

# Climate Change Public Nuisance Tort Litigation

Prof. Tracy Hester

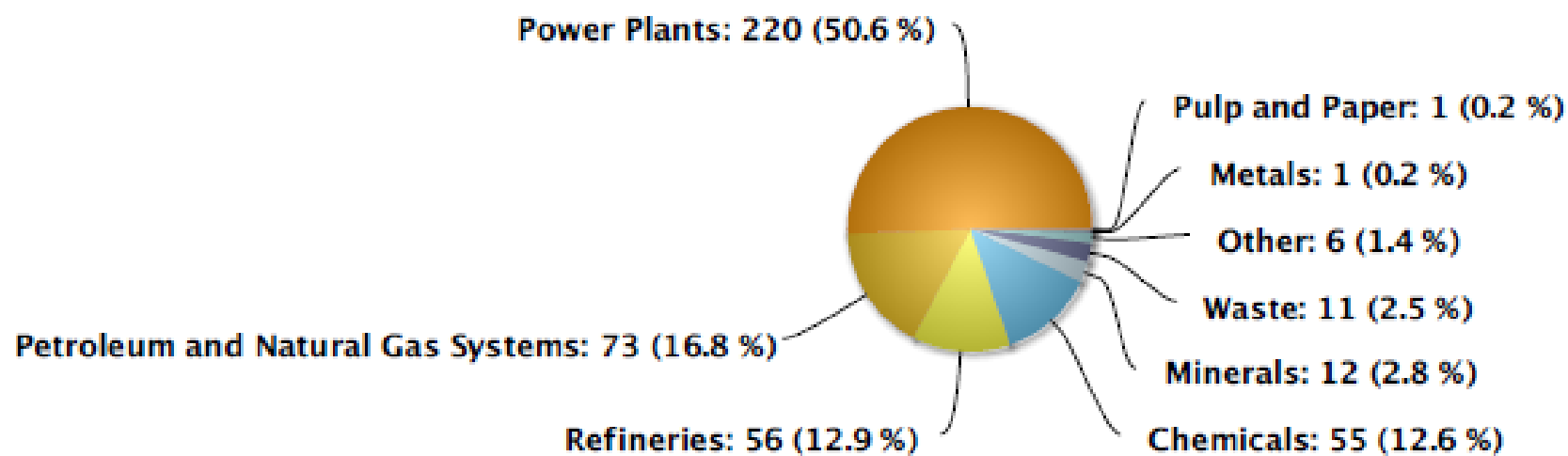
University of Houston Law Center

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Houston, Texas  
Oct. 16, 2017



Texas – Direct GHG Emissions of Selected Gases Reported by Sector in Million Metric Tons of CO<sub>2</sub>e





**flight**  
Facility Level  
Information on  
Greenhouse gases  
Tool



## 2016 Greenhouse Gas Emissions from Large Facilities

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Texas ▼

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Greenhouse Gas ▼

Emissions

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### 2016 - Texas - Total Reported Emissions by Facility in Metric Tons of CO<sub>2</sub>e


Facility	City	State	Total Reported Emissions	Sectors
W A Parish	THOMPSONS	TX	13,434,438	Power Plants
Martin Lake	Tatum	TX	12,205,754	Power Plants
Oak Grove	FRANKLIN	TX	12,047,247	Power Plants
Sam Seymour	LA GRANGE	TX	10,995,596	Power Plants
EXXONMOBIL Bt Site	BAYTOWN	TX	10,077,901	Refineries, Chemicals
Limestone	JEWETT	TX	8,914,572	Power Plants
Sandow Station	ROCKDALE	TX	8,604,097	Power Plants
Monticello	MOUNT PLEASANT	TX	8,364,408	Power Plants
Blanchard Refining Company LLC	TEXAS CITY	TX	7,195,194	Power Plants, Refineries
Big Brown	FAIRFIELD	TX	6,857,758	Power Plants
Exxonmobil Beaumont Refinery	BEAUMONT	TX	5,940,916	Power Plants, Refineries,...



## Sector

Sector	<div>SELECT ALL</div>	<div><input checked="" type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div><input type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div><input type="checkbox"/></div>	<div><input type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div><input type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div><input type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div><input type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>
	<div>DESELECT ALL</div>	Power Plants	Petroleum and Natural Gas Systems	Refineries	Chemicals	Other	Minerals	Waste	Metals	Pulp and Paper	Total Reported Emissions				
	<div>APPLY SEARCH</div>										<a href="#">What's this?</a>				
2016 GHG Emissions (Million Metric Tons CO <sub>2</sub> e)		220	73	56	55	5.7	12	11	1.5	0.7	435				
# of Reporting Facilities		129	449	31	103	73	38	111	15	5	928				

 Emissions totals displayed at the state level exclude Onshore Oil and Gas Production and Use of Electrical Equipment

 This data set does not reflect total U.S. GHG emissions. [Learn more about related EPA GHG data sources.](#) Data reported to EPA as of 08/05/2017.

# U.S. Climate Change Litigation

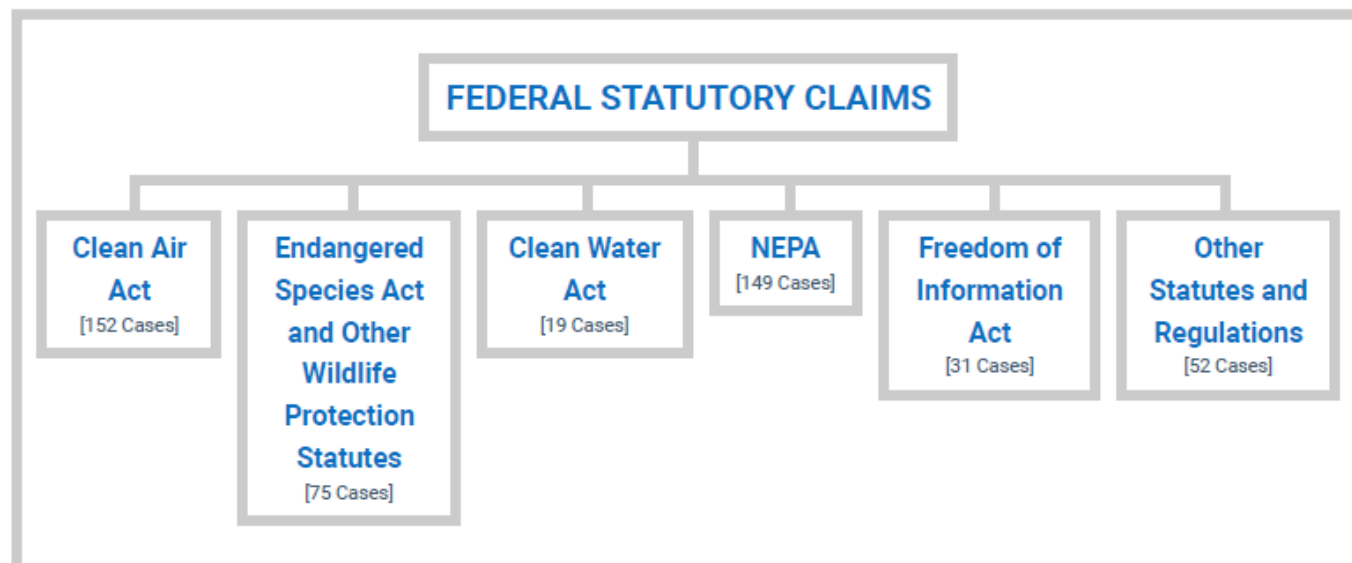


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Cases in the U.S. database are organized by type of claim and may be [filtered](#) by the principal laws they address, their filing years, and their jurisdictions. The database is also [searchable](#) by keyword. In many cases, the database includes links to decisions, complaints, motions, and other administrative and litigation documents. To browse by claim type, click on categories below. To filter cases or search by keyword, [click here](#).





# Climate Change Nuisance Lawsuits: Many Causes, Many Claims

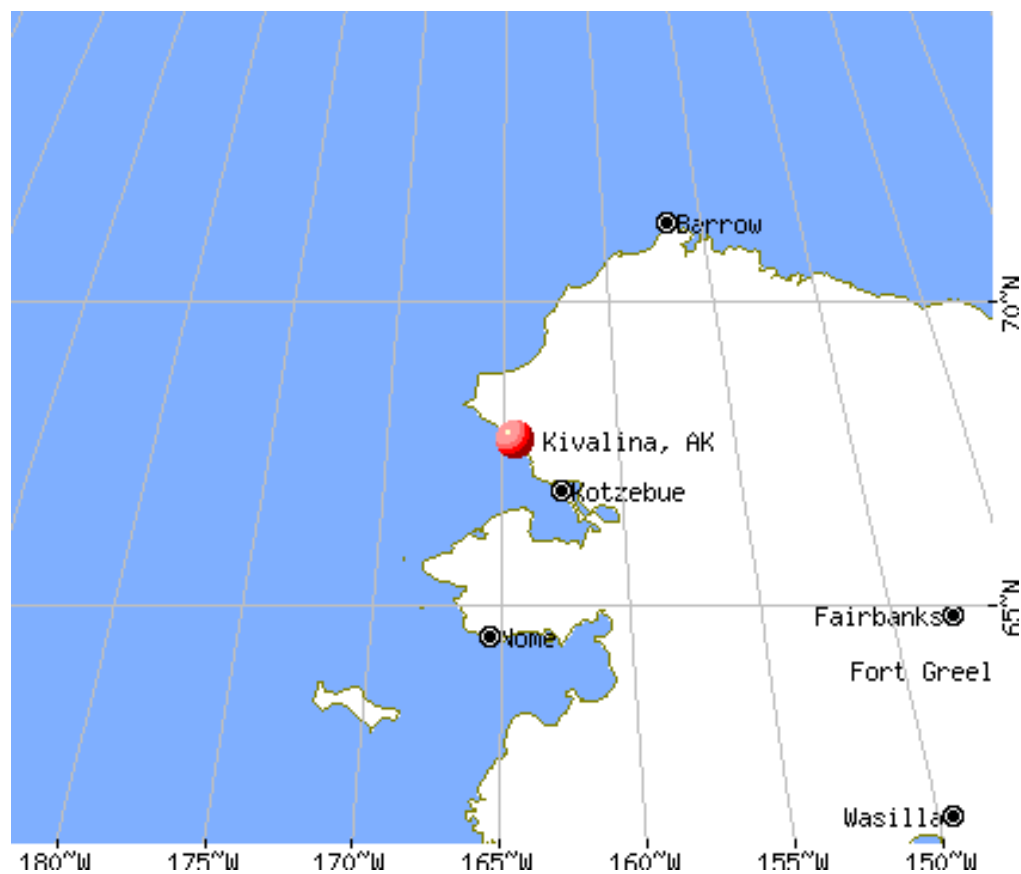
## Courts as Battlefields in Climate Fights



Erosion of the shoreline in Kivalina, Alaska, has led to a closely watched climate-change lawsuit.

By [JOHN SCHWARTZ](#)

Published: January 26, 2010







# The Big Three



- **Connecticut v. AEP (2d Cir.)**
  - Eight AGs sued five power companies
  - U.S. Supreme Court ruled that federal common law nuisance claims were displaced by Clean Air Act
- **Comer v. Murphy Oil Co. (5<sup>th</sup> Cir.)**
  - Class action suit for Katrina property damages
  - Targets oil, coal, chemical and insurance companies
  - Fifth Circuit dismissed in very odd fashion; district court dismissed re-filed complaint and Fifth Circuit has upheld the second dismissal
- **Native Village of Kivalina v. Exxon Mobil (9<sup>th</sup> Cir.)**
  - District court in California dismissed as political question
  - Ninth Circuit dismissed on displacement grounds as well



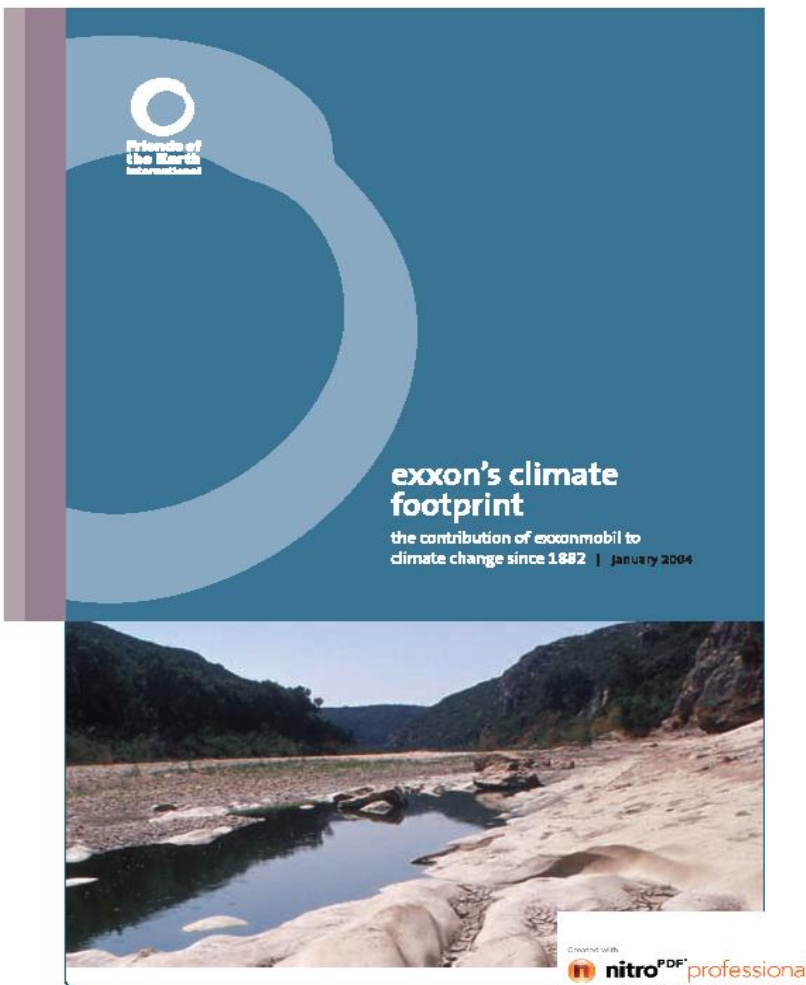
# Climate Change Liability -- Key Thoughts and Themes

- Should fate of nuisance suits differ?
  - Relief sought (injunctions vs. damages)?
  - Claims and harms alleged?
  - Types of plaintiffs bringing claims?
- The battle to get into court is different than the battle within the court
  - Causation
  - Effectiveness of remedy



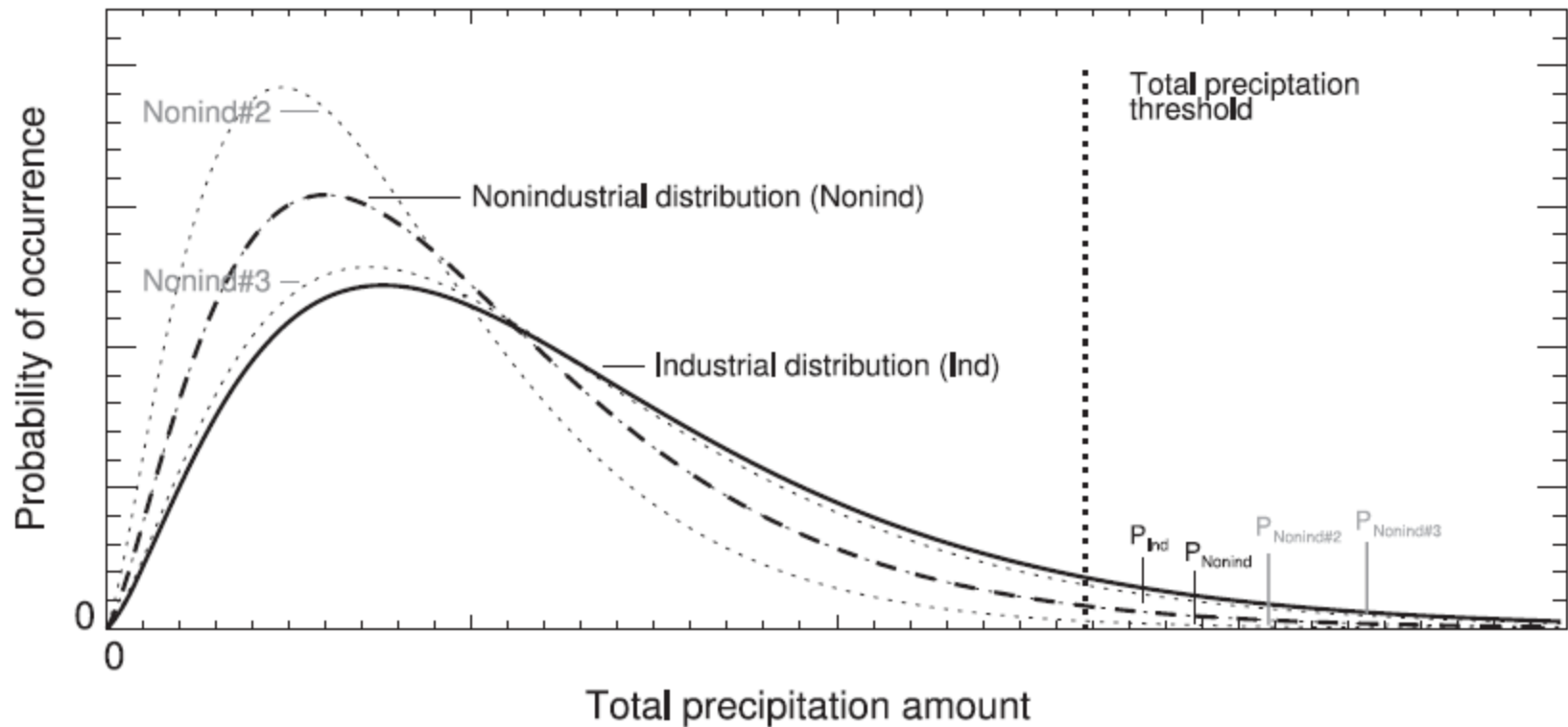
## **Future Directions in Climate Change Litigation (discuss in next class)**

- State law claims and lawsuits
- Public trust doctrine lawsuits
- Adaptation of tactics and strategy from tobacco and asbestos litigation
  - Collateral effects of certain claims (conspiracy)



- Tallies emissions back to 1882
- Claims about 5 percent of historical global carbon emissions from Exxon
- Alleges most releases occurred after climate concerns first raised

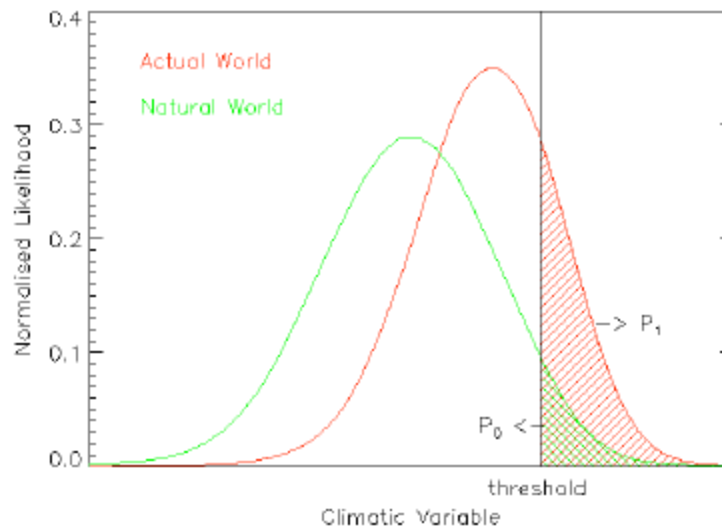
# Climate Attribution Science and Litigation?



# Fraction of Attributable Risk

Fractional change in the likelihood of exceeding a temperature threshold attributable to a particular causal factor

(Allen, Nature, 2003)



$P_0$ : Probability of exceeding a threshold in the “world that might have been” (without that causal factor).

$P_1$ : Probability of exceeding a threshold in the actual world.

$$FAR = 1 - (P_0 / P_1)$$

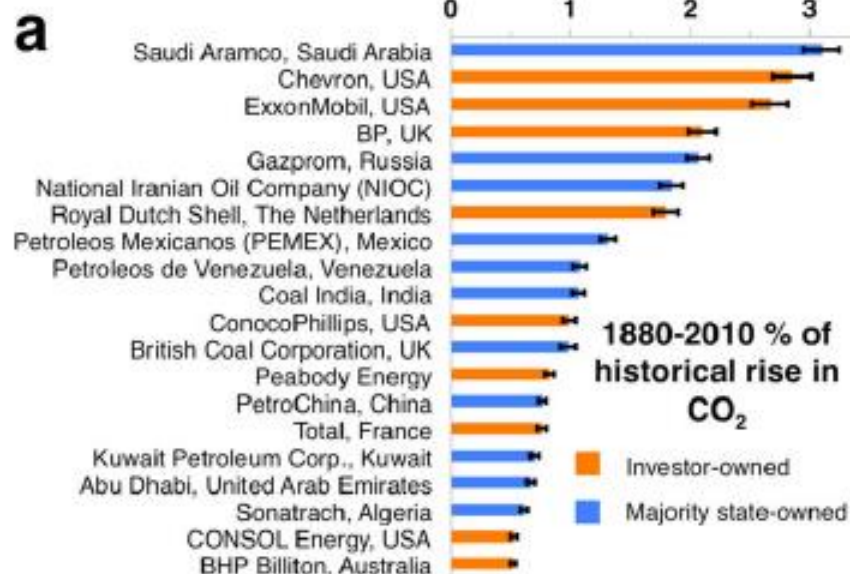


Extreme weather events that arose partially from anthropogenic climate change:

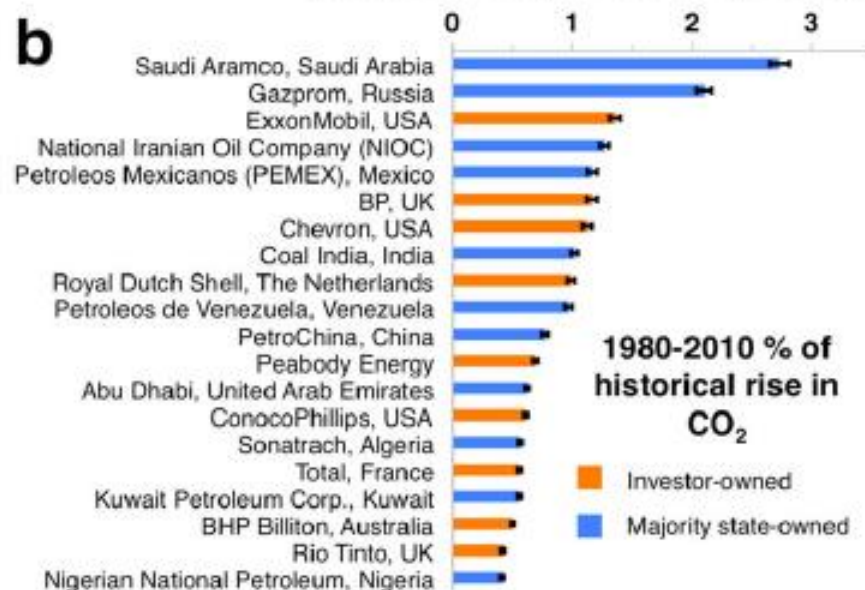
- European heat wave of 2003
- The cold US of 2008
- Moscow heatwave of 2010
- Cold European winter 2009/2010
- UK flooding in 2000



Contribution of emissions traced to carbon producers to rise in atmospheric carbon dioxide, 1880-2010 (%)



Contribution of recent (1980-2010) emissions traced to carbon producers to rise in atmospheric carbon dioxide, 1880-2010 (%)







## Questions?

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