC's authority.[72] "

The proposal will proceed in any event. SEC Commissioner Gary Gensler has written "investors with $130 trillion in assets under management have requested that companies disclose their climate risks".[73] Gensler fails to explain that the "assets under management" belong to the investors and not to the management firms, the largest of which is Blackrock whose Chief Executive Officer, Larry Fink, is a strident climate activist who publicly promotes stakeholder capitalism and climate action.[74] But even Mr. Fink recognizes that the decision of many pension funds (including the Caisse de Depot, Ontario Teachers' Pension Plan and the Canada Pension Plan) to reduce or completely divest their fossil fuel investments is folly.[75]

Implications of Regulatory Capture by Climate Alarmists

An important question regarding the degree of regulatory capture by climate alarmists is "why does it matter"? Giving investors more information is consistent with the regulatory regime of full, plain, and true disclosure and better-informed investors armed with the information they

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[72] Scharfman *supra*, page 6.

[73] SEC statement on Proposed Mandatory Climate Risk Disclosures, March 21, 2022, <https://www.sec.gov/news/statement/gensler-climate-disclosure- 20220321>

[74] Larry Fink, Stakeholder Capitalism, And Climate Action (forbes.com) <https://www.forbes.com/sites/prakashdolsak/2022/01/23/larry-fink-stakeholder-capitalism-and-climate-action/_?sh=648773062f4d>

75 Don't Divest from Oil & Gas say Blackrock CEO Larry Fink, Deborah Jeremenko, November 26, 2021, Canadian Energy Center < https://www.canadianenergycentre.ca/dont-divest-from-oil-and-gas-says Blackrock-CEO-larry-fink/->

need to make wise investment decisions. The problem with climate disclosure that presumes CO2 causes climate change is the danger that it is disinformation published at a substantial cost to issuers. This disinformation affects important segments of the economy that are vulnerable to activism with an explicit goal of suppressing fossil fuel development. The fossil fuel industry is an important contributor to the Canadian economy [76] and between 2000 and 2018 paid a total of $672 billion in taxes and royalties to Canadian governments.[77] No obvious source exists to replace these government revenues.

A second-tier result of the regulatory capture by climate activists not only in Canada but also globally has been the unintended creation of a global energy shortage that manifests itself in soaring prices for oil and natural gas. Oil now trades at about US$120 a barrel and in North America natural gas prices have surged seven-fold to over US$8.00 a thousand cubic feet. The situation in Europe is dire - natural gas in the United Kingdom has reached prices as high in March as five hundred pence per Therm (equivalent to approximately US$50.00 per thousand cubic feet or just over US $300 per barrel of oil equivalent on a British Thermal Unit of energy

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[76] The oil and gas sector's contribution to Canada's economy - Canadian Energy Centre <https://www.canadianenergycentre.ca/the-oil-and-gas-sectors-contribution-to-canadas-economy#:~:text=GDP%20and%20output,of%20the%20total%20Canadian%20economy.>

[77] $672 billion: The energy sector's revenues to Canadian governments 2000–2018 - Canadian Energy Centre <https://www.canadianenergycentre.ca/672-billion-the-energy-sectors-revenues-to-canadian-governments-2000-2018/#:~:text=and%20oil%20sands.-,Between%202000%20and%202018%2C%20the%20oil%20and%20gas%20sector%20paid,and%20royalties%20to%20provincial%20governments.>

basis).[78] The term “energy poverty” is appearing in United Kingdom news reports as higher utility costs are driving millions of British citizens into energy poverty.[79]

While the battle between fossil fuel interests and climate activists’ rages on, it is evident that climate activists have prevailed to date and their capture of legislators and regulators in North American is virtually complete. That balance may shift as it becomes evident that not only is CO2 harmless but also the global energy shortage created by the successful attack on fossil fuels will imperil the livelihoods of millions of people worldwide.

The recent judgment of Supreme Court of the United States[80] finding that the Environmental Protection Agency (EPA) exceeded its authority in setting rules that virtually compelled coal fired power generating firms to use expensive technologies to limit emissions is evidence the balance may already be shifting in that country. The Supreme Court found that administrative agencies “must point to clear Congressional authority when they claim the authority to make decisions of vast economic and political significance.”[81]

Part III: ESG Activism

Environmental, Social and Governance (ESG) ideas have captivated the minds of many elite

[78] UK Natural Gas - 2022 Data - 2020-2021 Historical - 2023 Forecast - Price - Quote (tradingeconomics.com) <https://tradingeconomics.com/commodity/uk-natural-gas>

[79] U.K. Living Costs: Price Cap Hike to Drag 10% Population into Energy Poverty - Bloomberg < https://www.bloomberg.com/news/articles/2022-02-02/u-k-price-shock-will-pitch-1-in-10-into-energy>

[80] *West Virginia et al v Environmental Protection Agency et al*, 597 U.S. 1530-22 Supreme Court of the United States, June 22, 2022.

[81] Ibid page 32 by Justice Gorsuch concurring

Canadians. Two separate groups have sprung up, each presenting its view on ways to impose ESG obligations on corporations directly and through the securities regulators.

One group which calls itself "Coalition for a Better Future" (the "Coalition") has such members as Anne McLellan, Perrin Beatty, Lisa Raitt, Goldy Hyder, Mark Little and former Premier of Nova Scotia Stephen McNeil.[82] The Coalition has a mission to put Canada on a path of economic growth and its mission statement includes the following:

"The Coalition for a Better Future represents a diverse and growing community of business leaders, community and civic organizations, social policy advocates, youth, Indigenous groups, environmental NGOs and concerned citizens. Each of us brings to the table a unique perspective, but we are united in our belief that economic growth is a necessary precondition for job creation, rising incomes, a cleaner environment, and a better quality of life." [83] The Coalition crosses political party lines with members from all sides of the political aisle and a strong backing of many key Canadian companies. It is an impressive array of talented people coming together to re-imagine Canada.

One section of the Coalition's vision labeled "Sustainability" embraces climate change as a serious threat and Net Zero as a goal Canada should set out to achieve [84] including measurable goals for progress towards its goals. Leave aside the issue of whether CO2 emissions are a threat to anyone but reflect on the inescapable fact that Net Zero if achieved globally would reduce

[82] Coalition for a better future mission statement
Error! Hyperlink reference not valid. < https://www.canadacoalition.ca/about#mission>

[83] Ibid

[84] Canada Coalition Goals <https://www.canadacoalition.cakeeping-score#Grow>/

atmospheric concentrations of CO2 below the level needed to support plant life in just a few decades. This outcome obtains through the simplicity of arithmetic and uncontroversial data published by United States Environmental Protection Agency[85] and scholarly research published by the American Meteorological Society in its Journal of Climate[86], and is the subject of a paper I published on Substack in September 2021.[87]

This paper does not deal with the merits of the sustainability goals but the degree to which this group and other ESG activists have captured legislators and regulators, and whether ESG is a "public good" worthy of protecting. ESG is unique in that the activists promoting the idea solely target corporations in their campaign to re-imagine capitalism. In a recent speech, former Cabinet Minister Anne McLellan reportedly said that market forces would not work anymore and that "stakeholder capitalism" needed to replace it.[88] Former Deputy Governor of the Bank of Canada Carolyn Wilkins echoed McLellan's comments saying that market forces didn't work any more and central planning was needed, recommending her audience read the 2021 report by

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[85] Global Greenhouse Gas Emissions Data | US EPA < https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data>

[86] The Mass of Atmosphere: A Constraint on Global Analyses, Trenbeth and Smith, Journal of Climate, Volume 18, Issue 6, March 15, 2005, <https://journals.ametsoc.org/view/journals/clim/18/6/jcli-3299.1.xml#:~:text=The%20total%20mean%20mass%20of, smaller%20than%20the%20previous%20estimate.>

[87] Will Net Zero Save Humanity? Michael Blair, Substack, September 21, 2021.

[88] Powerful group seeks to control Canadian economy and restrict personal freedom | Fraser Institute <https://www.fraserinstitute.org/article/powerful-group-seeks-to-control-canadian-economy-and-restrict-personal-freedom>

the G7 panel on economic resilience called "Building Forward Better".[89] The concept appears to be animated by the same desire to build a global socialist government that I argue underlies the climate change movement.

Andrew Weaver led the British Columbia Green Party from 2015 to 2020 and wrote a book about climate change entitled: Keeping our Cool: Canada in a Warming World.[90] Weaver's book promotes the climate change theory and Weaver holds himself out to be a "climate scientist". In fact, his education is entirely in the field of Applied Mathematics. His book is well written and well documented, with extensive references to other authors who promote AGW theory and claim calamity awaits us. On page 245 of his book, Weaver has two charts setting out the "Climate Response to 2050 Policy Options" comprising Weaver's estimates of global average temperatures at various levels of atmospheric CO2, from about 350 ppm by volume at the time he wrote his book in 2008, to a projected 1,700 ppm by volume by the year 2500 unless emissions are curtailed by policy choices.

Weaver's analysis seems devoid of any application of his skills in Applied Mathematics. The atmosphere has a mass of 5.146e18 Kg and 1 ppm by mass is just over 5 Gigatons. Since CO2 is heavier than the other gases comprising the atmosphere, 1 ppm by mass is greater than 1 ppm by volume by the ratio of the molecular weight of CO2 to that of atmosphere. That difference is not material. The Energy Information Administration reports that world reserves of oil approximate 1.7 trillion barrels. Complete combustion of a barrel of oil yields approximately 433 Kg of CO2 (basic chemistry). Complete combustion of all known world oil reserves would produce CO2

[89] Global Economic Resilience (g7uk.org) <https://www.g7uk.org/wp-content/uploads/2021/10/G7-Economic-Resilience-Panel-Report.pdf>

[90] Keeping our Cool: Canada in a Warming World, Andrew Weaver, Penguin Canada 2008.

equivalent to approximately 140 ppm by mass, and marginally more by volume. Weaver's alarm would require combustion of more than ten times the oil known to exist on Earth to produce the calamity he projects. Similar arithmetic for natural gas and coal reserves yields 20 ppm CO_2 by mass and 600 ppm CO_2 by mass respectively. The point is simple. Combustion of all known reserves of all fossil fuels in existence on Earth can produce a maximum of less than half the concentration of CO_2 Weaver says threatens mankind. Of course, not all oil, natural gas, or coal use results in CO_2 emissions since a great deal is used for petrochemicals and asphalt for example, and about two thirds of what CO_2 is emitted from fossil fuel use is removed from the atmosphere by photosynthesis and other processes.

Weaver typifies the "climate scientists" raising the alarm. The Green Party has embraced this flawed theory to advance the political careers of people like Weaver and Elizabeth May.

The Canadian Coalition for Good Governance ("CCGC") is another activist group.[91] This group comprises another set of Canadian elites with similar goals to the Coalition. The CCGC says it represents the interests of institutional investors and has an explicit goal, set out in its mission statement, to influence regulation. The mission statement reads:

> "Representing the interests of institutional investors, the Canadian Coalition for Good Governance promotes good governance practices in Canadian public companies and the improvement of the regulatory environment to best align the interests of boards and management with those of their shareholders, and to promote the efficiency and effectiveness of the Canadian capital markets."

[91] Mission and Objectives – Canadian Coalition for Good Governance <https://ccgg.ca/mission-and-objectives/>

The CCGC publishes an Environment and Social Guidebook which includes positions on a broad array of issues including climate change. The Guidebook includes this statement:[92]

> "Environmental and social factors span a broad range of issues. Some E&S factors are near-universally material, impacting all companies. These include social factors, such as, employee health, safety, and well-being practices, and cyber security; and environmental factors, such as, compliance with environmental laws and regulations. There are also systemic factors, such as those relating to climate change: energy system risks, extreme and variable weather events, and changing consumer behaviour. The materiality of other E&S factors will depend on the specific circumstances of a company, including sector, geography, or corporate structure. Examples include relations with Indigenous communities for extractive sector companies; the elimination of child labour in the supply chain of apparel retailers; or the use or contamination of water in agribusiness."

Like the Coalition, the CCGC promotes policies associated with the socialist wing of the Liberal and New Democratic parties of Canada. I am not arguing that socialism is a good or bad ideology since that is not the subject of this paper. I will instead review the extent to which the ESG component of this movement has captured regulators in Western democracies including Canada after presenting evidence as to why imposing ESG obligations on corporations is not a public good and how regulated corporations use arguments for ESG to capture the regulators for their own benefit.

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92 The Directors E&S Guidebook, Harvard Law School Forum on Corporate Governance <https://corporategov.law.harvard.edu/2018/07/01/ the-directors-es-guidebook/>

The influence of the CCGC on regulatory processes is clear. The Expert Panel on Securities Regulation expressly adopts the structural reforms proposed by the CCSG as warranting particular attention in its Final Report and Recommendations.[93]

Why ESG is not a public good

Corporations are a legal fiction developed to promote business investment but limiting the liability of investors in those businesses to the amount invested through the concept of "limited liability." Public corporations permit everyday people to participate in those businesses through purchasing of securities of the corporations, and securities laws set out to protect those investors from malfeasance. Business corporations' existence is dependent on their ability to earn profits failing which they become insolvent and are either reorganized or liquidated in bankruptcy. There is nothing controversial about these statements.

ESG seeks to impose additional burdens on corporations beyond operating profitably within the law by making those corporations responsible for environmental stewardship, social objectives, and a broad category of behaviour capture by the word "governance." Corporations already are bound by laws requiring them to respect the environment, obey the conduct laws of the societies in which they operate, and govern themselves prudently through their management and boards of directors. With extensive volumes of corporate laws, criminal codes, income tax statutes and environmental legislation already in place ESG must mean something more. Additional burdens carry additional costs, and those costs necessarily reduce returns on capital employed unless passed on to customers, something unlikely in a competitive marketplace unless all competitors including international competitors carry similar burdens.

[93] Final Report, Expert Panel on Securities Regulation, January 2008, page 52

Securities of corporations and their derivatives comprise the primary investments of mutual funds, investment funds, pension funds and exchange traded funds. Interest and dividends from the corporations provide income for investors directly or through their pensions. If returns on capital suffer declines, corporations cannot pay the same level of interest or dividends on their securities and continue to grow at rates experienced before the reduction in return on capital employed. ESG proponents say their goal is stronger economic growth but that is impossible if the ESG burden reduces returns on capital employed by corporations, and corporations burdened with ESG costs not borne by their competitors will find market shares under pressure further reducing profits and returns.

Aswath Damodaran is a world leading expert in securities markets and corporate valuation. He has written two papers lambasting ESG as wrong headed in his 2020 article: "Sounding Good or Doing Good: A Skeptical Look at ESG"[94] and his subsequent article "The ESG Movement: The Goodness Gravy Train Rolls On".[95] Damodaran makes a strong case for the argument that ESG's burdens weaken some corporations, strengthen others, and on balance are negative for securities markets. Tareq Fancy, former head of sustainable investing for BlackRock, wrote an opinion piece that simply concludes that ESG "is a dangerous placebo that harms the public interest."[96]

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[94] Sounding Good or Doing Good: A Skeptical Look at ESG, Aswath Damodaran, September 21, 2020

[95] The ESG Movement: The Goodness Gravy Train Rolls On, Aswath Damodaran, New York University,
<https://pages.stern.nyu.edu/~adamodar/pdfiles/country/ESGShortNew.pdf?msclkid=196331c6cf1a11eca3cd4fb9ab878277>

[96] The Secret Diary of a Sustainable Investor, Tareq Fancy
<https://sweatyourassets.biz/tariq-fancy-essay-the-secret-diary-of-a-sustainable-investor-article/?msclkid=4a3c5b4ccf1b11ecb665cd62911ec253>

In his most recent article on ESG, Damodaran sums it up nicely. "I believe ESG is, at its core, a feel-good scam that is enriching consultants, measurement services and fund managers while doing nothing for the businesses and investors it claims to help, and even less for society".[97]

Whether ESG is a beneficial or harmful trend is not the subject of this paper. Whether ESG activists have or will capture the securities regulation system in Canada is the subject. The evidence that ESG activists are capturing Canada's regulatory system to benefit themselves is becoming quite clear. The investment funds backing ESG hope to garner more assets under management and claim expertise in assessing which companies have strong ESG records and which do not. The issuers embracing ESG see the opportunity to be accountable to everyone in society as less onerous than being accountable to shareholders since being accountable to everyone is being accountable to no one. The regulators like the idea of being able to publish general subjective goals under "principle-based regulation" with the power to hold the regulated entities accountable *ex ante* if targeted outcomes fail to result but avoid any accountability for the outcomes themselves. The constituents who will suffer are investors.

How Investors Will Suffer

The argument that investors will pay higher prices for shares of companies that embrace ESG goals and enjoy a lower cost of capital appears throughout the literature promoting both "principle-based regulation" and ESG. That argument ignores an important financial reality - that a lower cost of capital is the equivalent of lower return to investors. Investment managers and regulators have long suffered the delusion that higher share prices benefit investors. They do not. Paying a higher price for the same future earnings and dividend stream is damaging to investors

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[97] ESG's Russia Test: Trial by Fire or Crash and Burn? Musings on Markets, Aswath Damodaran, June 30, 2022.

as a group and profiting by selecting a stock that appreciates faster than another is profiting at the expense of another investor, since there are two sides to every trade in the secondary markets. Trading profits are a zero-sum game. Companies that earn higher returns on capital employed benefit investors as a group regardless of the level at which the market prices their securities. Higher securities prices benefit fund managers who charge higher fees based on a percentage of "assets under management" further weakening the returns enjoyed (or suffered) by the actual investors. Higher prices benefit managers with compensation tied to share prices. Higher share prices do not benefit the investing community as a whole or society at large.

In his recent book "Woke, Inc." Vivek Ramaswamy's chapter entitled "The ESG Bubble" describes the paradox of ESG activism resulting in investors avoiding companies with poor ESG metrics and investing in those thought of as having strong ESG management, as follows:

"What happens if a bunch of ESG investors don't want to own sin stocks. Well, someone else must own them . . .How does the market solve for this? Well, it gives buyers of sin stocks a lower price for the stock and therefore a higher expected return as the underlying company goes on to earn profits for shareholders in the future."[98]

Ramaswamy goes on to say:

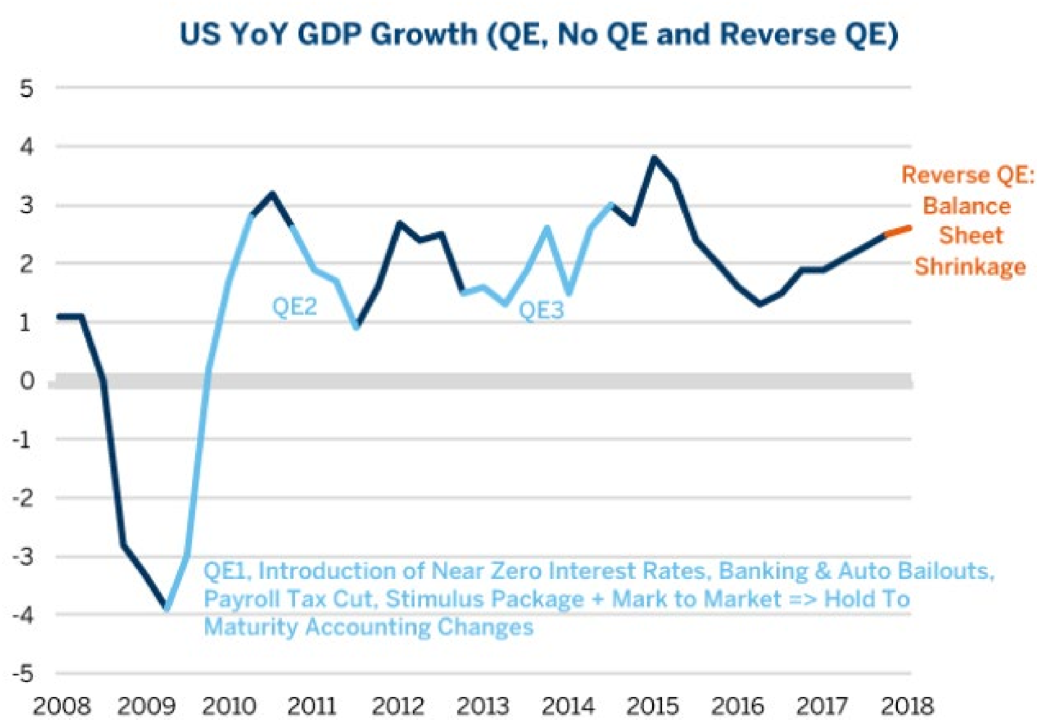
"That doesn't mean ESG investing is pointless. It's just that, by design, it is supposed to be less profitable. . . .by constraining their own investment choices, the ESG investor lowers their own expected returns."[99]

[98] Woke, Inc. Inside America's Social Justice Scam, Vivek Ramaswamy, Hachette Book Group, Inc. 2021 at page 111

[99] Ibid

Some theorists argue that a lower cost of capital implies that more projects warrant funding including those that did not meet the hurdle rate of a higher cost of capital. Lower return projects produce lower returns for investors and paying more for a lower earnings stream is a poor investment strategy. There has been a global experiment with lower costs of capital since GFC and the COVID pandemic with central banks driving down interest rates with quantitative easing and similar policies. The lower cost of capital arising from artificially low interest rates did not manifest itself in strong economic growth.[100]

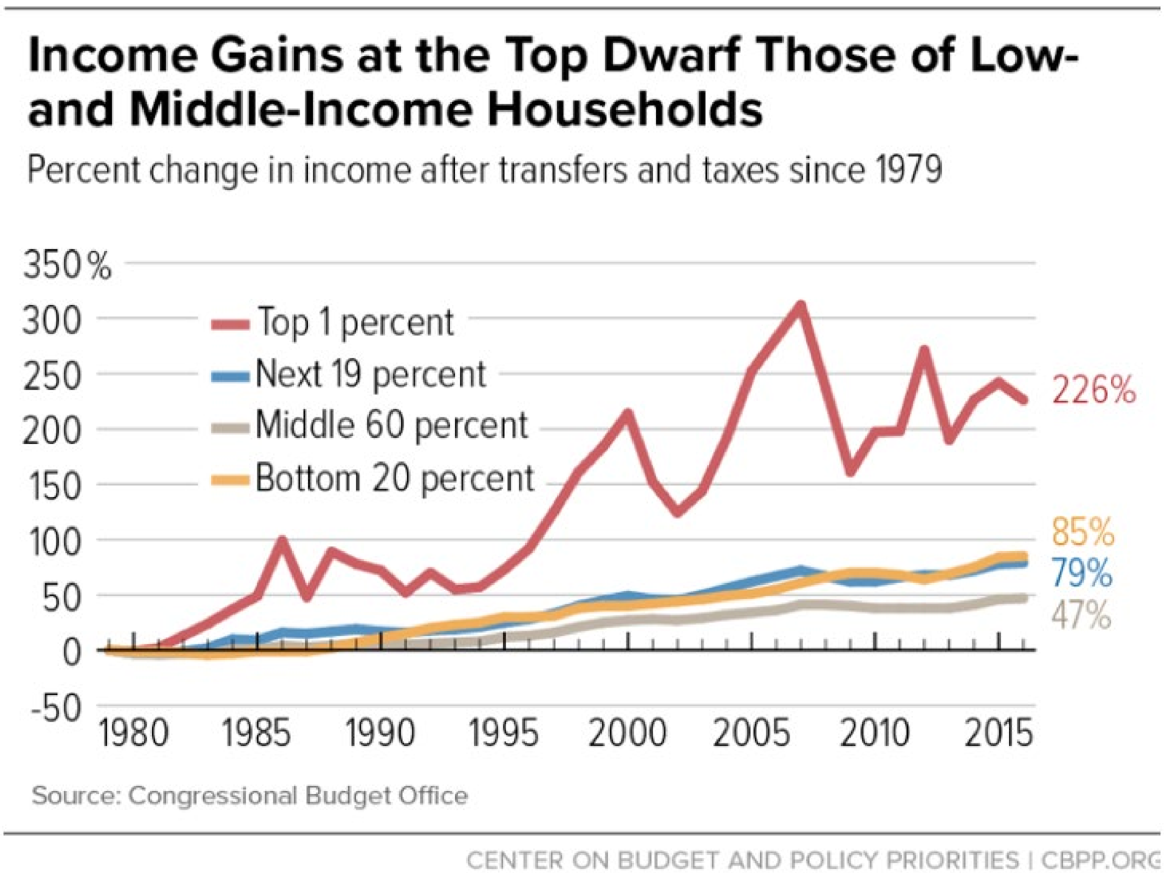
Figure 3: If Fed's QE Had Any Impact on GDP Growth, It's Not Simply Obvious.



Source: Bloomberg Professional (GDP CYOY)

[100] Did Quantitative Easing Help Spur Growth, Eric Norland, CME Group, August 9, 2018.

What the lower cost of capital did achieve was a dramatic rise in the trading price of publicly traded securities which benefited corporate executives' compensation [101] and increased the dollar value of assets under management (and the associated fee income) for advisory firms such as Blackrock and Fidelity.[102] In parallel, the outcome widened income inequality in society as the benefits accrued disproportionately to the highest income earners.[103]



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[101] This One Chart Shows How Obscene CEO Pay Has Become | Fortune <https://fortune.com/2016/07 15/ceo-pay-2/>

[102] 2022 Asset Management Outlook: 4 Important Trends That Affect Future Jobs - 300Hours <https://300hours.com/asset-management-outlook-jobs -impact/>

[103] A Guide to Statistics on Historical Trends in Income Inequality | Center on Budget and Policy Priorities (cbpp.org)

To the extent that ESG lowers the cost of capital for public companies, it is reasonable to expect the same outcome - higher compensation for executives, higher fee income for asset managers, and little benefit to mainstream society in terms of dividend income or other distributions from issuers. To the extent that asset managers and corporate executives benefit and the underlying returns on investment of the projects funded decline, long term investors will suffer lower incomes. The short-term QE fueled rise in stock prices will correct itself as QE reverses, higher inflation arising from the lower rates will decimate incomes for mainstream citizens, and interest and dividend streams paid into pension funds will be lower than if the cost of capital remained higher.

How the Economy Will Suffer

The theory that ESG benefits society by spurring economic growth is false. ESG policies burden corporations with additional costs. If they did not, ESG promotion by regulators would be unnecessary since corporations would naturally protect their environment, live in harmony with their communities and govern themselves lawfully if doing so exposed them to no costs. The additional costs imposed on corporations by ESG based regulations necessarily reduce returns as I have explained. An economy becomes unstable when income inequality hits intolerable proportions, a lesson well recorded in world history. Louis XIV of France lost his head for indifference to economic inequality and the Russian Tsar Nicholas suffered a similar fate during the Bolshevik Revolution.

< https://www.cbpp.org/research/poverty-and-inequality/a-guide-to-statistics-on-historical-trends-in- income-inequality>

ESG is a significant departure from the concept promoted by Nobel prize winning economist Milton Friedman in a now famous article in the New York Times[104] in which he wrote:

> *"In a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to their basic rules of the society, both those embodied in law and those embodied in ethical custom."*

The ESG movement seeks to make corporate executives serve not only shareholders but also all other "stakeholders" and in the case of regulators in a principle-based regulatory system to have personal liability for failure to meet outcomes set by regulators. North American democracies have long-established traditions where elected representatives establish laws and the electorate can vote them out of office if not satisfied with the laws enacted, electing a new government to repeal undesirable laws. Principle-based regulation sees the law-making role devolve to appointed bureaucrats who set social objectives independently of the legislatures or Parliament and hold corporate executives accountable for their achievement even if the outcomes demanded put the corporate executives in a conflict of interest between their duties to the corporation and their regulatory responsibility to achieve said outcomes. This is untenable.

The world's richest man, Elon Musk, calls ESG a "scam".[105]

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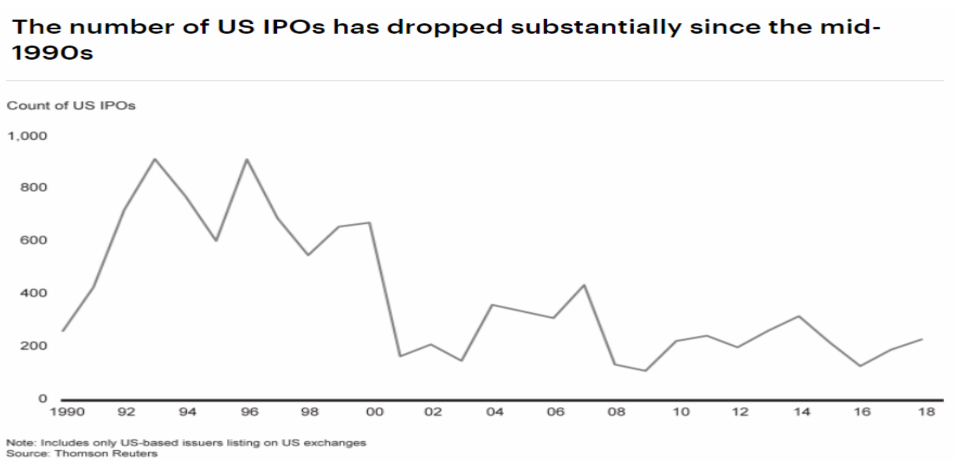
[104] The Social Responsibility of Business is to Increase its Profits, Friedman, New York Times, September 13, 1970.
[105] Climate Change and Y2K, Elon Musk Calls ESG 'A Scam' And A Way to Beat Forever Chemicals (forbes.com), Alex Knapp, Forbes Magazine, May 21, 2022, <https://www.forbes.com/sites/alanohnsman/2022/05/21/climate-change-and-y2k-elon-musk-calls-esg-a-scam-and-a-way-to-beat-forever-

There are two results from the ESG movement if it succeeds in capturing regulators. First, corporations not tied to the jurisdiction will leave and relocate to a more hospitable jurisdiction. Other corporations will abandon the public markets and operate free from the principle-based regulation by operating as private corporations. Both outcomes will have undesirable effects on the broad economy.

The decline of public companies and the rise of private equity is an established trend as initial public offerings (IPO's) decline. [106]



Absent empirical evidence that mandated ESG disclosure, and in the case of principle-based regulation, mandated ESG conduct, legislative bodies should act to forestall the capture of regulators by ESG activists. Those activists include fund managers, law firms, institutional

chemicals/?utm_medium=browser_notifications&utm_source=pushly&utm_campaign=2143594&sh=1879ac1d57de>

[106] Public Versus Private Assets: The Big Switch, MacArthur et. al, Bain & Company, February 26, 2019. <https://www.bain.com/insights/private-multiples-global-private-equity-report-2019/?msclkid=b513d6f9cf3a11eca0319b4d42f006b4>

investors, private equity firms and NGO's who stand to benefit at the expense of society generally if ESG becomes mandated.

Capture of Securities Regulators

There is ample evidence that ESG activism has already progressed to where it has captured securities regulators in Canada. The Capital Markets Modernization Taskforce (the "Taskforce") solicited inputs from 104 stakeholders in its deliberations. Of those, only six were issuers.[107] Of the balance of 98, many were parties who benefit financially from the implementation of ESG reporting mandates and it is not surprising that the Taskforce recommended enhanced ESG disclosure (including forward looking information) for listed companies in Ontario.[108] The Taskforce Consultation Report states without evidence that both globally and in Ontario investors want more ESG disclosure. Rather than investors desiring more ESG information, professional service firms who benefit from the demand for advice on ESG disclosure promote this fallacy.[109] Ernst & Young's "poll" on this issue did not ask investors but asked decision makers at buy-side institutions (another group that benefits from ESG activism) in finding that 60% of poll respondents were dissatisfied with the level of ESG disclosure by issuers.[110]

[107] Capital Markets Modernization Taskforce Consultation Report, July 2020, page 4.

[108] Ibid, page 27

[109] Truth, Fiction and Trust in ESG Reporting, MNP Professional Accounting Firm <https://www.mnp.ca/en/insights/directory/truth-fiction-and-trust-in-esg-reporting#:~:text=One%20way%20or%20another%2C%20investors,in%20favour%20of%20mandatory%20disclosures.>

[110] The Poll, Ernst & Young, <https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/assurance/assurance-pdfs/ey-reporting-the-poll-ESG-investor-survey.pdf?download >

The costs of ESG reporting or achievement of ESG goals set by regulators burden issuers and indirectly by investors. The benefits accrue to the groups most active in promoting ESG:

- Audit and accounting firms that will spend more paid hours assisting issuers to develop ESG presentations and related notes to financial statements
- Law firms who will spend more paid hours drafting ESG disclosure for regulatory filings such as prospectuses, annual information forms, and continuous disclosure statements
- Sell-side advisors who will use ESG disclosure as a selling point to encourage clients to choose different investments to generate commissions
- Institutional money managers who will create new products such as ESG-focused ETF's and ESG-based mutual funds to sell investors
- Corporate executives who will use ESG disclosure to misdirect investors attention from business performance and base compensation systems on ESG performance (which is difficult to measure) rather than more readily measured business performance.

Capture of American regulators by ESG activists is advanced. The Securities and Exchange Commission published a comprehensive "Response to climate and ESG Risks and Opportunities"[111] on its website. As with the Ontario Taskforce report, the SEC states without evidence that investor demand for ESG disclosure has soared. There is scant evidence in North America of what investors consider important in making investments, but the Association of Investment Companies in the United Kingdom published a report admitting that ESG was the

[111] SEC.gov | SEC Response to Climate and ESG Risks and Opportunities <https://www.sec.gov/sec-response-climate-and-esg-risks-and-opportunities>

lowest of five factors investors considered in selecting investments.[112] The principal factor considered by investors who responded to that survey was performance. There is little doubt that companies that embrace ESG do not manifest better performance on financial metrics, a fact driven home by the research by Aswath Damodaran mentioned earlier herein.

It is institutional money managers who embrace ESG since it is in their economic interest to do so. A recent Harvard study showed that leaders of institutional money managers intended to compel issuers to embrace ESG, something they would do without compulsion if ESG yielded an economic benefit to the issuer.[113] The authors write: "It was clear to us that corporate leaders will soon be held accountable by shareholders for ESG performance—if they aren't already."

The primary concern of these institutional investors was climate change, evidence of the degree to which the AGW theory has captivated society despite its flaws. The result is that managed money focused on ESG including climate change will produce lower returns for investors by ignoring issuers with higher CO2 emissions which on balance have higher returns than average. A recent study concluded: "We find that stocks of firms with higher total carbon dioxide

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112 How Much Does ESG Really Matter to Investors, Association of Investment Companies, November 9, 2021. <https://www.theaic.co.uk/aic/news/press-releases/how-much-does-esg-really-matter-to-investors#:~:text=ESG%20is%20more%20important%20to,most%20important%20concern%20when%20investing.>

113 The Investor Revolution, Eccles and Klimenko, Harvard Business Review, May-June 2019 <https://hbr.org/2019/05/the-investor-revolution>

emissions (and changes in emissions) earn higher returns, controlling for size, book-to-market, and other return predictors."[114]

Even rating agencies have jumped on the ESG bandwagon, considering ESG "risks" in their assessments of credit worthiness of public corporations.[115] Writing in the Wall Street Journal, Marlo Oaks summarizes the dangers of ESG with thoughts that securities regulators should consider when considering ESG.

> "ESG metrics' false certainty about future events, and consequent inability to keep up with unanticipated current events, causes capital to be misallocated. They create bubbles in favored industries while starving others that could be profitable.
>
> The solutions to our most difficult challenges—such as climate change—can come only through innovation. Foisting rigid ESG factors onto the market discourages innovation by mandating conformity, penalizing creativity, and punishing the industry with the greatest incentive to find alternatives—the energy sector. Fracking has reduced U.S. carbon emissions immensely, but it could cost you under S&P's ESG metrics." [116]

Corporations have operated for centuries without concern for ESG "risks" and will continue to do so for centuries to come. There are no unique "ESG risks" - just the normal risks businesses are exposed to every day as they deal with the challenges of business operations that encounter

[114] Do Investors Care About Carbon Risk? Bolton and Kaperczyk, Journal of Financial Economics, Volume 142, Issue 2, November 2021, pages 517-549

[115] S&P Hits U.S. States with Politicized Credit Scores - WSJ < https://www.wsj.com/articles/s-and-p-states-politicized-credit-scores-esg-rating-utah-oaks-carbon-environmental-energy-crisis -price-fracking-ukraine-russia-11652037089>

[116] Ibid

issues of the environment (where there is no shortage of legislation governing their operations), involvement in the communities where they operate, and their obligations to comply with corporate laws. ESG is a buzzword that has become mainstream as politicians and activists (most of whom who have never operated a business, constructed a factory, drilled an oil well, or met a payroll) embrace "feel good" concepts rather than deal directly with the issues they claim concern them.

Strong proponents of the ESG agenda include Al Gore who, apparently not satisfied with the $200 million he earned promoting climate fear and having to face the embarrassing reality that his forecast that New York would be under water by 2013 was laughable, signed on to the ESG parade to regain favor, and Larry Fink whose Blackrock investment firm benefits (while investors suffer) from the lower cost of capital ESG is claimed to yield. Gore's now famous Wall Street Journal editorial argued that "voluminous research has sown conclusively that businesses properly integrating ESG factors into their plans are typically more successful and profitable" is no more reliable than his forecast of New York City sinking under a deluge of melting ice and inconsistent with the empirical analysis done by Aswath Damodaran. Fink's firm benefits from ESG as basis to charge higher fees for "active management" and with approximately $10 trillion of "assets under management" and advisory fee income of approximately 0.22% of assets under management, a ten basis point reduction in the cost of capital of Blackrock's investee companies from the estimated 6.15% of the total U.S. market calculated by Aswath Damodaran[117] would increase the trading prices of Blackrock's securities holdings by $165 billion and Blackrock's advisory fee income by $363 million. It is no surprise

[117]Aswath Damodaran data files
<https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/wacc.htm>

that Blackrock supports ESG since it benefits his firm even if it penalizes his firm's customers long term investment income. Blackrock capitalized on the ESG trend by issuing of ESG focused Exchange Traded Funds (ETF's) including:

- iShares ESG MSCI Canada Index ETF
- iShares ESG MSCI USA Index ETF
- iShares ESG MSCI EAFE Index ETF
- iShares ESG MSCI Emerging Markets Index ETF
- iShares ESG Canadian Aggregate Bond Index ETF
- iShares ESG Canadian Short Term Bond Index ETF

The OSC assisted Blackrock in the sale of these securities by providing relief from the time limits for renewal of the relevant prospectuses.[118] All of these ETF's underperformed benchmarks even before management expenses were deducted. Morningstar Inc.("Morningstar") is an investment research firm that provides analysis of the performance of stock of firms with high ESG ratings and low ESG ratings. In 2021, Morningstar released a report where it found that investors overpaid for stocks of companies with high ESG ratings (resulting in lower returns for investors) and underpaid for stocks of companies with poor ESG ratings.[119]

As noted by Ramaswamy "it's debatable whether ESG investment strategies have outperformed or underperformed conventional investment strategies. They're certainly not the slam dunk that

[118] *Blackrock Asset Management Canada Limited (Re)*, 2019 CanLII 119830 (ON SEC)

[119] What's the Cost of Buying Good ESG Companies? Haywood Kelly, November 23, 2021

Larry Fink and Al Gore would have you believe."[120] Of course, performance based on share prices rather than long term returns to shareholders suffers from the paradox that higher share prices benefit only those who sell at those higher prices (and those who charge fees based on assets under management) and penalize those who buy at the same price and realize lower income over the life of their investment owing to the lower return implicit in a lower cost of capital.

When regulators assert that there is demand from investors for better ESG disclosure, they rely on inputs from institutional investors who earn their income by managing other people's money, not their own. They claim ESG policies lower the cost of capital of issuers which simply means stock prices trade at higher multiples. Institutional investors benefit from higher multiples since the same holdings are priced at higher levels and the management fees typically related to "assets under management" and higher stock prices mean higher fees. The poor blokes whose money is being managed pay those higher fees but suffer lower returns since the corollary for higher stock price multiples is lower returns on capital and lower streams of dividends. The active managers trading of stocks attract more commission costs and any gains come at the expense of a loss for another investor and do not add to the returns enjoyed by investors as a class. It would be anomalous for money managers to resist the ESG trend since it benefits them directly.

Regulators considering mandating ESG disclosure need to consider empirical evidence of what investors (not investment managers) want and whether ESG costs are offset by a benefit to investors as a class. Little work has been done in this area, so I conducted a small poll on Twitter among random investors to see whether ESG policies were top of mind in making

[120] Woke, Inc. page 119

investment decisions. That poll recorded 197 responses and 95.4% of responders put metrics like net income, cash flow, balance sheet strength and management competence ahead of ESG policies as the most important factor in making an investment decision. Put bluntly, there is no groundswell of demand for ESG disclosure among investors. A random sample of 233 persons is accurate to within plus or minus 5 percentage points when drawn from a population measuring millions.[121]

[121] How to Choose Sample Size
< https://tools4dev.org/resources/how-to-choose-a-sample-size /#:
~:text=Most%20statisticians%20agree%20that%20the, to%20survey%20all%20of%20them.>

These outcomes would not change materially if the sample size had been 1 million investors.

Regulations mandating ESG disclosure benefit the registrants who sell ESG ETF's and ESG-focused mutual funds at the expense of the public investors the regulators set out to protect. Mandating ESG disclosure implies ESG is an important consideration when selecting investments, causing adverse selection. The support of regulators for this disclosure implies the regulator thinks ESG investing benefits investors and ESG disclosure will help investors choose investments with higher ESG scores with the prospect of better investments returns. The reverse is true. ESG activists have captured regulators.

The OSC's "Request for Comment" procedure when contemplating changes to regulations encourages regulatory capture by ESG activists since the comments received are self-selected and ESG activists more likely to comment than ordinary investors who are indifferent to ESG reporting. Requests for comments are embodied in the *Securities Act*.[122]

Regulators expend little effort testing proposed regulations for efficiency or cost-benefit analysis. Anita Anand writes: "Conspicuously absent from securities regulatory initiatives in Canada are rigorous empirical studies that test the efficacy of the regulation and aid in justifying implementation of additional regulation"[123]. The absence of a cost-benefit analysis facilitates the goals of climate and ESG activists since empirical studies would show a relatively high-cost burden on issuers and little tangible benefit to investors. As I have described above, ESG activism at best reduces the cost of capital which, while a benefit to issuers and to asset managers, is a detriment to returns to investors.

ESG is a "feel good" concept embraced by Canadian elites who join organization like the Canadian Coalition for Good Governance or the Coalition for a Better Future thinking their promotion of "good governance" policies like ESG will improve life for Canadians by imposing new laws on corporations. Both are more "echo chambers" than forums for debate and that members of these "coalitions" and their ilk are acting like "good citizens".

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[122] *Securities Act*, s. 143.2(2)

[123] Research Study: Towards Effective Balance Between Investors and Issuers in Securities Regulation, Anita Anand, August 1, 2006, page 34

Canada's judicial system tries to surface truth through an adversarial system where arguments for both sides of a dispute are adjudicated by an independent judge based on rules of evidence. History has shown that the adversarial system (despite flaws) is effective.

"Echo chambers" are not. "When we listen only to those with whom we already agree and believe everyone else is wrong as a matter of first principle, we are bad citizens. When we insist on one standard of treatment from the government and the law for ourselves and for people who we happen to like, and a different standard for others, we are bad citizens. When we continually blame the world around us for our nations' troubles while refusing to consider whether we've had any part in them, we are bad citizens."[124] ESG activists want to make corporations accountable for social goals in the communities in which they operate but are silent about the accountability of those communities for their own problems. Corporations are already bound by federal, Provincial, and municipal laws regarding protection of the environment, our Constitution, Charter, and Human Rights codes, and extensive corporate and securities law. Imposing liability for ESG outcomes on corporations and their management adds nothing to the protective legislative and regulatory framework but results in added costs and complexity motivating corporations to seek locations in less intrusive jurisdictions. No "public good" will come from ESG.

[124] Our Own Worst Enemy, The Assault from Within on Modern Democracy, Tom Nichols, Oxford University Press, 2021

CONCLUSIONS

Fossil fuel lobbyists have been unsuccessful in capturing regulators in North America whereas climate activists and ESG activists have enjoyed considerable success. Regulators egged on by Liberal governments, academics and elites are embracing their clamors for mandated climate and ESG disclosure that will come at a cost to issuers and a cost to society. Issuers burdened by the costs of ESG disclosure and climate disclosure will suffer lower returns on investment resulting in lower income for pension funds, although fund managers and institutional investors will benefit from higher fees to the extent that stock prices are inflated by this trend. The success of climate activists resulted in a flight of capital from fossil fuel investments creating a global shortage of available fossil fuels manifesting itself in higher fossil fuel prices, higher price inflation and increased poverty in developing countries. The trend will persist until it reaches a crisis point where the electorate in Canada and United States becomes intolerant of these policies, changes governments, and common-sense returns.

That crisis point seems near at hand. Inflation in North America is at thirty-year highs while sovereign debt levels in the United States and Canada are also setting records. Higher interest rates are needed to curtail surging inflation, threatening another housing market collapse like the 2008 GFC. Wage growth is lagging inflation creating what economists call "wage pull" inflation while commodity shortages contribute to "cost push" inflation. There are millions of unfilled jobs in the market giving workers high bargaining power to demand wage rate growth at least equal to the rate of inflation. This is a classic formula for stagflation - low economic growth accompanied by rising prices. Fearful of the political fallout from aggressive increases in interest rates, central banks have tentatively increased those rates, but they remain lower than the neutral rate and continue to be less than the rate of inflation, fueling more inflation as consumers are paid to borrow at real rates below zero. Harvard economist Larry Summers warned the Biden administration in 2021 about the inflation risks and on March 26, 2022, warned about the risk of stagflation.[125]

The dire economic outlook is a direct result of policies by American and Canadian governments. The Biden and Trudeau administrations in United States and Canada have embraced the climate change rhetoric contributing to the global energy shortage which underlies the inflation problem. Major investment managers have embraced the ESG concepts reducing returns for investors on the funds they charge fees to manage leaving ordinary investors with higher fees for lower returns. Pension funds embracing both climate change and ESG have reported sub-market returns imperiling future pension payouts. Governments are now faced with higher borrowing needs in markets less inclined to hold bonds as bond prices plummet in the face of rising rates.

In response to ESG activism regulators seem eager to impose ESG disclosure rules on issuers and over time may wish to enshrine ESG concepts as law much as corporate governance regulations regarding composition of audit committees, separation of CEO and Chairman roles, and disclosure of the degree to which an issuers governance practices conform to "best practices" has made its way into corporate boardrooms. There is a void in empirical evidence that these regulations resulted in meaningful changes rather than cosmetic ones. "In the post-Enron era, one hears complaints that corporate executives are distracted from running the business while they fuss over corporate governance compliance issues. These complaints give rise to the

[125] Larry Summers' new warning: Fed heading for 'stagflation and recession' | Fox Business <https://www.foxbusiness.com/politics/stagflation-recession-larry-summers-federal-reserve - economy>

position that the corporate governance pendulum has swung too far because the business of compliance often overshadows the operation of the business itself. Empirically there has been no causal relationship drawn between many of the governance mechanisms in place in Canada and firm performance."[126]

RECOMMENDATONS TO IMPROVE REGULATION

Regulatory capture damages markets by conferring benefits on the firms or groups who have captured the regulators at the expense of society generally. In a concise but powerful paper setting out recommendations to improve securities regulation, Anita Anand[127] makes the important point that proposed regulations should be subject to *ex ante* cost benefit analysis and where this is not feasible to *ex post* cost benefit analysis after a trial period. No industry and no NGO or activist group should be able to advance their interests by capturing securities regulators - that should be left to legislative bodies and the electorate.

I recommend the following changes to Ontario's regulatory regime:

- Put the interests of public investors ahead of the interest of money managers and advisors. These groups have different interests and when regulators need information on what best serves the public it cannot come from people whose livelihoods put them in a conflict of interest with the public investors they serve.
- Abandon efforts to compel climate change disclosure that go beyond the existing rules that require issuers to disclose material risks and opportunities. If climate change is a risk

[126] Anand, page 55

[127] Ibid pages 9-11

or opportunity for a particular issuer, they are already bound to disclose it. The pretense that all issuers are affected by climate change issues is specious and damaging and pays lip service to an unproven theory that, however popularly believed, lacks substance.

- Abandon efforts to compel ESG disclosure. Existing regulations already require disclosure of all material facts and material information that may affect the price or value of an issuer's securities, and ESG disclosure (if it reduces the cost of capital for issuers as theorized by its proponents) benefits money managers, financial advisors, and senior management of public corporations by driving share prices higher the corollary of which is lower returns for investors directly and in their retirement funds.
- Simplify the *Securities Act* which has become unwieldy. If Moses can deliver instructions intended to regulate the behaviour of all humanity in ten sentences it does not take thousands of pages of legislation and regulation to regulate the activities of issuers and investors or their advisors within reasonable bounds and the cost of the current regulatory regime decreases the returns to public investors.

I will expand on each of these recommendations.

1. Put Investors' Interests First: Those Interests are Not Shared by Financial Intermediaries

Financial intermediaries benefit from more transactions (more commission and transaction fees) and from higher prices for stocks (higher assets under management and higher fees based on percentages of assets under management). Investors benefit from fewer transactions and lower stock prices except when selling. Sales should be rare since the return on underlying businesses is greater than the return on market indices and long-term investments will tend to produce higher returns than frequent trading with few exceptions. Commissions, transaction fees and fees based on assets under management are parasitical to the returns to investors.

2. Abandon Climate Change Mandates: They serve activists, not investors

Steve Koonin sums it up nicely. "The media and hence popular and political opinion, attributes all manner of impending societal catastrophes to human influences on the climate, including death and destruction, disease, agricultural collapse, and economic ruin. Luckily for us, the historical data doesn't support such claims, and the projections of future impacts (exemplified by the familiar "could be as bad as . . . ") stem from implausibly extreme scenarios fed into models that, as we've seen, are clearly not up to the task. ("COLUMN: Yes, there are alternate views on climate change") But to understand just how badly The Science is misrepresented when it comes to such impacts you really need to see the details of a few examples."[128] Koonin goes on to dissect the hysteria through his Chapter entitled: "Apocalypses That Ain't".

Koonin is not alone. In a book entitled "False Alarm" Bjorn Lomberg sets out the costs and benefits of the conventional attack on CO2 to attempt to control nature and makes the convincing case that mankind need only adapt to whatever climate change is in store, rather than embark on a Quixotic campaign that will cause more harm than benefit to humanity.[129] Dr. Patrick Moore explains both the importance of CO2 to humanity's health and welfare and the weakness of the

[128] Koonin, supra, page 167

[129] False Alarm: How Climate Change Panic Costs Us Trillions, Hurts the Poor, and Fails to Fix the Planet, Bjorn Lomberg, Basic Books New York, 2020

climate alarm in his 2021 book "Fake Invisible Catastrophes and Threats of Doom".[130] Michael Shellenberger pleads a similar case in his 2020 book "Apocalypse Never"[131] as does Alex Epstein in his recent best-seller "Fossil Future".[132]

Mandating climate disclosure does nothing for investors but add to the hysteria over climate fomented by political leaders for political gain and adds to the costs borne by issuers that are ultimately paid by investors in lower returns. If securities regulators are serious about putting investors first, they will drop the idea of mandated climate disclosure completely.

3. Abandon ESG Mandates: They serve politicians, not investors

The ESG movement is an effort by political elites to re-imagine capitalism, as if corporations can both operate as effective economic mechanisms bring investment capital to business activities and manage the achievement of social goals set by regulators rather than elected representatives. Those goals are often the utopian dreams of politicians devoid of popular support by the electorate, as in the case of "climate change" discussed above.

Investors have simple needs. They expose their monies to risk and expect an economic reward recognizing they may lose the money invested but no more. Corporations' roles are to invest those monies in activities that produce the return-on-investment investors both desire and need to

[130] Fake Invisible Catastrophes and Threats of Doom, Patrick Moore, Ecosense Environmental Inc, 2021

[131] Apocalypse Never: Why Environmental Alarmism Hurts Us All, Michael Shellenberger, Harper, June 30, 2020

[132] Fossil Future, Alex Epstein, Penguin Books, 2022

provide current and retirement income, both directly and through institutions that invest monies on their behalf such as pension funds and mutual funds.

The goals regulators seek to set for ESG either expose corporations to higher costs and therefore lower returns or have no cost and will be sought by corporate managers regardless of regulation. Other than return, investors do not share uniform goals for environment, social or governance issues. If they did, they would always elect representatives who shared those goals and elections would be unnecessary.

Arguments that corporations with high scores on ESG metrics enjoy a lower cost of capital means investors in those corporations will suffer lower returns. The returns investors receive is the inverse of the cost of capital. The obvious conflict of interest between ordinary investors and the institutional money manager who promote ESG was covered in paragraph 1 above. The proponents of "stakeholder capitalism" and ESG don't propose re-imagination of capitalism but propose socialism with a different label. Corporate leaders cannot simultaneously manage to fulfill their duties to the corporations they serve and the diverse and continually changing goals of the citizens in the regions where they operate. Where there is no conflict, they will choose to operate in a way that is lawful and cognizant of the desires of the people living near their operations and where there is a conflict, they must resolve that conflict in accordance with their duties to the corporation and within the corporate, criminal, provincial and municipal laws that bind them.

ESG serves politicians by giving them talking points for campaigns with politicians on both sides of the aisle claiming their policies meet ESG goals with opposing politicians arguing their interpretation of ESG goals is more appropriate. Mandates of ESG disclosure put corporate officers in the middle of these disputes.

4. Simplify the Securities Act: Investors should be able to understand the Act without expert advice

I am a seventy-seven-year-old retired executive with experience on twenty boards of directors in several industries and took part in numerous public offerings of securities. I have a graduate education in business, finance, mining law and now securities law. Notwithstanding, the byzantine maze of securities legislation drives me into the arms of securities lawyers. On many occasions, I have found the professionals who practice securities law have no better understanding of the *Securities Act* than mine, and when disputes arose, learned counsel from differing firms have offered judges differing interpretations of securities laws in arguing the case.

Laws that are incomprehensible to ordinary investors cannot serve them well. Laws that are incomprehensible to securities lawyers and judges serve no one well.

If Moses could deliver guidance to humanity in ten sentences it must be possible for regulators to conceive of securities laws that are simple and effective.

I have a few suggestions for those laws:

a. Tell the truth
b. Describe your business accurately in the same terms you would use to describe it to your spouse and children
c. Use the money raised from investors for the purpose you advised them you would
d. Report results regularly in accordance with IFRS guidelines
e. Tell investors promptly if circumstances arise that harm or help your business and your best estimate of the degree of harm or benefit

f. Don’t cheat
g. Communicate with investors in simple sentences with transitive verbs in the active voice
h. For advisors, tell investors how you are compensated and why you sell advice instead of making money directly through your investment insights.
i. Advise investors with facts rather than opinions.
j. For discretionary money managers, don’t make an investment for a client you would not make for yourself or your loved ones
k. For execution only accounts, follow your client’s instructions without pretending you know better. Your client is entitled to make foolish investments.

In my opinion, those comprise a comprehensive set of securities laws and any laws that go further or deeper impose more cost than benefit and do not serve investors well.

I will close with the words of Dr. Patrick Moore.

“You have heard the news on climate change that says human-caused emissions of carbon dioxide are going to make the world too hot for life. So now as you drive down the highway in your SUV, you are afraid that you are killing your grandchildren by doing so. As this makes you feel guilty and accountable, you send a hefty donation to Greenpeace or any of the other hundreds of “charities” selling you this narrative. It is a very effective strategy on their part, as stirring a combination of fear and guilt is the most powerful motivator to get people to open their wallets to help avoid this alleged disaster. And all this inevitable doom due to an invisible gas that is essential for life and even now is only 0.0415 percent of the atmosphere.”[133]

If you want to find out what is really behind the climate alarm, follow the money.

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[133] Moore, *supra*, page 31

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