

# Harmless Loss: Its Moral, Political and Legal Significance

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## Abstract

What is “loss”? When, and why, does it matter? Analytic-philosophical consideration of loss has been overshadowed by the neighbouring concept of harm. But the two are distinct, and the distinction matters. We argue that the best conception of loss captures a wide range of diminutions, of any magnitude, in the feature-set of an entity, whereas the best conception of harm captures only significant diminutions in wellbeing of humans (and other living beings with moral status). In the space between the two concepts lies an under-theorised concept we call *harmless loss*, which does important conceptual work in cases of trivial wellbeing loss, losses to non-wellbeing goods, and losses to non-human agents. Our conceptual scheme motivates principles of reasoning according to which decision-makers should take account of harms and ignore harmless losses, except where they have special duties to avoid losses. These principles advance debates about climate change “loss and damage” and the “just transition” to a low-carbon economy.

**Keywords:** climate change; harm; just transition; loss; loss and damage

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## 1 Introduction

The question of whether, when and how to compensate the losers from reform requires careful consideration. (OECD 2010, 1)

Climate change involves human societies in problems of loss: depletion, disappearance, and collapse. (Elliott 2018, 301)

What is loss? When, and why, does it matter? As these quotations illustrate, the concept is central to some of the biggest challenges facing humanity, and to the policy and legal reforms needed to respond to them. There is good reason, moreover, to think that invocations of loss are becoming, and will continue to become, more frequent and prominent in public discourse. Consider just two contemporary sets of trends: the acceleration of technological change, especially in digitisation, robotics and artificial intelligence, which is increasingly displacing incumbent practices, jobs and skills; and the acceleration of climate change, ecological degradation, and species extinction. As these trends unfold (and interact), experiences of and anxieties about loss seem likely to grow.

Such trends have provoked fascinating recent work in phenomenology and virtue ethics, which has probed deeper into the human experience of loss and fitting responses to it (Lear 2006; Vallor 2015; Zoller 2017).<sup>1</sup> These trends have also led to more policy-oriented and applied work in areas such as climate change mitigation, adaptation and “loss and damage” (Page and Heyward 2017; Wallimann-Helmer 2015; Wallimann-Helmer et al. 2019). Yet, there has been very little analytic-philosophical consideration of the concept of loss itself, of more or less suitable conceptions of loss, and of the normative significance of identifying something as a loss.

A likely reason for this neglect is that consideration of loss has been overshadowed by voluminous discussions of the neighbouring concept of *harm* (Feinberg 1984, 1986; Meyer 2003, 2021; Perry 1992, 2003; Raz 1988; Shiffrin 1999, 2012; Tadros 2014). Indeed, numerous philosophers have treated the two concepts as interchangeable (Perry 1992, 2003; Tadros 2014). Certainly, any analytic-philosophical discussion of loss could not ignore the literature on harm, and would need to identify the differences between the concepts and their normative significance. That is, broadly speaking, the challenge we set ourselves in this paper.

Our core claim is that the best conception of loss is a thin one that captures a wide range of diminutions, of any magnitude, in the feature-set of an entity, whereas the best conception of harm is a normatively thick one that captures only *significant* diminutions in the *wellbeing* of *humans* (and other living beings with moral status). In section 2, we specify and motivate our *Thin Conception of Loss*, elaborating its five most relevant features and illustrating these with a range of examples. Our *Thick Conception of Harm* is specified and defended in section 3. The most controversial implications of the Thick Conception of Harm are that it does not classify as harms either setbacks to a person’s interests that are real but not sufficiently grave

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<sup>1</sup> There has been some consideration of loss in legal theory, especially with respect to the law of damages, torts, contract, property, and unjust enrichment (e.g., Edelman 2009).

to warrant normative concern, or setbacks to the interests of group agents, such as corporations and states. But the setbacks in these cases *would* be classified as losses on our Thin Conception of Loss, and we argue that it is more appropriate to classify them as losses than as harms. Indeed, such setbacks are instances of what we call *harmless loss*—an important but under-theorised concept.

We go on to argue, in section 4, for principles of reasoning that track the normative significance of the distinction between harm(ful loss) and harmless loss. These principles, in short, direct public and private decision-makers to take account of harms and ignore harmless losses, except where they have special duties to avoid (harmless) losses. The distinction prompts the search for reasons other than those grounded in direct harm that may justify a normative concern for loss per se. These principles help to make progress in normatively complex debates arising from processes of ecological, social, economic and policy transition—processes that typically cause losses and thus create “losers”. We conclude by returning to one of our motivating cases—climate change—to illustrate how our conceptual and normative claims advance debates about climate change “loss and damage” and the “just transition” to a low-carbon economy.

## 2 The Thin Conception of Loss

We begin by specifying our preferred conception of loss:

*Thin Conception of Loss:* An entity,  $E$ , incurs a loss at time  $t$  *only if* the entity’s relevant feature set,  $S_x$ , is diminished, even if only minimally, at  $t$  relative to a baseline,  $b$ , where  $b$  may be a state that occurs at an earlier time or a counterfactual state of affairs.

We do not think that our Thin Conception is likely to be especially controversial, in general or when applied to entities that are agents (our focus in this paper).<sup>2</sup> Accordingly, we shall restrict our remarks in this section to elaborating its five most relevant features and illustrating these with a range of examples. We suggest that each feature reflects the way the term loss is ordinarily used in the domains of normative theorising in which we are interested—namely, ethics, interpersonal morality, private law, political philosophy, public policy, and public law. The first two features are (more or less) shared with the Thick Conception of Harm that we will advocate in the next section, and are thus not important to our argument, but are worth emphasising for completeness. The remaining three features are importantly different from the Thick Conception of Harm.

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<sup>2</sup> Our Thin Conception of Loss, like Hanser’s event-based account of harm, is not state-based. For Hanser, “Someone suffers a level-1 harm with respect to a certain basic good if and only if he loses some quantity of that good” (Hanser 2008, 441). In his view, suffering harm depends on the type of event the person undergoes that leads him to lose some quantity of certain basic good, regardless of how good or bad the resulting state would be (ibid 440). Similarly, in our view, to incur losses does not require the victim to be in an intrinsically bad or comparatively bad state of affairs. Instead, to incur a loss means to have been subject to an event that diminishes the feature-set of the subject, independently of the moral quality of the resulting state of affairs. However, we believe that some of the events of the kind described by Hanser are better understood in terms of losses rather than harms.

First, we assume that loss is necessarily a comparative notion, involving a comparison between an entity's feature set at some relevant time ( $t$ ) relative to some baseline ( $b$ ), where  $b$  may be a state that occurs at an earlier time or a counterfactual state of affairs, such that the entity's feature set is diminished relative to the baseline. In the former case, the victim's feature set is diminished relative to its state at some time before the relevant event occurred (e.g., "he lost his finger in an accident"); in the latter case, the victim's feature set is diminished relative to what it would otherwise have been had the relevant event not occurred (e.g., "she lost her inheritance before it was paid out, due to the trustee's negligence"). These alternative possibilities mirror established positions in the literature on harm, and their respective merits and drawbacks are not germane to our argument in this paper.<sup>3</sup>

Second, the Thin Conception of loss does not presuppose any particular (e.g., anthropogenic) causal history. It is common, and often of great importance in normative theorising, to analyse losses caused by other identifiable agents. But it is equally common to speak of losses caused by natural events (like earthquakes) or diffuse processes or structures (like markets or institutions). Most conceptions of harm are similarly aetiologically capacious (see Bradley 2012, 394–295).

Third, our Thin Conception also takes a broad stand on the kinds of entities that could incur a loss, including living and non-living entities, agential or otherwise. Like harm according to our Thick Conception of Harm, losses can be incurred by human agents. But unlike harm according to the Thick Conception of Harm, losses can also be incurred by group agents (such as corporations and states), by non-agent groups (such as "humanity" or "the English"), and by non-agential entities (such as the universe or planet Earth). This, we suggest, reflects ordinary language usage: group agents and non-agent groups are ordinarily understood to be real entities, and it is natural and meaningful to speak of them as incurring losses (e.g., "the corporation's quarterly losses", "the tribe's loss of cultural heritage", or "the state's loss of territory"). Similarly, it is meaningful to speak of the loss of particular species of flora or fauna, or the loss of a system-state, as when an ecosystem is destroyed—which can be conceptualised as losses to human beings (or groups thereof) or as losses to the universe, to planet Earth, or to some more localised entity.

Fourth, in referring to an entity's "feature set", the Thin Conception takes a wide view as to the plausible "currency" of loss (cf. debates about the correct "currency" of harm: e.g., Tadros 2014, 171). For instance, ecosystems could lose their integrity, functioning or aesthetic qualities; the universe could lose a species; humanity could lose a language, and so

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<sup>3</sup> They are known, respectively, as the *diachronic-historical* understanding (Perry 2003) and the *subjunctive-historical* understanding (Feinberg 1986; Meyer 2021, sec. 3.1). In the literature on harm, some have argued for a *threshold* understanding, whereby the victim is harmed if her absolute condition is worse than a normatively-defined threshold level (Meyer 2003; Raz 1986, 414; Shiffrin 1999). Whether or not this is a correct view about harm, it is not a plausible baseline for a conception of loss. It makes no sense to speak of a person having incurred a loss just by being in a condition worse than a normative threshold specifies. For instance, suppose the correct threshold of harm is \$2.15 per day per person (which is the World Bank's extreme poverty line, updated in September 2022); if Jack lives on \$2 per day, it arguably makes sense to say that Jack has been in a harmed state, but would be nonsensical to say that "Jack has lost \$0.15 every day".

on. Because we are primarily interested in losses to agents, we will focus on the kinds of goods generally thought to matter to agents, such as “wellbeing” (which could be further specified as “functionings”, “preference/desire-satisfaction”, “happiness” etc.), “resources” (which could be further specified to include income, wealth, property, etc.), and more complex variants of these, such as opportunity variants and modally-demanding (security) variants. Because our Thin Conception encompasses non-wellbeing goods, like “resources”, its application could be extended to non-living group-agents for which wellbeing currencies are not applicable. This, as we shall see shortly, contrasts with our narrower specification of the currency of harm.

Fifth, the Thin Conception does not require that a diminution be of a minimum gravity or seriousness to count as a loss. We emphasise this by including in our definition the clause “even if only minimally”. Again, this reflects ordinary language usage. For instance, it is meaningful and natural to say things like “he momentarily lost his composure” or “she lost a penny”. This absence of a gravity threshold provides the third and final contrast with the Thick Conception of Harm, to which we now turn.

### 3 The Thick Conception of Harm

The Thin Conception of Loss fills an important conceptual gap left by the concept of harm if the latter is understood in terms of what we call the *Thick Conception of Harm*.

*Thick Conception of Harm:* A living thing, *A*, suffers harm at time *t* only if *A*'s wellbeing is significantly worse at *t* relative to a baseline, *b*, where *b* may be defined by the level of *A*'s wellbeing before *t* or a counterfactual state of affairs at *t* or a normative threshold level of wellbeing.

The Thick Conception of Harm is different from our Thin Conception of Loss in three relevant respects. First, the Thick Conception of Harm contains an *ontological constraint*: only living things can suffer harm (we will focus on human beings), whereas a wider range of entities can incur a loss. Second, it contains an *axiological constraint*: to suffer harm on the Thick Conception necessarily means to have an inferior level of *wellbeing* (relative to the applicable baseline), whereas diminutions in a wider range of currencies (e.g., resources) can count as losses, as can complex variants thereof (e.g., opportunity and security variants). Third, it contains a *gravity constraint*: the affected entity must be “significantly” worse-off, whereas no such constraint applies to the Thin Conception of Loss. Relative to the set of objects that can be classified as a loss, each of these three differences narrows the set of objects that can also be classified as a harm.

Let us briefly elaborate on our three proposed constraints. Regarding the axiological constraint, our intention is to be ecumenical about the currencies of wellbeing that could be chosen. Accordingly, we refer to three different candidate wellbeing currencies when discussing our examples: a “functionings” currency (Sen 1979); a preference satisfaction currency (Bykvist 2016); and an exclusively subjective currency of well-being, namely the happiness of the affected entity (Layard 2011).

Regarding the ontological constraint, we assume that it is meaningful to speak of all living things as having wellbeing, albeit that what counts as wellbeing may be wider or narrower depending on the type of entity in question.<sup>4</sup> Since we are interested in humans (and human-constructed groups) in this paper, our argument and its applications do not turn on the truth of this assumption, so long as it is meaningful to speak of humans as having wellbeing.

Regarding the gravity constraint, we assume that “significance” is a primitive range property. It is a range property in the sense of having a minimum level that must be crossed to count as sufficiently grave, above which all degrees of gravity satisfy the constraint (even though there may be scalar differences in gravity within the range).<sup>5</sup> It is a primitive concept because it would be naïve to specify its meaning in the abstract; rather, what counts as significant in a given case depends on the context and purpose of the inquiry, and can only be worked out casuistically. In our Thick Conception of Harm, the gravity constraint gives effect to the intuition that some aspects of a person’s wellbeing are more important to how their life goes than others,<sup>6</sup> and that the concept of harm should be reserved for those relatively grave setbacks to (or deficient states of) the subject’s wellbeing (see also Perry 2003, 1301–2; Shiffrin 2012, 361, 370–72).<sup>7</sup>

In what follows, we argue that the Thick Conception of Harm is the best conception of harm available, with the relevant contrast conceptions being (relatively) thin conceptions of harm that lack one or more of the three above-mentioned constraints. We adopt the following two criteria for evaluating conceptions of a concept:

*I. Intuition correlation.* The conception is defined such that its classification of objects comports with widely shared intuitions about whether the objects are tokens of the concept, especially if the concept has a common-sense interpretation (cf. List and Valentini 2016, 533).

*II. Illuminative power.* The conception’s defining conditions should illuminate what it is about the objects so classified that makes them tokens of the concept (cf. Timmons 2002, 15).

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<sup>4</sup> Though not all currencies of wellbeing are equally neutral regarding who or what can suffer a loss (e.g., it seems more natural to speak of a plant experiencing a worsening of its “functionings” than a thwarting of its “preferences”).

<sup>5</sup> See Carter (2011, 549) discussing Rawls (1999, 443).

<sup>6</sup> On the functionings conception of wellbeing, this intuition has been expressed by referring to the “centrality” of the functioning (e.g., Nussbaum 2000, 15). One could also speak of certain “basic” preferences being more important than others (e.g., Bykvist 2016). Likewise for mental states (e.g., absence of depression). This requires a conception of what it is to live a normal or good life—a requirement that we think indispensable to understanding harm.

<sup>7</sup> Our position leaves open the possibility that mere losses could be characterised as *contributing to* harm. This is in line with McMahan’s response to Parfit’s “mistakes in moral mathematics” (e.g., many torturers each delivering an imperceptible shock to one victim, which combine to cause great suffering) (Parfit 1984, 80–82). According to McMahan’s view, “it is a crucial part of the explanation of why what each Harmless Torturer does is wrong, and seriously wrong, that his act *contributes to, or increases, individual suffering* (or, more generally, harm) that is extremely bad” (McMahan 2021, 329, emphasis altered).

To illustrate the second criterion and its distinctiveness from the first, consider a possible definition of “democracy” as merely “a system of government”. It would correctly classify Sweden as a democracy (satisfying the intuition-correlation condition in this instance), but it would fail to illuminate what is distinctive about democracy as a system of government. Of course, it would also incorrectly classify North Korea as a democracy, but this violation of the intuition-correlation condition is a further weakness of the conception—additional, albeit related, to the illuminative weakness.

Our argument, stated succinctly, is as follows. The Thick Conception of Harm—in virtue of the three above-mentioned constraints—illuminates what is normatively significant about harm in core instances of the concept’s application in ordinary, philosophical and legal language. It therefore satisfies the Illuminative Power criterion. It does not capture non-core instances of harm at all. However, it still satisfies the Intuition Correlation criterion because it captures the core cases; the fact that it does not capture non-core cases speaks in favour of this conception, because intuitions are not widely shared (less uniform and less settled) in such cases, and in any case these non-core cases of harm can be shown to be core cases of loss (*viz.* according to the Thin Conception of Loss). By contrast, conceptions of harm that lack the ontological, axiological, and gravity constraints capture both core and non-core cases, albeit at the expense of illuminating what is normatively significant about harm in the core cases. While such conceptions plausibly satisfy the Intuition Correlation criterion (classifying non-core cases as harms does not necessarily indicate *counter*-intuitive implications), they fail to illuminate what is normatively significant about harm in core cases. We conclude that the Thick Conception is better than alternative, thin conceptions of harm.

We will now substantiate this argument. We begin with the core cases of harm, in which we will argue that while the Thick Conception *and* thinner conceptions of harm all classify these cases as instances of harm, the Thick Conception has more illuminative power. We then defend its most controversial implications, which relate to non-core cases.

#### *Core cases of harm*

Consider the following cases:

*Stabbing:* A stabs B in the arm with a knife, causing B permanent partial loss of functioning in his arm.

*Bullying:* A bullies B via repeated verbal and online taunts, threats and putdowns, causing B to experience a significant deterioration in his mental health, self-esteem and interpersonal relationships.

We take these to be core cases of harm. Our Thick Conception classifies each as harm. They each involve a person whose wellbeing is diminished (however wellbeing is plausibly understood) to a degree that clearly is normatively significant or grave (on our various candidate wellbeing currencies and, arguably, all plausible wellbeing currencies). It therefore satisfies the Intuition Correlation condition.

Other, thinner conceptions of harm, namely conceptions that do not limit harm by the ontological, axiological or gravity constraint, also clearly satisfy the Intuition Correlation condition with respect to these cases. However, these other conceptions fail to illuminate what is distinctive about the cases that makes them instances of harm. First, it is not the mere fact that B suffers a loss of functioning of his arm or a worsened mental state that makes these cases core instances of harm, but rather the fact that the setbacks are normatively significant, understood with reference to the normal functioning of human beings. This is further substantiated in our subsequent discussion of cases involving normatively *insignificant* setbacks to human wellbeing. Second, it is not the mere fact that some interest of B, or some aspect of B's total feature set, is lost that makes these cases core instances of harm, but rather the fact that B's *wellbeing* is diminished. This is further substantiated in our subsequent discussion of cases involving normatively significant setbacks to human interests other than wellbeing. Thirdly, it is not the mere fact that some real entity has incurred a setback to their interests or feature set that makes these cases core instances of harm, but rather the fact that the setback is to a *living thing* (or, at least, a *sentient being*). This is further substantiated in our subsequent discussion of cases involving normatively significant setbacks to group agents and non-agent groups.

#### *Non-core cases*

Consider the following two cases that, arguably, do not fulfil the gravity condition:

*Crowded Train:* In a crowded train, A accidentally stands on B's foot, with the effect that B is temporarily immobilised. B becomes flustered and anxious: the train has reached her stop and the doors are opening, and she only has a limited time to alight. She manages to break free and alight the train at her preferred stop.

*Friendly Teasing:* A and B are friends. A and some other friends are chatting in a larger group, waiting for B, who is late. When B arrives, A makes a joke about B's habitual tardiness and the others all laugh. B feels embarrassed and ashamed, and anxious that her friends might think less of her. She later reflects on the episode and realises that she overreacted. She admits to herself that she is, indeed, often late to meet her friends for no good reason, and resolves to better respect her friends' time in future.

Our Thick Conception would not count these as instances of harm because, though they both involve a worsening of human wellbeing, these setbacks are not sufficiently grave to count as harms. In *Crowded Train*, B's wellbeing is undeniably worsened by A stepping on her foot—she is physically restrained, would much prefer to be able to move freely, and becomes flustered and mentally anxious. But the function of the concept of harm is not to tabulate every preference-frustration or perturbation in functioning or mood; rather, it is to mark out those set-backs that depart from the normal vicissitudes of life to a degree that they necessarily warrant a moral, political or legal response. This case intuitively does not. Similarly in *Friendly Teasing*, the interaction falls within the range of social interactions and human cognitive and emotional experiences that we would rightly deem perfectly normal,



even desirably “character-building”. Yet, thin conceptions of harm, which lack a gravity constraint, *would* classify these setbacks as harms.<sup>8</sup> That they do so counts against them.

In our view the setbacks in these cases would more aptly be described as harmless losses, reflecting the joint application of our Thick Conception of Harm (which does not capture them) and our Thin Conception of Loss (which does capture them). In *Crowded Train*, we could sensibly say that A caused B to temporarily lose the functioning of her legs and to lose her composure. And in *Friendly Teasing*, we could sensibly say that A caused B to temporarily lose social status and self-respect. In our view, this adequately captures the effects, without falsely inflating them to the category of harms. Taken together, then, the Thick Conception of Harm and the Thin Conception of Loss add useful elements to our conceptual repertoire that help us identify normatively significant distinctions in our social lives.

It might be objected at this point that we are confusing the concept of harm with the concept of *wrongful* harm, and that our intuitions in *Crowded Train* are being driven by a latent conception of wrongfulness that we rule out in this case by using the term “accidentally”. But this is not so (we added “accidentally” solely to rule out any suggestion of a menacing aspect to A’s conduct, which might have longer-lasting psychological effects on B). The function of the concept of wrongfulness is to establish the conditions for an agent’s *blameworthiness (or liability)* for some act or omission, and thus it only pertains to a subset of harm cases, *viz.* those caused by wrongful acts or omissions of agents.<sup>9</sup> However, based on the gravity constraint, we can distinguish between instances of loss whether or not they are wrongfully caused, and this distinction tells us whether the loss is (morally, politically, and potentially legally) significant. For instance, having one’s home destroyed by an earthquake, assuming no malfeasance by the planning authorities or the home-builders, would constitute a wrong-less harm. The fact that it is a harm arguably warrants reflection about the morally appropriate responses of distant strangers and the desirable government disaster-response policy.

A further response to the objection is that including a gravity constraint on harm remains desirable *because of* the implications of standard wrongfulness conditions in cases of losses that are intentionally (or recklessly) caused but normatively trivial. *Friendly Teasing* illustrates the point well: A’s teasing was intentional, and foreseeably caused B’s losses. If these losses were classified as harms, then A would have intentionally caused B foreseeable harm—a textbook definition of wrongful harm. Yet that would be a gross inflation of the normative seriousness of A’s actions in the context. The gravity constraint on harm precludes that counter-intuitive implication.

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<sup>8</sup> Feinberg (1984, 53 (fn11)) implicitly recognises that there is a normative view about what constitutes an acceptable range of the vicissitudes of life, outside of which a loss counts as harmful. For us, the “insignificant” cases are not marginal cases that can be dismissed with a quick reference to a “de minimis” constraint. Rather, the distinction between significant and insignificant is central to our understanding of the concepts of harm and loss.

<sup>9</sup> We do not mean to imply that all wrongs involve causation of harm; merely that they can do, and it is those cases that are pertinent to the point being made. Harmless and lossless wrongs are not the subject of this paper.

Now consider a further set of cases, which, arguably, involve non-wellbeing losses:

*Billionaire theft:* A, a thief, hacks into the bank account of B, a billionaire, and steals \$1 million. B does not notice, and carries on living his lavish life as before.

*False imprisonment:* B is unwell and the doctor recommended she stay in bed. B obliges and chooses to stay in bed for the foreseeable future. Unbeknown to B, for unrelated reasons, A has placed B under a vigilante house arrest and stationed thugs outside her house to prevent her from leaving. After a week of this—and before B has recovered—A reconsiders and orders the thugs to leave.

*Passive smoking:* A smokes regularly at home, exposing his wife, B (a non-smoker), to serious health risks. B is unaware of the health risks of passive smoking and untroubled by A's smoking habit. Luckily, B suffers no ill-health effects from exposure to smoke and lives to old age.

Each case involves losses (on our Thin Conception). Conceptions of harm might classify these as harms, for instance where the conception refers to “interests”, the fulfilment of which can be understood to be objective in the sense of mind-independent. Our claim is that these cases are, rather, best classified as cases of harmless loss.

*Billionaire theft* is a case of pure resource loss. To most of us, \$1 million is a huge amount of money; judged in pure monetary terms, the loss is significant. But no harm is caused in this case because there is no change in the billionaire's wellbeing as a result of losing the \$1 million: the loss does not affect his functionings, since he is being and doing everything he was already being and doing (or would otherwise have been or done); likewise, all his preferences appear to be satisfied notwithstanding the loss of the \$1 million,<sup>10</sup> and the loss does not affect his mental state since he did not know about it. This does not let A off the hook. A still acted wrongfully (at least *prima facie*, and excluding Robin Hood / vigilante distributive justice-type arguments) and caused B's financial loss. But it seems to us that intentionally causing a harmless loss is meaningfully different from intentionally causing a harm(ful loss)—for instance, stealing \$100 from a poor person who needs it for subsistence—and that any moral sanction or legal punishment should reflect this distinction (we elaborate on this claim in Part 4).<sup>11</sup>

At most, it could be argued that A has lost some *opportunity* for additional wellbeing, i.e. freedom to achieve additional wellbeing. But a pure loss of freedom or opportunity would not count as a harm on our Thick Conception of Harm, unless the agent would have taken

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<sup>10</sup> It is theoretically the case that B could have had a preference to have the amount of money he had before the theft, or a preference not to have any money stolen. In those cases, we acknowledge that there would be a loss of wellbeing (thus the Thick Conception of Harm, with wellbeing specified in terms of preference satisfaction, would count *Billionaire Theft* as a harm if it also satisfied the gravity constraint). But the fact it is possible for one's preferences to be satisfied without any bearing on one's mental state or functionings—for instance, when the agent doesn't know if their preference has been satisfied or not—is a well-known criticism of the preference satisfaction view (Parfit 1984, 494). A similar caveat, and similar response, applies to the subsequent two cases (e.g., one could conceive of a preference against a pure loss of freedom or a pure risk imposition).

<sup>11</sup> Alternatively, one could argue that A should be liable for the wrongful *expected* harm of his actions. The same could be said about the next two cases.

up the opportunity and their doing so would have contributed to their wellbeing to a sufficient extent that not doing so constitutes a sufficiently grave loss that it crosses the gravity threshold (which, in the case of the billionaire under consideration, seems extremely unlikely). This brings us to the second case.

In *False imprisonment*, B has incurred a serious loss of freedom (in the “negative” sense of constraints being placed on the range of options available to her) by virtue of A placing thugs outside her house to prevent her from leaving. But she is not harmed because there is no change in her wellbeing: her beings and doings have not changed (she suffers no functioning loss relative to the closest possible counterfactual scenario without the house arrest, because she was confined to bed anyway); for similar reasons, her preferences have not evidently been thwarted;<sup>12</sup> and since she is unaware of the loss of freedom, she suffers no psychological ill effects. Again, it is perfectly consistent with our argument to maintain that A acted wrongfully in causing this harmless loss of freedom.

In *Passive Smoking*, we confront the issue of pure risk imposition. Due to A’s passive smoking, B’s overall situation is worse only in the modally demanding sense that she is objectively exposed to serious risk. It is correct to say that the *security* of her wellbeing is diminished (clearly a loss), but her wellbeing achievement is undiminished: there is no diminution in her beings and doings, in the fulfilment of her preferences,<sup>13</sup> or in her mental health. A’s smoking is potentially wrongful in virtue of exposing B to the risk of harm, but it is not a wrongful *harm* (pace, e.g., Finkelstein 2003; Oberdiek 2017).

Each of these three cases was constructed in such a way as to isolate the “pure” non-wellbeing loss—of resources, opportunity/freedom, and security, respectively. Of course, such losses are in reality often bound up with wellbeing losses (which on our conception would count as harms, assuming they satisfy the gravity condition). For instance, in *Passive Smoking*, if B in fact held correct beliefs about the health risks of passive smoking, she might have become afraid and anxious about the risk of becoming ill; she would lose the “affect of security”, not only “fact-relative security” (Herington 2017). If the fear and anxiety were sufficiently serious, it would count as harmful on our Thick Conception. Even the billionaire could conceivably be harmed by a \$1 million loss of which he became aware, given the potential psychological effects of crime. Certainly, our contrast case of stealing \$100 from a poor person who needs it for subsistence would count as harmful. Our point is simply that losses of resources, opportunity/freedom, and security *per se* are not harmful, and that this intuitive result is illuminated by the wellbeing condition of our Thick Conception of Harm.

Now consider cases involving seemingly large (prima facie “grave”) losses to non-living entities:

*Business loss:* B, a business corporation, incurs a substantial net financial loss during a financial year.

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<sup>12</sup> See above, footnote 10.

<sup>13</sup> See above, footnote 10.

*Territorial incursion:* B, a state, loses a large part of its territory due to sea-level rise.

Our final claim is that neither of these losses is an instance of harm, since neither of the entities that incurs the loss is a living thing. Of course, when group agents incur losses, there will generally be natural persons who will also suffer losses—and potentially harms as well. But that is a different matter. For business corporations, the causal chain that links losses at the corporate level with losses to real persons is necessarily mediated by choices made by the board of directors (or management, via delegated authority from the board) about how the corporate loss is to be distributed among the company's stakeholders. Similarly for a state, the effect of a loss at the level of the state on real people depends on policy decisions made by the relevant government.

It might be objected that, if one is, as a matter of social ontology, committed to the position that group agents are descriptively-real entities (which we are), it follows that group agents can be harmed. But this is a non-sequitur: one can accept (as we do) the descriptive reality of group agents without accepting the distinct claim that group agents have fundamental moral status, or should be accorded the same normative protections as living things (see, e.g., List and Pettit 2011). While it is not uncommon to hear people talk of states and businesses being “harmed”, we think this usage of harm is problematic precisely because it involves an unwarranted inflation of corporate-level losses to something that is necessarily normatively significant, and thus elides the distinction between agents with different moral status. We take it to be a virtue of our conceptual scheme that it preserves this important distinction.

In sum, none of these “non-core” cases seems to be one in which intuitions clearly run in favour of classifying it as an instance of harm. We have argued that they are all better classified as instances of harmless loss. This reserves the category of harm for setbacks to the wellbeing of living things that are *necessarily* normatively concerning, such that they require moral, political or legal attention.

Still, nonharmful losses *may* be normatively concerning, even though, as we have argued, this is not because of the loss per se. Rather, other contingent features of harmless loss cases may be morally concerning for non-harm-based reasons. We explore this possibility in the next section.

#### **4 Implications for private and public reasoning**

Loss is an ever-present feature of any complex and dynamic society. In the face of such losses, how should we navigate the boundaries of our personal moral responsibilities? And how should governments navigate the boundaries of their political responsibilities? We argue that our conceptual scheme—the combination of our Thin Conception of Loss and our Thick Conception of Harm, and the residual categories of harmful and harmless loss—motivates principles of reasoning that help us to make progress in answering these difficult questions. We first discuss reasoning in private morality and private law, and then consider political philosophy and public law.

With regard to private morality, our conceptual scheme motivates the following substantive principle:

*Consequentialist Reasoning Principle (Private):* When engaging in practical reasoning about contemplated actions, an agent should *always* take account of expected harmful losses, but harmless losses should *not generally* be taken into account (save in exceptional cases).

Our conceptual scheme motivates this principle in the following sense: by definition, harmless losses, even though they may diminish the wellbeing of those affected, are not necessarily normatively significant as they do not fulfil the gravity constraint, and therefore should not generally bear on the practical reasoning of moral agents; by contrast, harmful losses are normatively significant, and therefore ought to (at least) factor into moral agents' practical reasoning. It is thus only a short step from our conceptual scheme to this substantive principle. The intuitions to which we appeal in support of our conceptual scheme support, *mutatis mutandis*, also our Consequentialist Reasoning Principle (Private).

The "positive" element of the principle is modest in that the obligation is merely procedural: it requires agents always to take account of harmful losses expected to result from their contemplated actions, but this does not entail that agents have a moral obligation to actually avoid causing harmful losses to others. No doubt there are further conditions under which agents do have such a substantive obligation of harm-avoidance, but discussing these conditions is beyond the scope of this paper. The "negative" element of the principle is more consequential: since it generally precludes the need for agents to even *consider* harmless losses in their practical reasoning, by implication those agents need not (generally) *act* in ways that avoid causing harmless losses to others; in the typical case of harmless loss, the absence of a procedural obligation entails the absence of a substantive obligation.

Now, it is true that the Thick Conception of Harm by itself could perform this function; "loss" is not needed. But loss, and specifically our Thin Conception of Loss, *is* needed to perform further functions. This is where our final clause in the negative element of the principle comes in (and explains why we've used the qualifier "generally" in the formulation of the principle). As our principle recognises, there are special circumstances in which agents may have *duties to avoid losses*. One set of examples includes private legal liabilities against business corporations and other group agents, such as torts or breaches of contract. In these cases, private legal rules typically impose duties the violation of which triggers compensatory obligations for losses caused. These rules are putatively justified by rule-consequentialist efficiency considerations. If our Thick Conception of Harm is correct, then our Thin Conception of Loss is necessary to simultaneously operationalise these legal rules without inflating corporate losses to the status of harms.

A second set of examples of duties to avoid losses, encompassing the legal and moral domains, includes duties to avoid breaching interpersonal promises, contracts and legitimate expectations. Where breaches of such duties cause losses that are nonharmful (in virtue of not affecting wellbeing or affecting wellbeing to a degree that falls below the gravity threshold), it is nonetheless plausible that duties extend to avoiding (and

remedying) harmless losses. A plausible ground for such duties is the autonomy value of persons being able to intersubjectively shape their normative environment, which entails the need for close attention to the content of the promise/contract/expectation, and hence a practical concern with any departures from that content, harmful or otherwise (Green 2020; Shiffrin 2008).

A third set of examples involves causing losses that contribute to harm<sup>14</sup> or that impose excessive risk of harm (the latter can be reconceptualised as a loss of security). In these cases, it is again not the loss *per se* but the association with (potential) harm that motivates the duty. The identification of a harmless loss becomes procedurally useful to identifying cases in which the relevant threshold of contribution to, or excessive risk of, harm (however these are specified) has been crossed.

Finally, individuals may have special duties to avoid causing or contributing to losses to non-human entities, such as losses of cultural goods, ecosystems, species and other 'kinds'. For instance, it may be that we have duties to avoid losses to such goods when they are not repairable or replaceable (Hayenhjelm 2018). Or such duties may arise from special ties to a group, which motivate measures to preserve its distinctive ways of life (e.g., Miller 1995).

Turning now to public policy and public law, we argue that our conceptual scheme helps us to make progress in a parallel way to that just discussed with regard to private morality and law. Specifically, it motivates the following substantive principle:

*Consequentialist Reasoning Principle (Public):* When engaging in practical reasoning about contemplated actions, governments should *always* take account of expected harmful losses, but harmless losses should *not generally* be taken into account (save in exceptional cases).

Our conceptual scheme motivates this principle in the same sense as in the private version of the principle: harmless losses are not normatively significant, and therefore should not generally bear on the practical reasoning of governments; but harmful losses are normatively significant, so ought to (at least) be taken into account. Like its private counterpart, the "positive" element of the principle is purely procedural, entailing that governments should take into account harmful losses when determining the right course of action, including considering what (if anything) to do to avoid, publicly justify, mitigate or compensate for such harmful losses. It does not entail that governments ought to avoid causing harmful losses, or that they ought to justify or mitigate such losses or compensate those harmed. In our view, it is conceivable that governments may be justified in causing harmful losses to some persons (or other living things) in some cases, potentially even without mitigation or compensation (Meyer and Truccone-Borgogno 2022). But we do not aim to defend that claim here; the conditions under which harmful losses should be avoided, publicly justified, mitigated or compensated by governments take us beyond the scope of this paper.

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<sup>14</sup> See above, note 7.

The “negative” element of the principle is, again, more consequential. And it is supported by similar intuitions about “non-core cases” that support our Thick Conception of Harm, albeit adapted such that government policy is the cause of the relevant loss. Consider a variant of *Billionaire Theft* in which a legitimate government imposes a wealth tax on billionaires, causing billionaires to lose at most a few million dollars each. Insofar as the losses—or the expected losses—are harmless,<sup>15</sup> the government generally has no obligation to take those losses into account when evaluating the policy, and thus, generally, no reason to avoid or mitigate those consequences or compensate the losers. Likewise, consider a variant of *Business Loss*, in which business corporations incur losses as a result of a change in government regulation or taxation. According to the Thick Conception of Harm, the losses to the business *qua* corporate entity are not harmful because a group agent cannot experience harm. It follows that business losses are not generally losses that should factor into the practical reasoning of governments regarding their policies.

Again, this result could be obtained from a similar principle that merely referred to our Thick Conception of Harm (or a similarly thick conception of harm). Nonetheless, the Thin Conception of Loss is needed to operationalise the exceptions to the general direction to governments to ignore harmless losses. As with private morality and private law, governments may owe moral-political and/or legal duties in special cases that require them to both consider (procedurally) and to not cause (substantively) losses, including harmless losses. Again, the fact that such obligations extend to harmless losses highlights that the justifications for such obligations must lie elsewhere than the avoidance of harm, but there are some such grounds that nonetheless need to make use of a notion of loss.

For instance, consider the case of a government body that compulsorily acquires the investment-property of a billionaire to build a railway line; the billionaire lives elsewhere and has no non-pecuniary attachment to the property; but the government is constitutionally prohibited from taking private property without paying compensation to the owner. This is a case in which the government has caused (*ex hypothesi*) mere harmless loss, which it would not normally need to take into account, according to the public version of our reasoning principle. But the government is legally obligated in this case to compensate for the losses it causes (again, efficiency considerations may provide a plausible moral basis for such a legal obligation). The concept of harmless loss is needed to operationalise the non-harm-based obligation without conflating it with a case of harm, illustrating the value of our full conceptual scheme.

Other examples of governments’ duties to avoid losses involve procedural duties and duties to use their powers for a proper purpose. Such duties are plausibly owed by governments on rule-of-law grounds and enforceable by the adversely affected agents, whether corporate

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<sup>15</sup> Again, this depends on how wellbeing is defined and the interpretation of the gravity constraint (see above footnote 10). To some extent, this nuance is less important with respect to governments because, *ex ante*, government policymaking should arguably be guided by *expected* harms, given the nature of policymaking (affecting a large, general and open class of persons and entities) and the epistemic limitations of governments. For a modest billionaire tax, the expected losses would surely be harmless. But notice that this would likely be otherwise in the case of severe restrictions on freedom or grave risk impositions.

or natural persons. Such duties are not predicated on harm-avoidance, but rather on upholding rule-of-law-abiding government conduct. Accordingly, in order to enforce the fulfilment of the duties, affected agents must rely on a thin conception of loss such as ours in cases that do not involve harms.

Moreover, because governments are typically uniquely well placed to provide public goods and address structural forms of harm and injustice that arise from the actions of many individuals, governments may have special duties to avoid many of the types of losses mentioned earlier that individuals have special duties to avoid, but which any individual alone cannot control. These may include losses that contribute to harm or that impose excessive risk of harm. Likewise, they may include losses to important non-human entities, such as losses of cultural goods, ecosystems and species.

In sum, individuals and governments do not generally have duties to consider and act on harmless losses, but there may be special cases in which they do have such duties. Our conceptual scheme and principles of reasoning illuminate the important feature of these exceptional cases: that the relevant duties must arise from something other than straightforward imposition of harm. Determining the true bases and relative weight<sup>16</sup> of such duties is not our concern here, but the above survey canvasses a range of possibilities and motivates further inquiry into these matters.

## 5 Conclusion: an application to climate change

We have shown that our conceptual scheme, and the consequentialist reasoning principles it motivates, helpfully delineate the scope of moral responsibility for the losses that individuals and governments cause: individuals and governments are permitted to (generally) ignore harmless losses when engaging in practical reasoning about their conduct/policies—except where a special duty to avoid losses is owed—but they ought to take harmful losses into account. The Thin Conception of Loss is needed to explain and operationalise such special duties, and associated remedies for their breach, given the non-applicability of the Thick Conception of Harm in those cases. The residual category of harmless loss serves as something of a bridge between the two concepts, signifying what is (and is not) at stake in these general and exceptional cases.

We conclude by considering how our conceptual scheme, and the principles just defended, help to make progress in thinking about individual and state responsibilities relating to climate change.

As noted, a vibrant area of debate in both scholarly literature and international negotiations is the liability of (wealthy) countries for the “loss and damage” suffered by (poorer) countries as a result of climate change. Our conceptual scheme and Consequentialist Reasoning Principle (Public) suggest the current focus—on *all* losses experienced by *countries*—is misguided. Only harmful losses generally matter, i.e. absent special duties, only

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<sup>16</sup> The gravity of the concerns raised in some of these examples (e.g., extinction of the human species) suggests the possibility that certain duties to avoid harmless losses may be stronger than duties to avoid harmful losses—an outcome that our principles of reasoning does not exclude.



those losses that significantly diminish the wellbeing of human beings (and other living things) matter normatively. Nonetheless, given that the focus of loss and damage discussions is on climate impacts in poor countries, most of the impacts under consideration would qualify as harmful losses because they would cause significant wellbeing losses to people. Still, our scheme illuminates and operationalises a distinction between such harmful losses and harmless losses. For instance, a small amount of anthropogenic climate change-induced sea level rise that reduces the value of coastal land owned by business corporations and very wealthy people (assuming these are, at least *prima facie*, non-harmful) would be harmless losses that governments need not generally concern themselves with. Nonetheless, climate change is causing a range of harmless losses that plausibly do enliven special duties, such as duties to protect species, ecosystems, and cultural goods. To the extent that these are not bound up with harms, such duties must be grounded in values and principles other than those concerned with direct harm.

Second, consider the issue of losses caused by climate change mitigation policies (e.g., taxes and regulations on the emission of greenhouse gases), which has given rise to debates about a “just transition” to a low-carbon economy (see, e.g., Bolet, Green, and González-Eguino 2024; Wang and Lo 2021). Such policies (let us assume) increase the price of electricity and fuel for some time, causing some businesses to become unprofitable. As a result, some employees lose their jobs, and some regions decline economically. Some of these losses will be harmless, like the losses incurred by corporations (*qua* group agents) but some will be harmful, like the losses of jobs, at least to those who lack reasonable alternative avenues of employment or income generation. Our Consequentialist Reasoning Principle (Public) alone cannot tell policymakers what is the right course of action, but it does direct them generally to ignore the costs of the policy on business corporations (and other group agents) as such, and to ignore any nonharmful resource losses incurred by wealthy individuals. It follows that governments have no obligation to mitigate such losses or compensate affected businesses and wealthy individuals for their (harmless) resource losses.

The only exceptions are those cases where the government is bound by a special duty to avoid losses. One example of such a case might be where a government, through abuse of power, enforced its climate legislation in such a way that it imposed unusually large penalties for non-compliance only on business rivals of the President. Another would be a government that compulsorily acquires an easement over a billionaire’s large rural estate to erect a wind turbine in a jurisdiction that constitutionally prohibits uncompensated takings of property. In these cases, the government plausibly has, respectively, a moral-political and constitutional-legal duty to avoid causing losses, including harmless losses.

Additionally, our reasoning principle directs the government to attend to those cases in which the losses are expected to be harmful, such as where the policy erodes the purchasing power of people on low incomes or causes vulnerable workers in affected industries to lose their jobs. Perhaps these harms are, all things considered, justifiable. Or perhaps they ought to be mitigated through the provision of countervailing benefits, such as subsidised retraining schemes and income support for vulnerable workers, or investment in depressed regions (Green and Gambhir 2020). Whatever the best response may be, the point is that

conceptualising harmless losses differently from harmful losses directs our moral antennae away from the former and toward the latter. Such attentional redirection amounts to meaningful progress in resolving difficult questions about the scope of governments' responsibilities for transitional losses caused by their policies, both in the context of climate change and more generally.

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