

# Ex Ante Compensation for Cultural Loss and Damage

Pierre ANDRÉ

FNRS Postdoctoral Fellow ([pi.andre@uclouvain.be](mailto:pi.andre@uclouvain.be))

Hoover Chair of economic and social ethics, UCLouvain (Belgium)

## Abstract

A series of legal cases and petitions point to violations of the **right to cultural identity** induced by the effects of climate change (Billy v. Australia, Held v. Montana, petition by the Inuit Circumpolar conference). In 2022, the United Nations Human Rights Committee even found that Australia had failed to protect the right to “right to enjoy their own culture” of the Indigenous communities of the Torres Strait Islands. It subsequently asked the government to take “measures necessary to secure the communities’ continued safe existence on their respective islands” and to “provide adequate compensation” to the indigenous Islanders for the harms inflicted on them (UNHRC 2022).

**However, can all the losses induced by the increasing effects of climate change be adequately compensated?** According to a common view, the value of non-economic goods like ecosystems or cultural identity lost as a consequence of climate change is incommensurable with the value of anything that could be offered as compensation (De Shalit 2011; Serdeczny 2019). Therefore, compensation can in such cases only be partial (Heyward and Page 2017). But incommensurability does not necessarily render compensation utterly impossible or wholly inadequate: some form of compensation may still be possible and even desirable (Goodin 1989).

In this article, I shed new light on this issue by drawing on the conceptual distinction between **value incommensurability** and **value incomparability** (Chang 2013; Hsieh and Andersson 2021): while incommensurability refers to the lack of a common measure of the value of different goods, incomparability refers to the evaluator’s inability to say whether a good is ‘better’, ‘worse’ or ‘as good as’ another (Raz 1986). This leads me to argue that the latter poses a bigger problem for compensatory justice than the former.

Climate change may irreversibly destroy **valuable ecosystems** that are constitutive of people’s cultural identity (Armstrong 2014). Given the crucial role of cultural identity in the ability of agents to make evaluative judgements regarding different ends (Zellentin 2015; Kymlicka 1995), the victims of such **cultural devastation** (Lear 2006) may find themselves incapable of making meaningful comparisons between alternative life plans. Thus, they may be unable to judge whether or not they have been adequately compensated for their loss. If we reject a wholly paternalistic conception of compensation, this makes **compensatory measures** for lost ecosystems of critical cultural importance **wholly inadequate, if not impossible**.

This conclusion has dramatic implications for the policies seeking to address climatic loss and damage. First, the future victims of inevitable cultural devastation should be **compensated ex ante**, when they are still capable of making meaningful comparisons between alternative life-plans, rather than *ex post*. Second, compensation policies should recognize the impact of cultural devastation on autonomy and be accompanied by specific policies aimed at **rebuilding the autonomous agency** of the victims, notably via policies to support hope.

## Relevance for policymaking

This research is relevant for policymaking because in at least three respects: i) measuring the value of losses, ii) defining the adequate policy response, and possibly iii) assigning responsibilities.

First, even if lost non-economic goods like unique ecosystems **cannot be measured** on a single scale, it does not necessarily mean that compensation should be abandoned. Ex post compensation, however, may be impossible if people fall victim to cultural devastation and values **cannot be compared** anymore. This conclusion is reached by switching from an approach that focuses on the **qualities of the goods** to one that emphasizes the **agency of the victims**.

Second, the incomparability problem raises the issue of **timing** in the policy response to loss and damage. This leads me to argue in favor of *ex ante* rather than *ex post* compensation. It also engages with the question of the **type of policies** that should be implemented by explaining how **compensation** may be insufficient and should be supplemented by other policies aimed at **rebuilding autonomy**.

Third, this research may have some interesting implications for the **ascription of responsibilities**. Indeed, a **victim-centered** approach focused on maintaining and rebuilding autonomy may clash with an **agent-centered** approach focused on fair burden-sharing. For example, a just solution may have to decouple the **duty to accept** climate refugees and the **duty to finance** loss and damage policies.

## References

- Armstrong, Chris. 2014. 'Justice and Attachment to Natural Resources'. *Journal of Political Philosophy* 22 (1): 48–65.
- Chang, Ruth. 2013. 'Incommensurability (and Incomparability)'. In *The International Encyclopedia of Ethics*, edited by Hugh LaFollette, 2591–2604. Blackwell.
- De Shalit, Avner. 2011. 'Climate Change Refugees, Compensation, and Rectification'. *The Monist* 94 (3): 310–28.
- Goodin, Robert E. 1989. 'Theories of Compensation'. *Oxford Journal of Legal Studies* 9 (1): 56–75.
- Heyward, Clare, and Edward Page. 2017. 'Compensating for Climate Change Loss and Damage'. *Political Studies* 65 (2): 356–71.
- Hsieh, Nien-hê, and Henrik Andersson. 2021. 'Incommensurable Values'. In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, Fall 2021. Stanford University. <https://plato.stanford.edu/archives/fall2021/entries/value-incommensurable/>.
- Kymlicka, Will. 1995. *Multicultural Citizenship*. Clarendon. Oxford.
- Lear, Jonathan. 2006. *Radical Hope. Ethics in the Face of Cultural Devastation*. Cambridge: Harvard University Press.
- Raz, Joseph. 1986. *The Morality of Freedom*. Oxford: Clarendon Press.
- Serdeczny, Olivia. 2019. 'Non-Economic Loss and Damage and the Warsaw International Mechanism'. In *Loss and Damage from Climate Change*, edited by Reinhard Mechler, Laurens M. Bouwer, Thomas Schinko, Swenja Surminski, and JoAnne Linnerooth-Bayer, 205–20. Cham: Springer.
- UNHRC. 2022. Daniel Billy and Others v. Australia (Torres Strait Islanders Petition) Communication No. 3624/2019.
- Zellentin, Alexa. 2015. 'Climate Justice, Small Island Developing States & Cultural Loss'. *Climatic Change* 133 (3): 491–98.