

Climate Change litigation

Suing companies for climate change

Note: The essay referred to below is submitted as part of a summative assessment in the Global Law of Climate Change Course at King's College London. All sources for the findings below are stated clearly in said essay.

Why do liability claims against high-emitting corporations fail? And could attribution science be the solution?

Climate change, and the devastating impacts it will have and has already had on the world and its inhabitants is arguably a – if not *the* – defining global issue of our time. As humanity grapples with prospects of entire cities and states disappearing due to rising sea levels, large areas of land being flooded or ruined by extreme weather events, etc., the question of mitigating the impacts of climate change becomes increasingly pressing.

Alongside the urgent need to fight the consequences of climate change, exists the question of who is responsible for the crisis we are now dealing with. Arguably, it is a basic human instinct to seek accountability and reparation for inflicted harm. It is the very reason why the law exists – it goes against our very nature to allow injustice to exist unchecked.

It may seem unproductive to seek answers to such retrospective questions. The real problems of climate change lie in our future, so why should we look to the past? As this blog post will hopefully illustrate, however, the question of assigning responsibility for climate change need not be entirely separate from the question of mitigation.

In recent years, members of both the scientific and legal communities have pointed to climate change litigation as an important factor in fighting climate change. Specifically, they argue that the time has come to hold high-emitting corporations liable for damages related to impacts caused by climate change. This is partly due to the ever-improving nature of so-called attribution science; research aimed at assigning responsibility for climate change and its impacts. When science can clearly identify who has caused the crisis and its devastating impacts to nature and people, it seems reasonable that legal responsibility should follow. After all, legal mechanisms for holding those who cause others harm liable for damages exist in all legitimate legal systems.

If only it were so easy. To date, no liability claim against a corporation related to damages incurred as a result of climate change has succeeded, despite the fact that many such cases have been filed all over the world. Many cases have failed due to difficulties in establishing causation, i.e. that the plaintiff's injury was caused by an action by the defendant. This seems somewhat paradoxical considering that the majority opinion in the scientific community seems to be that attribution science is capable of accurately proving links between emitters and the impacts of climate change that cause the typical injuries in these cases.

The essay on which this blog post is based explores the various reasons why climate litigation against high-emitting corporations fails, and the possibilities for using attribution science to alleviate problems in establishing causation. My findings are as follows:

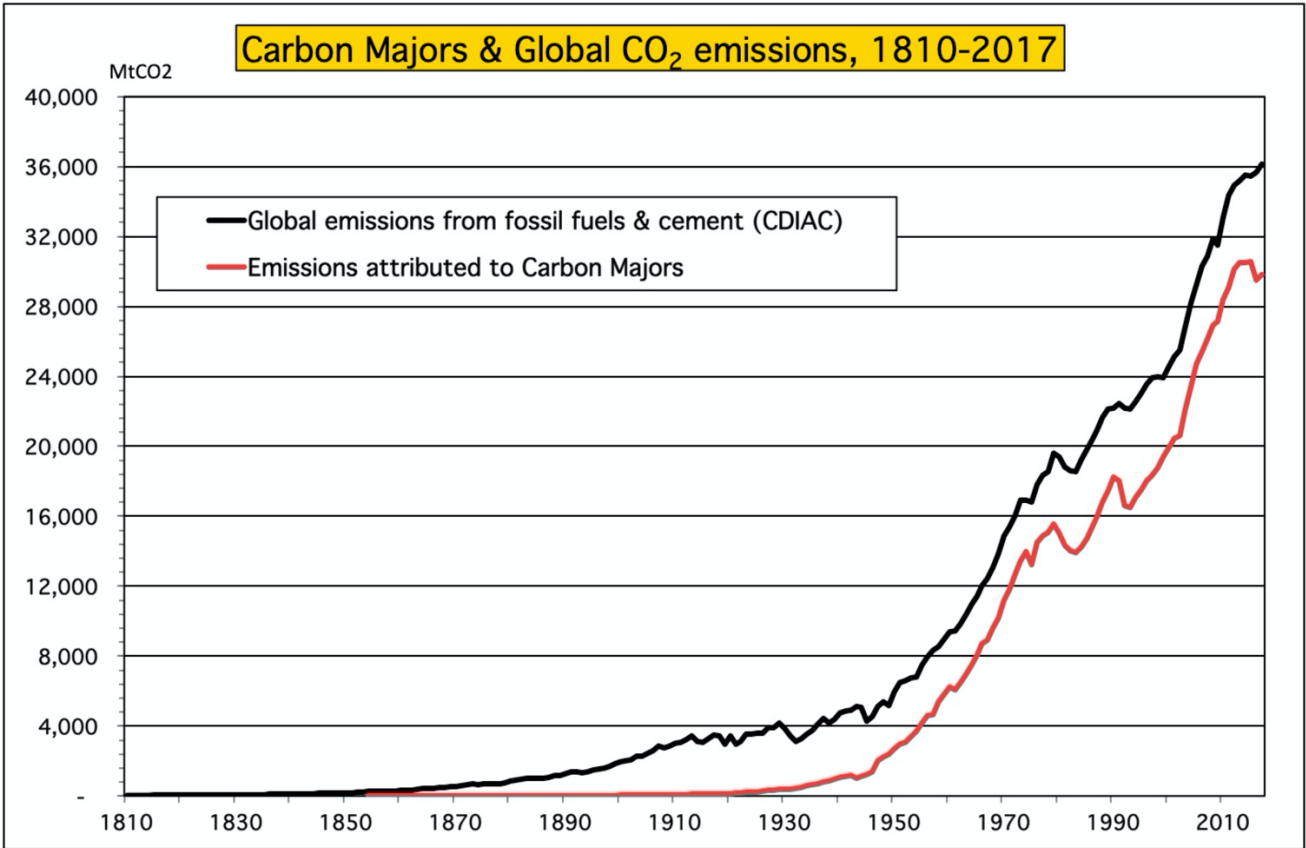
- Although attribution science does come with a certain degree of scientific uncertainty, and some particularly difficult normative questions in relation to assigning responsibility for current and historical emissions, the science seems sufficiently robust and accurate to attribute responsibility for impacts of climate change to specific emitters. However, it seems that this is currently limited to an expression of proportional responsibility for total emissions, which must again be translated to proportional responsibility for a specific injury.
- When applying the causation requirement in liability claims, courts typically require that the evidence submitted illustrates a linkage between a specific emitter and the relevant injury for the claim via a so-called identification test. This is problematic when attribution science currently seems to support attribution of proportional responsibility for an injury. Although there may be available legal mechanisms that could possibly alleviate this problem, courts have been unwilling to deviate from the more stringent, traditional causation tests in liability claims against emitters.
- In addition to this, litigants fail to sufficiently and accurately present the relevant attribution science. Evidence used in the courtroom is simply not up to date with the scientific developments in this field.

While these findings present issues related to climate liability cases that may at first glance seem difficult to overcome, there is growing confidence in both scientific and legal communities that future cases may have better chances, due to developments in both fields. This again gives hope for getting at least some semblance of justice for the many lives, homes livelihoods, etc., that are threatened by the impacts of climate change, and may perhaps even have larger impacts in terms of precedent.

«The real problems of climate change lie in our future, so why should we look to the past?»



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