



‘Carbon Crimes’: Torturing Law And Reason to Rid The Planet Of Climate Change Deniers

Description

USA: Several years ago, climate propagandist Al Gore stated, “Climate deniers deserved to be punished.” As tyranny gains traction, it always finds a way to forcibly suppress its intended victims. This article nails it: “The climate movement has discovered criminal law as a tool for conducting climate politics.”

The 2019 London play, *Kill Climate Deniers*, adequately displays the ultimate sentiment held by the eco-movement towards so-called “climate deniers.”

This is an important article that should be read word-for-word to understand the radical shift in legal theory. ? TN Editor

Abstract

The climate movement has discovered criminal law as a tool for conducting climate politics. To complement civil lawsuits against states and corporations, the movement’s activists intend to invoke torture and a newly proposed crime of “ecocide” to target corporate executives, politicians, and others who stand in the way of their preferred policies. In pushing their agenda, these activists receive assistance from the judiciary—specifically, the European Court of Human Rights.

The use of criminal law to pursue climate politics is a further step in the radicalization of the climate movement and poses a threat to economic and political freedoms, the rule of law, and democracy. If the movement is able to realize its plans, all those who do not support ambitious climate policies would have to fear prosecution and imprisonment. Conversely, threatening criminal sanctions against politicians and corporate executives will create powerful incentives to adopt ambitious climate policies and the dominant pro-climate narrative.

Lucas Bergkamp explains how criminal law, in the climate movement’s vision, should supplement civil and administrative law to eliminate any and all opposition to its plans for the realization of a climate

utopia.

European government of judges

Over several decades, the European Court of Human Rights (ECHR) has evolved into a European government in itself. Based on [doctrines](#) designed to enable it to expand its powers at its discretion, the Court has enacted a series of mandates for new laws and policies for Europe. There is little democratic control over the Court's role in advancing progressive politics. Once the Court has spoken, national parliaments are unable to undo its pontification because a human right trumps national law; national judiciaries are compelled to execute the Court's judgments, even if their own national law provides otherwise.

While imposing its high moral demands on executive governments, the Court believes itself to be quite [exempt](#) from any moral or [legal constraints](#). In a [previous contribution](#), I discussed how climate-change litigation before the Court has undermined the rule of law, the separation of powers, and democracy. In this article, I focus on the Court's role in criminalizing the climate debate. Its reckless disregard of judicial impartiality, the right to a fair trial, and judicial restraint is another manifestation of the Court's support for the progressive movement.

Criminalizing “climate denial”

A decade ago, an American lawyer argued that climate denial is arguably punishable as criminal deception and [fraud](#) under existing law. In 2015, [Al Gore](#) said that “climate-change deniers should be punished.” President Trump's withdrawal from the Paris Climate Agreement was viewed as a crime against humanity: “This is [murder](#).”

A recent book, [Carbon Criminals, Climate Crimes](#), describes “what corporations in the fossil fuel industry, the U.S. government, and the international political community did, or failed to do, in relation to global warming.” On UNESCO's website, a prominent feature article advocates that “climate crimes must be brought to justice” and that “[states and corporations](#) must be held accountable for their actions or inaction regarding climate change.”

The rationale supporting criminalization

The argument for criminalizing “climate denial” typically boils down to the following argument articulated by [Jeremy Williams](#):

Given what we know and have known for decades about climate change, to deny the science, deceive the public, and willfully obstruct any serious response to the climate catastrophe is to allow entire countries and cultures to disappear. It is to rob ... the poorest and most vulnerable on the planet of their land, their homes, their livelihoods, even their lives—and their children's lives, and their children's children's lives. For profit. And for , power.... These are crimes. They are crimes against the earth, and they are [crimes against humanity](#).

This emotional outcry is not only an impenetrable amalgamation of factual and moral reasoning but also assumes what must be proved. To prevent disaster, rationality needs to be brought back into the analysis. Unfortunately, as the ECHR demonstrates, we cannot rely on the judiciary to do so.

The “European Climate-Change Court”

In 2020, the ECHR signaled to the human rights community that it was open to receiving applications from climate activists. The Court and the Council of Europe held a conference, “[Human Rights for the Planet](#),” in which several judges, including the Court's president, played key roles. The speeches delivered by the Court's judges were rightly perceived as an [open invitation](#) to activists.

Several climate cases are now pending before the Court. As expected, climate-emergency rhetoric dominates the arguments presented by the plaintiffs. The Court has already demonstrated how far it is willing to go to rewrite the law to save the planet.

“Climate emergency”

The European Court of Human Rights, to which its president refers as the “[European Climate Change Court](#),” has used the opportunity presented by the climate litigation that it invited to take the lead in criminalizing the climate debate. It has done so in a number of ways. First, the Court's president and one of its vice presidents have declared publicly that “we are facing a [dire emergency](#) that requires concerted action by all of humanity” and that “we will face the [collapse](#) of everything that gives us our security.” Thus, the Court's leaders have openly and unreservedly endorsed the climate movement's alarmist rhetoric. They have done so not based on science but on alarmist declarations by Sir David [Attenborough](#), a well-known biologist and climate activist.

Second, to prevent any argument on the facts, the judges added: “No one can [legitimately](#) call into question that we are facing a dire emergency that requires concerted action by all of humanity.” They also committed the Court to the cause: “For its part, the European Court of Human Rights will play its role within the boundaries of its competences as a court of law, forever mindful that Convention guarantees must be [effective and real](#), not illusory.”

No right to a fair trial for deniers

By issuing these warnings, the Court effectively closed down any debate on climate change and climate science before any trial has even begun. In doing so, it deprived defendant states of an important argument to defend themselves against allegations that their climate policies are inadequate

to fight the alleged climate crisis. Before they could present the relevant scientific evidence showing that there is no such thing as climate emergency or climate crisis, the Court's leading judges told the defendant states that they should not dare to deny.

By labeling any argument that there is no climate crisis "illegitimate," these leading European judges, who should serve as examples of judicial impartiality, have endorsed the climate movement's climate-denier rhetoric. This rhetoric is an inappropriate, unethical play on [Holocaust denial](#). Simultaneously, and directly relevant to this contribution's subject, the Court's "illegitimacy" label also raises the specter of criminal prosecution.

There is no climate crisis

It is hard to think of any judicial conduct that shows greater partisanship and disregard for the principle of judicial impartiality than the conduct of these European human rights judges. The right to a fair trial, guaranteed by [article 6](#) of the European Convention on Human Rights, has effectively been set aside for climate deniers. The question should be asked whether, given the opinions expressed by its leaders, the ECHR can legitimately rule in any climate case.

The Court's denial of justice is all the more shocking in light of the science, which does not support the proposition that there is a climate crisis. The European Commission has stated: "The term 'climate emergency' expresses the [political will](#) to fulfil the obligations under the Paris Agreement." In almost 4,000 pages, the recent Intergovernmental Panel on Climate Change ([IPCC](#)) [AR6](#) report does not once employ the terms "climate crisis" or "climate emergency" because these terms do not belong to the scientific terminology (they occur only in a descriptive section on communication). Rather, they are political slogans, as the Commission suggested. To the point, the undefined "climate emergency" is an invention by activists.

Torture

Remarkably, even the finger-pointing at perceived climate denial was not sufficient for the ECHR. In the first climate case pending before it, the Court decided, on its own volition, to add "[torture](#)" to the charges against 33 states that allegedly do not do enough to combat climate change, as required by the 2015 Paris Agreement on Climate Change. The Court suggests that these states may have committed "torture" by adopting "inadequate climate policies."

Torture, of course, is a serious crime. The [Rome Statute](#) of the International Criminal Court (ICC) provides that torture, "when committed as part of a widespread or systematic attack," is a crime against humanity. Consequently, not implementing adequate climate policy would be a crime against humanity that can be prosecuted by the ICC. What would the victims of actual torture think of the Court's misuse of this term for political reasons?

Judicial threats

Corporate executives of companies deemed to be responsible for greenhouse gas emissions, politicians that do not support ambitious climate policies, and everyone else who advocates against the climate movement's agenda would be exposed to criminal prosecution and imprisonment of up to 30 years. This is not a far-fetched interpretation of the relevant law but, as explained below, a fairly straightforward application. Obviously, the ECHR was well aware of what it was doing by slipping in "torture," but it nevertheless felt comfortable proceeding in this manner.

Needless to say, the threat of life imprisonment is a very powerful disincentive. As an academic author for UNESCO put it:

Criminal sanctions are the most [potent tools](#) we have to mark out conduct that lies beyond all limits of toleration. Criminal conduct violates basic rights and destroys human security. We reserve the hard treatment of punishment for conduct that damages the things we hold most fundamentally valuable. Climate change is causing precisely such damage.

This seems to be exactly what the [judges](#) on the ECHR believe. Corporate executives will have to think twice about corporate climate policies and will be inclined to cave in to activists' demands. Likewise, politicians skeptical of the current climate policies may feel compelled to give up their resistance. All other dissenters may also be inclined to choose personal security over honesty. Economic freedom, political freedom, and freedom of speech would be obliterated. Is this what the Court's president means when he says that the European Convention guarantees must be "effective and real, not illusory"? The Court's inexplicable decision to add torture to the charges in the first climate case only adds to the concern that human rights protect only those who endorse progressive causes, not those who have other political preferences.

Ecocide

By invoking the crime of torture in the climate debate, the ECHR may also have intended to assist the efforts to get ecocide recognized as a crime. "Ecocide" refers to the "[devastation and destruction](#) of the environment," but no official legal definition yet exists. For decades, greens have been trying to get ecocide recognized as an international crime—but so far, to no avail. In the last two years, however, due to the rise of the climate-crisis narrative, they have made significant progress. There now is [much activity](#) aimed at persuading international organizations to legislate on ecocide. In May 2021, the Inter-Parliamentary Union (IPU), a global organization that claims to empower national parliamentarians to promote, inter alia, sustainable development, adopted a resolution calling on all "[m]ember Parliaments to reinforce criminal law to prevent and punish widespread, long-term and severe damage to the environment" and "to examine the possibility of recognizing the crime of ecocide *to prevent the threats and conflicts resulting from climate-related disasters and their consequences*" (emphasis added).

In June 2021, an expert panel convened by the Stop Ecocide Foundation published a [definition](#) of "ecocide" intended to serve as the basis for an amendment to the Rome Statute of the ICC. Once the Rome Statute is amended to include ecocide, individuals suspected of having committed ecocide can be tried before the ICC.

The amendment's breadth

With this amendment, the prohibition of climate denial becomes redundant because the Rome Statute threatens imprisonment against not only those who commit a crime but also anyone who “induces the commission of such a crime,” “aids, abets or otherwise assists in its commission or its attempted commission,” or “in [any other way](#) contributes to the commission or attempted commission of such a crime by a group of persons.” Moreover, the Rome Statute applies equally to all persons, without any distinction based on official capacity; specifically, elected representatives and government officials are not exempt from criminal responsibility.

Thus, politicians, corporate executives, thought leaders, and anyone else can be subject to criminal prosecution if they express an opinion or pursue a policy deemed to be “anti-climate” that therefore may result in ecocide. In the fight against climate denial, this tool would be of incalculable value.

European Union “leadership”

The European Parliament has referred to ecocide in two recent reports and expressed the wish to recognize ecocide under [EU law](#) and diplomacy. To prepare the adoption of an EU directive on ecocide, the European Law Institute launched a [project on ecocide](#). Taking advantage of the momentum, even before this project is finished, the ecocide movement is now pushing to get ecocide included in the EU [Environmental Crimes Directive](#), which is currently being revised.

EU member states control a significant portion of the votes necessary for an amendment of the Rome Statute and can provide incentives to secure the additional votes necessary to get the crime of ecocide adopted. The consequences of such an amendment could be enormous if the ICC follows the example of the ECHR and jumps onto the climate activists’ bandwagon.

Climate change is ecocide

Make no mistake: while the definition of ecocide is broad and vague, the primary target of the ecocide movement is climate change. Civil liability law and human rights law give climate activists the tools to force governments and companies to comply with their demands, but this kind of litigation is expensive and takes time. The new crime of ecocide would give them a powerful instrument to shortcut the process by threatening criminal sanctions against corporate directors and officers, as well as reluctant politicians and opinion leaders, and to force them to change their ways.

Climate activists also believe that the term “ecocide” will have an emotive and stigmatizing effect that “causing climate change” does not have. As [one author](#) puts it:

The term “ecocide” sounds dramatic. It is more emotive than “contributing to pollution” or “increasing greenhouse gas emissions” or “investing in fossil fuels.” It communicates the gravity and urgency of the irreversible destruction being inflicted on the environment. It unambiguously casts major polluters as “villains,” perpetrators of a crime (emphasis added).

No protection

National laws do not protect the suspects. Under the proposed definition of the international panel, ecocide means “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.” Note that “unlawful,” which is broader than “illegal,” is the gateway to disregarding permits for emissions and compliance of activities and products with national laws.

The main trick is that this definition does not require any actual damage; knowledge of likely damage in the future is enough—which is a given, in light of the “settled science” set forth in the IPCC reports. Fundamental principles of criminal law are merely an afterthought, if they are on the radar screen at all.

Torturing human rights and criminal law

Needless to say, the ECHR’s suggestion that governments “torture” their citizens by implementing “inadequate climate policy” is both insulting to torture victims and [unlawful](#). The inclusion of torture in a climate-policy lawsuit is the culmination of the Court’s progressive move away from a human rights adjudicator to a social policymaking institution. This activism has not only harmed the Court’s reputation as an impartial court of law but has also created serious problems for national legislatures faced with the often unhinged policy mandates imposed by the Court.

To be sure, we do have a torture problem, but it is not the European climate policymakers who are doing the torturing. Rather, the Court itself has tortured the law to fit its own ideology. The Court tortured the European Convention on Human Rights until it confessed that it is a program for progressive politics. It tortured the right to life and several other human rights until they agreed to include within their scope a whole series of so-called [positive obligations](#), which only the Court gets to define. Perhaps most egregious, the Court tortured the Convention until it gave the Court the right to waive essential requirements imposed by the Convention to eliminate any limits on its jurisdiction, which then allowed the Court to move forward with the first climate-change case, which it so desperately wanted.

The crime of climate change

The use of criminal law to pursue climate politics is a new chapter in the climate-litigation saga. Climate activists have discovered criminal law as a tremendously effective tool for climate politics. Governments and corporations can be subordinated through civil and human rights law, but to put pressure on corporate executives and politicians, criminal law is much more effective. Criminal law is the crowbar that pries open the doors to the boardrooms and the chambers where policy decisions are made.

What is remarkable is that the activists include not only the nongovernmental organizations that claim to “fight for the climate” but also Europe’s highest judges at the European Court of Human Rights. Are the limits on its authority really lifted by the self-declared crisis?

Lock them up!

In totalitarian states, political dissidents are controlled in three ways: they are removed from public life as a “danger to public order”; they are placed in psychiatric hospitals, since they suffer from mental illness; or they are imprisoned because they have committed crimes. The climate movement’s latest move pursues this third route of “delegitimization” and “denormalization” of its political opponents and those who disagree with the movement.

According to the climate movement, the alleged climate crisis would require urgent action to avert the impending catastrophe and save the planet and humanity. In its view, this requires that democracy, fundamental principles of law, and the limits of judicial power are set aside. In this struggle for survival, the climate movement has concluded that greenhouse gas emissions must be criminalized so that climate deniers can be locked up. Unfortunately, the ECHR has fallen victim to the emotional appeal of the movement’s rhetoric.

Threats to freedom

The climate movement’s strategy is clear: torture and ecocide must be part of its toolbox so that the sinners can be converted, deniers can be punished, and climate utopia can be realized. Inevitably, however, “[climatism](#)” results in the suppression of freedom and opens the path to climate totalitarianism. Ironically, the ECHR, which was created in the aftermath of the destruction of the Nazi totalitarian regime to act as a legal bulwark safeguarding individual liberty, has placed itself as the judicial enabler of this process.

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