

A CASE OF 'PENDING RESPONSIBILITY': ARCTIC INDIGENOUS COMMUNITIES, LOSS AND DAMAGE, AND GLOBAL GOVERNANCE

Author: **Amelie Bahr**

University College London, Masters in Global Governance & Ethics, 2018-2019

What are the everyday effects of global governance as it is experienced by the globally governed, and what does this experience tell us about the normative implications for designing better global governance? In this paper, I apply these questions to climate change loss and damage and Arctic indigenous communities. I argue that, contrary to notions of compensatory or distributive justice, a normative approach that is sensitive to structural inequalities is needed to address the particular vulnerability of Arctic indigenous communities to loss and damage. Thus, the Warsaw Mechanism should support the reformulation of the political relations between indigenous communities and settler states on a domestic level according to the concept of 'pending responsibility'.

Introduction

Having first emerged in the 1990s, global governance represents a relatively nascent subfield in the study of international politics, and one that “remains notoriously slippery” (Weiss & Wilkinson, 2013, 207) in terms of all-encompassing theoretical definitions as to what the former is ‘about’. But global governance can equally be studied as an actually existing set of actors and institutions, and the effects the former exert on those they ‘govern’. Inversely, where global governance is found lacking in its everyday effects, this can generate insights on how to improve the functioning of its apparatus. In this essay, I will apply such a lens to the global governance domain of loss and damage, in particular with regards to Arctic indigenous communities. There now exists a growing recognition that some adverse impacts of global warming are already “locked in” by past, present and projected future emissions. Loss and damage refers to precisely those impacts which cannot or will not be avoided through mitigation or adaptation (Kreienkamp & Vanhala, 2017). These include both slow onset processes such as sea level rise or rising temperatures, and extreme events such as floods and hurricanes.

The 2015 Paris Agreement was the first international climate treaty to include an entire article on loss and damage; the former also fully institutionalized a dedicated policy mechanism for this issue area – namely, the 2013 Warsaw International Mechanism for Loss and Damage. The latter is now the main institution under the United Nations Framework Convention on Climate Change (UNFCCC) to address loss and damage by supporting research, engaging stakeholders and enhancing practical action (ibid.).

In theory, Arctic indigenous communities should be one of the main beneficiaries of the international regime on loss and damage, as climate change in the Arctic is proceeding at a much faster rate than the global average (Landauer & Juhola, 2019). The Arctic is threatened by both slow onset and extreme events with biophysical and socioeconomic impacts alike, which are especially severe for the indigenous population, whose lifestyle is inseparable from its surroundings. Despite the particular vulnerability of Arctic indigenous communities, the international debate around loss and damage has centered on a dichotomy between developed and developing states, as only the latter have access to international adaptation funds (ibid.). This dichotomy is directly challenged by my case study.

I shall show how the demands from Arctic indigenous communities are not being met by the international climate change regime and subsequently discuss the normative implications of my case study for present and future global governance. In particular, I argue that the distinction between compensatory and distributive justice should be transcended in favor of an approach that addresses the structural inequalities underlying global warming throughout history, of which the present loss and damage is but one manifestation. To that end, I draw on Whyte’s (2016) concept of pending responsibility and show how the latter should inform work on loss and damage under the Warsaw Mechanism to allow for a reformulation of political relations between indigenous people and settler states in a domestic context.

Arctic indigenous communities and global governance: critique to no avail

With regards to the criticism of Arctic indigenous communities of the global governors in the domain of climate change, I focus mainly on processes within the UNFCCC and the Inuit community in particular. The Inuit Circumpolar Council (ICC) has called for strict, binding emissions reductions to prevent further adverse effects of global warming (2010). It has also called for an international adaptation fund to make funding and technical assistance available for affected “peoples” rather than “states”, as the ICC is acutely aware that vulnerability to climate change is – for the most part – regional and local in nature. Thus, adaptation assistance should be made available accordingly (ibid.).

These demands remain at odds with the achievements under the UNFCCC framework to date. After years of gridlock in the climate change regime, the Paris Agreement departed from previous efforts to set fixed emission targets to allow for a flexible, individualized approach of each country scaling up its commitments to reduce emissions over time (Hale, 2017). Whether its catalytic intentions will prevail remains to be seen over the next years, leaving the Inuit in uncertainty over the seriousness of the international community to prevent further escalation of current loss and damage. In the international adaptation framework, Inuit and other indigenous peoples in developed countries are still not allowed to access assistance for adaptation (Landauer & Juhola, 2019). This remains the case even though when compared to e.g. Small Island Developing States according to socioeconomic indicators, many Inuit regions

would also be considered developing regions (ibid.).

Everyday effects of this failure to adequately provide for Arctic indigenous communities in the climate space are widespread. Global warming is affecting traditional indigenous culture in various ways, from its travel and harvesting to its hunting and food-sharing culture. For example, reduced sea ice endangers the animals on which the Inuit depend, and which are becoming less accessible and possibly even extinct (International Circumpolar Council, 2005).

Due to these difficulties, there have already been various cases of relocation and migration as a result of global warming (Landauer & Juhola, 2019). Disruptions in these traditional activities also have an impact on the education and passing on of knowledge between different generations and the relationships between them more broadly (Crowley, 2011). The importance of retaining culturally significant practices, specifically for indigenous communities, is widely recognized in the adoption of human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples.

Normative approaches to loss and damage: compensatory and distributive justice

The case study of Arctic indigenous communities points to clear inadequacies in the current loss and damage policy domain. It also provides an opportunity to reflect on how to improve global governance, particularly with regards to the normative principles that underpin the latter.

In normative theory on climate change, a key distinction is made between notions of compensatory and distributive justice (Wallimann-Helmer et al., 2019; Schinko, Mechler, & Hochrainer-Stigler, 2019). Compensatory justice seeks to distribute responsibilities to make those harmed whole again according to who contributed to the occurrence of harm to begin with, invoking the liabilities of the funders and the rights of the recipients. In contrast, distributive justice conceives of loss and damage as an undeserved harm, requiring an evening out of unfairness. The latter should be determined according to the capacities of the funders and the needs of the recipients (ibid.).

This distinction mirrors the divides in the discussions on loss and damage in the climate change regime itself. As Vanhala and Hestbaek (2016) show, underlying the idea of loss and

damage are competing interpretations on the part of developing and developed countries. The former have stressed aspects of liability and compensation based on the disproportionate contributions of developing countries (with the crucial exception of their indigenous communities) to global warming, invoking compensatory justice claims. In contrast, developed countries have stressed approaches of risk management and insurance, framing loss and damage as a largely technocratic issue (ibid.). In deciding how to provide assistance on resolving the latter, distributive justice claims may be more appropriate.

Both Wallimann-Helmer et al. (2019) and Schinko et al. (2019), who discuss normative theory specifically with regards to loss and damage, see notions of distributive justice as advantageous at least in the short to medium term. For Schinko et al., this is the case because the science of attribution is at present not yet advanced enough to clearly assign responsibilities to different parties in specific cases of loss and damage (2019). They argue that once this can be established, compensatory justice can replace distributive justice in the medium to long run (ibid.).

Wallimann-Helmer et al. argue that distributive justice has a key advantage over compensatory justice because, regardless of advances in the science of attribution, compensatory justice can only address those cases of loss and damage that are anthropogenically induced – after all, demands for compensation are based on the infliction of harm (2019). In contrast, redistributive justice has a larger scope in that it can also include loss and damage resulting from natural climate variation (ibid.).

At first glance, it seems that Arctic indigenous communities – as many developing regions also beset by loss and damage – prefer the approach of compensatory justice. For instance, in 2005, the ICC submitted a petition to the Inter-American Commission on Human Rights arguing that American greenhouse gas emission are violating the human rights of Inuit (Inuit Circumpolar Council, 2005). This is based on a conception of Inuit as those harmed enjoying a right to their traditional lifestyles, which the US is liable for breaching through their disproportionate contributions to global warming. However, I argue that upon closer inspection, both the notions of compensatory and distributive justice are of only limited use in the case of loss and damage.

Wallimann-Helmer et al. describe what according to compensatory justice would be regarded as a just outcome: “The victims should find themselves in the same condition as they had been before infliction; to wit, as they would have been had the harm never occurred.” (2019, 44). However, others point out that even the situation that affected regions had been in before loss and damage occurred was less than desirable to begin with. Thus, if compensatory justice merely stops at the point that Wallimann-Helmer et al. (2019) suggest, this will merely perpetuate the inequitable structures that produce impoverishment and vulnerability in the first place (Wrathall et al., 2015).

In their words, “while climate change stress may reveal itself in ‘crises’, vulnerability is a latent social condition, and the historical nature of vulnerability is that some had already experienced loss and damage through the process of colonisation and development in the 20th century.” (Wrathall et al., 2015, 281). In light of this perspective, compensatory justice may be restorative but certainly not transformative. The issue here is essentially one of structural power, where social structures generate positions with different capacities and interests whose stratification is reproduced over time (Barnett & Duvall, 2005). In this context, compensatory justice claims conceive of loss and damage as an isolated crisis the Inuit are currently facing, rather than an integral part of oppressive social practices to which indigenous communities have been subject throughout history. Schinko et al. (2019)’s point about compensatory justice claims failing due to insufficiently advanced science of attribution for specific instances thus also falls short, as history itself is a testament to the structures that produces the vulnerability to loss and damage in the first place. Distributive justice is not even concerned with who inflicted damage in the first place, but takes for granted the vulnerability of the Inuit and does away with concerns of how their structural position was created in the first place, much less how it was reproduced over time.

Towards a transformative theory of justice

The question then becomes how to transcend the approaches of compensatory and distributive justice to arrive at a more meaningful normative framework to address loss and damage for Arctic indigenous communities.

Whyte (2016) provides a useful starting point in this endeavor in differentiating between impending

and pending responsibility for loss and damage that settler states face vis-à-vis their indigenous communities. The former is incurred by settler states because of their role in anthropogenic climate change that disproportionately impacts indigenous communities. The focus is forward-looking: settler states should provide funding programs, scientific resources, and advisory roles in policymaking to affected indigenous communities, as well as represent their interests in the international order (ibid.). At the moment, the inputs of Arctic states to the UN on climate change have only rarely referred to the specific struggles of indigenous communities, while only three indigenous organizations from the Arctic Council have secured observer status at the UNFCCC (Duyk, 2015).

Impending responsibility is generally compatible with claims of compensatory justice in assigning settler states responsibility based on their contributions to climate change, for which they are being held liable because they infringe on indigenous people’s rights. In contrast, pending responsibility is backward-looking and frames climate change as a long-standing issue of political reconciliation (Whyte, 2016). Whyte argues that the fulfillment of impending responsibilities will ultimately fail due to the political relations in place: even if assistance is administered to indigenous communities, the latter still do not have real authority on setting policy agendas or full control over their own territory.

Thus what should be addressed – in terms of pending responsibility – is these political relations themselves. In fact, the very formation of the latter was only made possible through the infliction of anthropogenic environmental change on indigenous communities, including preventing them from moving with the seasons and forcing relocations already at a much earlier point in time (Cameron, 2012). The current loss and damage is but the most recent manifestation of a much longer process by which the capacity for adaptation by indigenous communities has been limited whilst allowing for the further exacerbation of global warming itself (Whyte, 2016).

Whyte’s contribution is crucial in its aspiration for a truly transformative theory of justice to address loss and damage. However, it sees the solution to loss and damage in the restricting of political relations in states in the first instance and even cites the international establishment as one of the main obstacles to fulfilling impending responsibilities (ibid.). However, while I agree that political reconciliation ultimately must take place in a domestic context, as the precise political

relations between settler states and indigenous communities and their origins differ across countries, I shall argue that we should envision the international climate regime itself as a catalyst for states fulfilling their pending responsibility.

To this end, I propose that the Warsaw Mechanism should be structured not just according to various issue areas within loss and damage (such as slow-onset events and non-economic losses), but at the same time according to the urgency of the need for relief and the vulnerability of particular social groups to loss and damage. The reformulation in terms of urgency would require scientific evidence as to the specific risks to loss and damage across the world at present, which could then be used as leverage to redefine the exposure to loss and damage in terms of regions, not states. After all, the case of the Arctic clearly shows that risks to loss and damage can differ within a given state as well as between developed and developing countries. This would allow for the Arctic to access the UNFCCC's adaptation fund, even as a part of developed countries, providing crucial assistance. However, as Whyte (2016) points out, as long as indigenous representatives are not involved in decision-making processes, funding itself for the whole area of which they are a part does not necessarily constitute a sufficient relief for their communities if they cannot decide how funding is spent and oversee its implementation. Hence my assertion that it does not only matter where loss and damage is the most severe, but also who is most affected in these regions. If such assessments highlight indigenous communities as particularly vulnerable, then it follows that their representatives should be included in policymaking processes.

I believe that this would advance efforts for pending responsibility in two ways. First, adding dimensions of urgency and vulnerability to the loss and damage discourse sends a signal that the disproportionate effects of climate change and their targets are taken seriously by the international establishment, putting pressure on domestic governments to examine this unequal distribution of effects in their domestic contexts. Second, giving indigenous communities a "seat at the table" in the international climate change regime lends legitimacy to their role as an active participant in policy decisions, placing them in a better position to engage in renegotiations of political relations on a domestic state-level.

Naturally, my recommendations are likely to face several difficulties in implementation. Efforts to create a specific stratification with regards to urgency and vulnerability are likely to be controversial in a

policy regime that has largely been delegated to technocratic elites seeking scientific, expertise-driven solutions (Franta, 2015). Thus such efforts could be criticized as unnecessary politicization that could unravel the frail consensus on loss and damage that is only just emerging.

However, as my assessments in this paper have shown, the present occurrence of loss and damage is but one outcome of a historical process based on deep power asymmetries. Thus, portraying climate change as a purely scientific issue is actually an exercise of productive power (Barnett & Duvall, 2005), obscuring the political drivers behind loss and damage. It may therefore be worth uncovering the former in order to include those who are at once most vulnerable and at the same time left behind by the climate change regime, ultimately with the aim of restoring trust in the institutions of global governance itself.

Finally, one should not forget the ultimate aim of normative theory. If, in formulating the latter, one should only make claims that can be implemented within the current realities of global governance, these claims would also be bound by the latter's current inadequacies. Thus, global governance should aspire to conform to normative principles as deliberated in theory, rather than the other way around.

Conclusion

In this paper, I have outlined the case study of Arctic indigenous communities with regards to climate change loss and damage. Up until now, their demands have not been addressed by the international climate change regime, even though they belong to those most vulnerable to the consequences of global warming. Indeed, they are already now deeply affected by loss and damage. Although Arctic indigenous communities are located in developed countries with high levels of greenhouse gas emissions, they hardly contribute to global warming themselves, thereby challenging the distinction between developed and developing countries that informs debates on loss and damage internationally. This unique situation gives rise to specific normative considerations with regards to climate change governance: if Arctic indigenous communities are not included in policymaking at present, which normative principles should inform global governance going forward?

I argue that instead of notions of compensatory or distributive justice, the concept of impending responsibility should be used. This approach

recognizes that the current vulnerability of Arctic indigenous communities is a manifestation of unequal political relations resulting from the infliction of anthropogenic environmental change throughout history. I propose that the Warsaw Mechanism should identify more closely which regions and which social groups are affected by loss and damage. This would do justice to the fundamentally unequal effects of climate change, and act as a catalyst to a political reconciliation between settler states and indigenous communities on a domestic level.

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