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Oil New climate paper calls for charging big US oil firms with homicide

Authors of paper accepted for publication in Harvard Environmental Law Review argue firms are 'killing members of the public at an accelerating rate'

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Oil companies have come under increasing legal scrutiny and face allegations of [defrauding investors](#), [racketeering](#), and a [wave of other lawsuits](#). But a new paper argues there's another way to hold big oil accountable for climate damage: trying companies for homicide.

The striking and seemingly radical legal theory is laid out in a [paper](#) accepted for publication in the Harvard Environmental Law Review. In it, the authors argue fossil fuel companies "have not simply been lying to the public, they have been killing members of the public at an accelerating rate, and prosecutors should bring that crime to the public's attention".

"What's on their ledger in terms of harm, there's nothing like it in human history," said David Arkush, the director of the climate program at consumer advocacy group Public Citizen and one of the paper's authors.

The paper is rooted in part in the [growing body of evidence](#) fossil fuel companies knew of the harm their products caused and [misled the public](#) about them.

Attorneys general and cities have used that information to sue oil companies for financial damages caused by rising seas, wildfires and heat. But the new paper argues that oil companies' climate research and continued fight to delay climate regulations amount to a "culpable mental state" that has inflicted harm on people, including death.

“Once you start using those terms, you come to realize that’s criminal law,” said Donald Braman, a law professor at George Washington University and Arkush’s co-author. “Culpable mental state causing harm is criminal conduct, and if they kill anybody, that’s homicide.”

Braman argued that pursuing homicide charges would have a greater impact on fossil fuel companies than the cases currently wending their way through court in part because the penalties would be steeper. Rather than paying a fine, homicide charges could open up an array of other outcomes that could materially alter how companies operate.

Homicide is a catchall term that includes charges ranging from manslaughter to murder. The former is a lesser charge where death was caused without intent, while murder is reserved for cases where the defendant either had knowledge that taking a specific action could kill someone or engaged in a premeditated killing. Arkush said the fact that fossil fuel companies knew that their products worsened the climate crisis and yet continued to extract oil, gas and coal “comes extremely close” to meeting the definition of murder, though the paper lays out the case for multiple types of homicide charges.

▲▲ Whether you could make an actual criminal charge stick is tricky because their complicity is mixed with the complicity of everybody else
Christopher Kutz

The paper also argues that the case for climate homicide has been bolstered by attribution science, which seeks to ascertain how much the climate crisis has worsened individual extreme weather events. Some studies have even been able to [attribute a specific number of extreme weather deaths](#) to the climate crisis. The duo argue that this growing body of science is among the most powerful tools to prove that oil companies’ actions have more than met the standard for a prosecutor to bring a homicide case.

Bringing homicide charges against oil companies for deaths caused by the climate crisis would be unprecedented, but corporations have been tried for homicide before. California prosecutors charged the utility PG&E with [manslaughter](#) for its role in the deadly Camp Fire that leveled the town of Paradise in 2018. And federal prosecutors charged BP with manslaughter following the 2010 Deepwater Horizon disaster. In both cases, the companies pleaded guilty and paid billions in fines and penalties.

While there may be a theoretical case for climate homicide, the realities are daunting. First, a district attorney or attorney general office that has jurisdiction in a place where climate change has caused deaths would have to be willing to bring charges. And that office would need significant resources to confront influential billion-dollar corporations.

“The morality of what fossil fuel companies have been doing over a few decades has become clearer and clearer,” said Christopher Kutz, a distinguished professor and director of the Kadish Center for Morality, Law and Public Affairs at the University of California, Berkeley. “They are complicit in the deaths that occur and the article is very persuasive about that. But whether you could make an actual criminal charge stick is tricky because their complicity is mixed with the complicity of everybody else.”

Kutz said another challenge facing any would-be prosecutions is the central role fossil fuels have played in shaping the modern world.

“The central act for which the homicide charges being applied were embraced, subsidized, and a central part of the world economy for the last 150 years,” he said. “This is a different kind of case where the use of fossil fuels is the baseline of normal behavior. That would make it a very unusual kind of homicide case,” he added, likening it to “a black hole of liability”.

Guyora Binder, a distinguished professor of law at the University at Buffalo, said the paper was “exciting, imaginative and insightful in a number of important ways”, but also advised caution.

“An obstacle to finding causal responsibility is when death results from diffuse actions of multiple actors,” said Binder, who has written extensively on homicide and criminal law. “It’s a little reminiscent of the issues with tobacco and opioids where you have multiple manufacturers and you can’t trace which one contributed to which death ... It’s not clear that if you remove any one of [the fossil fuel companies], that the deaths resulting from global warming don’t occur.”



People rest at a cooling station during a heatwave in Portland, Oregon, in June 2021. Photograph: Kathryn Elssesser/AFP/Getty Images

Binder hypothesized that multiple companies could be charged collectively, though it would still be a very challenging case to bring about. As an analog, he noted that [there have been cases](#) in which multiple street drag racers have been charged with homicide, though only one of them was physically responsible for killing someone, because they all competed in a race that resulted in a death.

“If it turns out [fossil fuel companies] were all colluding in suppressing research about climate change and all trying to help each other continue this enterprise, then we may be [able to] hold them responsible for one another’s actions,” he said.

Asked for a response to the study, a spokesperson for the American Petroleum Institute said in an email: “The record of the past two decades demonstrates that the industry has achieved its goal of providing affordable, reliable American energy to US consumers while substantially reducing emissions and our environmental footprint. Any suggestion to the contrary is false.”

It’s possible that the broader social shift taking place, including criticism over fossil fuel companies’ role in causing the climate crisis, could make climate homicide a feasible option for the right prosecutor. The growing wave of lawsuits being brought against them is proof, Braman said, that those companies are no longer untouchable.

The authors go so far as to recommend a particular sentence should fossil fuel firms be found guilty of homicide: restructuring them as public benefit corporations, similar to what happened to [Purdue Pharma](#) as part of its settlement for contributing to the opioid crisis. Doing so, they argue, would allow for rapidly winding down fossil fuel production to reduce further climate harm while ramping up investments in clean energy and protecting workers and communities tied to fossil fuel companies.

Climate advocates have taken note of the paper’s argument. The Center for Biological Diversity is a US non-profit that focuses on protecting endangered species. It has sued over oil companies’ drilling rights, but isn’t directly involved with any of the big oil cases.

“The case is compelling that fossil fuel companies’ actions meet the legal definition of homicide. The paper lays that out clearly,” said Kassie Siegal, the director of the center’s climate law institute.

“I think it’s absolutely brilliant,” she said.

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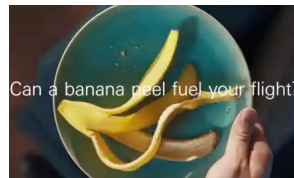
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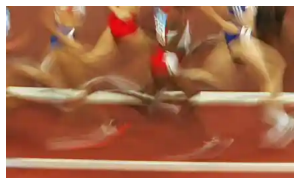
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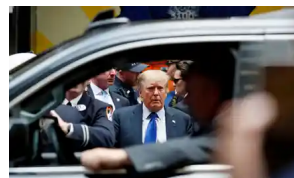
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