

## DOES VICTIMLESS DAMAGE EXIST?

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### Article abstract

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## DOES VICTIMLESS DAMAGE EXIST?

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### ABSTRACT:

This article aims to explore the concept of victimless damage. This refers to paradoxical cases where a perpetrator and a moral wrong can be easily identified, but where somehow the role of the victim as such can be questioned. In order to explore this concept, I will first offer a typology of cases that could be labelled under this umbrella concept—namely, (1) cases of deceased victims, (2) biotechnological or no-identity cases, and (3) the ones related to lack of awareness due to epistemic injustice. Then, after highlighting the common traits and discussing some fuzzy cases, I will flesh out the main arguments for and against of the existence of and need for this concept, on the basis of both moral objectivism and subjectivism. In my view, delving into these arguments could shed some light on the metaethical debate on the sine qua non conditions of moral damage and its relation to moral wrongness. Finally, I will conclude by advocating for the need to introduce a gradational concept of moral damage and the second-person perspective into moral philosophy in order to take into account potential cases of victimless damage, but without having to accept the premises of moral realism.

### RÉSUMÉ :

Cet article vise à explorer le concept de dommages sans victime. Cela ferait référence à des cas paradoxaux dans lesquels un sujet et un tort moral pourraient être bien identifiés, mais où le rôle de la victime en tant que tel pourrait être remis en question. Pour ce faire, je proposerai d'abord une typologie des cas pouvant être étiquetés selon ce concept général, à savoir: 1) les victimes décédées, 2) les cas biotechnologiques ou sans identité, et 3) ceux liés au manque de sensibilisation dû à l'injustice épistémique. Deuxièmement, après avoir mis en évidence les traces communes et discuté de cas flous, je développerai les principaux arguments potentiels contre et en faveur de l'existence et de la nécessité de ce concept, à la fois à partir de traditions d'objectifs moraux et subjectivistes. À mon avis, approfondir ces arguments pourrait éclairer le débat méta-éthique sur les conditions sine qua non du dommage moral et son rapport avec le tort moral. Finalement, je conclurai en plaidant pour la nécessité d'introduire des concepts graduels et le point de vue de la seconde personne en philosophie morale afin de mieux rendre compte de la complexité inhérente aux cas de la vie quotidienne.

## 1. INTRODUCTION: THE RELEVANCE OF AN OLD QUESTION

Over the last decades, given the technological and scientific development, as well as the sophisticated global interconnections between physically remote groups of people, our understanding of the classic victim/perpetrator, or moral agent/moral patient, structure has deeply transformed. Without dismissing cases where there is no clear perpetrator, such as those pertaining to poverty, the spectator effect, and collective and intergenerational responsibility, this contribution aims to address the question of whether moral damage without victims exists, and, if so, what argument could be made to defend the thesis.

Contemporary moral philosophy has faced the challenge of the expansion of two key factors: time and space. That is, moral dilemmas and our responsibility as moral agents no longer extend only to those in contact with us, directly affected by our actions here and now. On the contrary, we have incorporated the spatial and temporal variables in a new way, such that we are aware of the fact that what we do here and now may entail significant consequences for those living far away from us and not necessarily at the current moment. In a nutshell, “one of the virtues of postconventional moralities is that they extend the moral community to which we are responsible not only horizontally and synchronically, but also vertically and asynchronously. We have become responsible for the past as much as for the future” (Mendieta 2002, pp. 96–97). In this context, the question of victimless damage becomes especially relevant.

As a result, there might be cases of moral damage without moral agents being responsible for them, as there could be cases of moral damage without the victim being aware of having suffered some damage or having the impression of having lost anything.

Given the complex current context, this article aims to delve into the nature of victimless damage. I aim to focus on hard cases where an act can be morally incorrect even when it apparently does not harm anyone—that is, when there is no victim. In other words, when the focus is placed on the victim, moral philosophy has a challenge addressing the nature of paradoxical cases that generate instances of possible moral damage without victims.

Current moral philosophy has provided a vast group of studies on cases of victims with (no clear) perpetrator, which are closely connected to cases of perpetrators with no clear damage or, in Parfit’s terms, to cases of harmless torturers (1984).<sup>1</sup> Likewise, some cases of victimless damage have been previously discussed. However, I aim to contribute to the discussion by providing a systematic approach that attempts to relate the variety of cases under this umbrella concept. Also, in the following sections, I aim to address the metaethical assumptions that lead to the main positions on this issue.

When it comes to victimless damage, those cases related to posthumous victims have received special attention. Examples of contributions on this topic are Feinberg's (1984) and Vrousalis's (2013) work, as well as the debate between Partridge (1981) and Levenbook (1984) on harming a dead person. Nevertheless, without dismissing these poignant contributions, beyond the fact that posthumous harm is just one type of victimless damage, I aim to discuss this topic from a different perspective.

The line of argumentation I will be exploring in this article is not focused on the legal debate (whether a dead person has rights or interests), as Feinberg does. Likewise, my main focus is not the idea of moral agency or responsibility. Rather, my perspective is metaethical. I aim to explore whether moral damage can be disassociated from moral wrongness, whether or not they are interchangeable concepts. In other words, my main concern is whether moral damage, a concept that implies the idea of a victim, a certain level of subjectivity, and the capacity for suffering, could replace the concept of wrongness, a concept much more connected to moral objectivism.

As Feinberg states, "to say that A has harmed B in this sense is to say much the same thing as that A has wronged B, or treated him unjustly. One person wrongs another when his indefensible (unjustifiable and inexcusable) conduct violates the other's right" (1984, p. 34). In the same line of argument, Thiebaut (2005, p. 18) labels moral damage as "the human form of evil." However, these arguments directly point out the paradox I aim to address: harm (or damage) and wrongness are taken almost as synonyms here, which might be the root of the paradox that victimless-damage cases create. The assimilation of moral damage to human moral wrongness or evil could lead to tautologies as well as to a basic metaethical question: for moral subjectivism, the idea of wrongness or evil is not necessary. For moral realism, the idea of moral damage and a victim aware of it would be irrelevant when describing something as wrong or an action as a duty.

As Levenbook (1984, pp. 407–408) perfectly summarizes it:

Can someone be harmed after his death? There is at least one reason to believe he can. Acts such as breaking a promise, destroying someone's reputation, and undermining someone's achievements can be harmful to him while he is alive, even if he never learns of them. These acts can also be done after his death; so, it is tempting to suppose, they can harm him then too. This sort of reasoning has persuaded a few philosophers, most notably Joel Feinberg, that it must be possible to harm someone after his death. (Let us call this sort of harm posthumous harm.) Yet Feinberg believes that to harm someone is to invade his interests. It is not clear that people can retain interests after their death, particularly if one rejects all accounts of personal immortality, as Feinberg does.

Ernest Partridge has recently defended the view that no one can be posthumously harmed because no one can retain interests after death....

It should be made clear at the outset that, like Feinberg, Partridge, and other recent disputants on this topic, I will rely neither on materialism as a theory of personal identity nor on an account of personal immortality. Puzzles about the nature and coherence of harm done to persons after they are dead are most philosophically perplexing when one assumes, as I shall, that death is the cessation of existence of a person.

Again, I will not lead the discussion into the argument based on some kind of posthumous or surviving interests, as Partridge already does in criticizing Feinberg's view. My interest revolves around the relation between harm (or damage) and wrongness, and the metaethical assumptions at the base of the arguments for and against the recognition of cases of victimless damage, rather than around the line of argument that defends some kind of surviving personhood or immortal personal identity.

Therefore, my aim in this article is twofold. Firstly, I aim to classify cases that tend to be separately approached, although they may share one trait, namely, they may imply the idea of victimless harm. Hence, I will first suggest a classification or typology in order to organize potential cases that could be studied under the concept of victimless damage. In doing so, I will help focus attention on the concept of victimless damage, which up to now has appeared in a scattering of different debates. In a nutshell, these cases are usually addressed separately, case by case, so asking how one case may relate to another may open new lines of argumentation, challenge assumptions, and lead to new questions.

Secondly, I aim to flesh out the variety of reasoning strategies applied. Hence, I will explore the main arguments for and against the idea of victimless damage on the basis of two different basic metaethical backgrounds: objectivism and subjectivism.

Finally, I will suggest some strategies to recognize the wrongness in those cases, at least to some extent, without having to accept moral realism. I will suggest how the idea of gradual damage combined with a shift of focus on who the victim is could open a third path. I will advocate for introducing a second-person perspective, as this could save the moral relevance of these cases without falling into moral relativism, on the one hand, and without having to accept moral realism, on the other hand. This could allow some flexibility without accepting moral relativism.

In my view, delving into this umbrella concept of "victimless damage"<sup>2</sup> is important and relevant for both metaethics and normative ethics. An exploration of this concept may provide some different perspectives on the nature of moral damage and its connection with moral wrongness and the role of the victim—that is, with the second-person perspective. Asking about the nature of victim-

less damage is in fact asking whether and how these three main concepts (moral damage, moral wrongness, and victims) are interwoven: Is the existence of a victim a key condition of moral damage? Is moral damage a key concept for establishing moral wrongness? By doing so, I would be able to address a variety of reasoning paths for subjectivism without falling into relativism. If someone can argue why there is something wrong in these cases of victimless damage without falling into solipsism or relativism, then subjectivism has the potential to surpass the first-person perspective and become intersubjective, without bringing into the argument ontological assumptions that may be harder to share. This, in turn, can be especially relevant for morally pluralistic societies.

## 2. WHAT IS A CASE OF VICTIMLESS DAMAGE? A CATEGORIZATION

In this section I will explore the concept of victimless damage or, in other words, the possible cases of moral damage without a victim. Thus, I will analyze what this idea refers to and what is implied by it. Likewise, I will mention what cases are structurally outside the scope of this concept, even though they might seem similar.

However, before exploring the concept of victimless damage, as a preliminary clarification, I would like to provide an idea of what I mean by *moral damage* and *victim*. Although both victim and moral damage are the concepts at stake throughout this article and these preliminary definitions may seem tautological, I would like to at least suggest that moral damage can be understood as the result of a morally relevant action executed by a moral agent towards a moral patient, and which is perceived as avoidable and triggers feelings of indignation and guilt, at least in the moral spectator and/or the patient (see Thiebaut 2005; Arteta 2010; Cabezas 2014). Likewise, the victim can be understood in two senses: as a simple patient or recipient of the action, or as a moral patient—that is, as a being with moral status, a being who suffers<sup>3</sup> the damage, and who is to some degree aware<sup>4</sup> of it and deserves moral consideration (see Goodpaster 1978; Velayos 1996).

That being said, under the term “victimless damage” a great variety of cases could be analyzed. In what follows, I offer a typology based on three main groups of potential cases of victimless harm. This typology is organized taking the varieties in the nature of the victim into consideration. Although all of them share the trait of being somehow unaware of the damage—that is, they do not name the experience/action as such—the reasons why they are unaware may vary in these three groups. Thus, one could find the following three types of victimless damage:

1. *Deceased-victim cases*. This group of cases would refer to deceased victims—that is, cases where the potential damage does not reach the victim because the damage arrives once the victim does not exist anymore as a living, suffering moral patient. Examples of this category would be the exposure of mummies and plastinated bodies in museums where you cannot always know whether



those people would or would not have wanted to have their dead bodies exposed before the public centuries or decades after they lived.

What is done to your corpse may be seen as a source of potential moral damage, as a way of harming your personal integrity and identity. In this case, we would be facing an instance of moral damage without any existing victim involved. That would also be the case in graveyard desecrations or in practices such as making intimate details about a deceased person public, such as their secret love letters or diaries. The attack against personal integrity and/or privacy in these cases, which would be instances of moral damage in living patients, becomes fuzzy when the recipient of that harm no longer lives and therefore can no longer feel and suffer the experience of harm. Thus, in order to label the deceased person a victim, we would need, as these cases imply, an amplification of the idea of dignity, a timeless conceptualization of it.

2. *Biotechnological or false-identity cases.* This second group of cases, related to biotechnologies and genetic engineering, could be summarized in this paradox: “You could have been different, but that *you* would not be you.” Here the damage seems to point to the nature of that being. This group could also be named “the no-identity cases,” in Parfit’s terms. To provide examples, I will present two paradigmatic cases, one affecting nonhuman patients, the other one affecting human beings.

Here, the famous glowing green rabbits that were injected with a glowing jellyfish protein as embryos (Elliot 2013), so undergoing a change in what “being a rabbit” consisted in, are a key example. Those defending the thesis that here we may be facing an instance of moral damage without a victim are aware of the fact that the rabbit, as it is not a moral agent,<sup>5</sup> and, more importantly, as it has never existed as an individual in a different form,<sup>6</sup> would never perceive itself as the victim of any harm. This would be the case especially if these hybrids lived with other hybrids—that is, if the glowing rabbit did not live with white conventional rabbits. Under these conditions, there would be no space for any kind of comparison or group rejection, which could have been a reason to label the case a simple instance of moral damage against the hybrid rabbits.

The second paradigmatic example is the notorious case of a deaf couple who wished to genetically select their embryos in order to have a deaf child (Pino 2002). In this light, genetic manipulation could also clearly be approached from a victimless-damage perspective.

Cases concerning preimplantation genetic diagnosis, eugenics, and genetic engineering lead to the question of whether something can be understood as an instance of moral damage not because it causes a type of morally relevant suffering, but because it somehow attacks the idea of a species’ nature. In this sense, a consideration of symbolic damage and the meaning of species’ natures would be unavoidable, as I will explain in the following section.

Here the supposed damage would be linked to identity, to the idea of being what/how you should be, or, in other words, to the self-comprehension of the next generation,<sup>7</sup> which not necessarily connects with suffering. “Moral commands are brittle constructions that, both in one, protect the *physis* against bodily injuries and the person against internal or symbolic injuries” (Mendieta 2002 ,pp. 97–98), even if both turn out to be symbolic. That is, here the question would be whether a change in your physical traits, even before you were you, implies a corporal injury or an intromission into your bodily integrity.

The argument in relation to this second type would defend the position that, if a symmetric dialogue leading to a consensus (Habermas 2001) were maintained with these potential victims or patients, then, reasonable doubts would arise as to whether they would consent to these modifications. The problem is that they have never been a different being from who they are with that modification, so the virtual dialogue would be held with a non-existent being whose traits have never in fact been realized. Following the previous example, the deaf selected embryo has never been a hearing embryo, just as the actual glowing rabbit has never been an ordinary white rabbit. Here the victim is therefore “hypothetical” in a sense, for the victim, the one losing something, would be that ideal version of “you” that the spectator holds about how you should be you. In other words, that version of you, which would be the damaged one, never existed in fact. Thus, these cases would imply an idea of ontological dignity.

3. *The Truman cases*. Finally, a third group could be presented as the Truman cases, as a reference to the film *The Truman Show* (Weir 1998), given its extraordinary way of portraying the idea of living in a bubble. In the previous group of cases, the victims are unaware of what they are missing because they have never *been* something different. Therefore, they do not experience their current situation as abusive or harmful. For its part, in this third group, the victims are unaware of what they are missing because they never *knew* something different and, as a result, they do not perceive their situation as harmful.

The potential victims are unaware. They do not recognize the event as harmful, but because they do not directly experience the event. In this case, the gap will not be temporal, as in the first group (deceased victims), but spatial, to some extent. The victims “live in a bubble,” such that, unless someone breaks the bubble, the damage will not reach the victims because the attack is indirect—as is the case in being the victim of gossiping, defamation, or insults by one’s colleagues, but never hearing about it, for instance. Another example is well portrayed in the theatre play and film *Le dîner de cons* (Veber 1998). From the victim’s point of view, he far from considers himself to be a victim, as he sees the situation as flattering. From the spectators’ point of view, he is, as we know, the victim of mockery. In the Truman example, if Truman had died without finding out the truth, he would have lived his life without feeling himself to be or recognizing himself as the victim of moral damage. In this sense, as long as he lived unaware, and as long as the spectator recognized this as a case of moral damage, given the instrumentalization, we would be facing a case of victimless harm.



Also, in relation to what the victim knows, a last subtype of potential victimless damage can be found: *the Rapunzel cases*. These are cases where the victims know their conditions in a descriptive sense (you know you live in a tower), but have normalized the situation, as they have not known any other way of doing things. What you do not know is that you should not spend your childhood in a tower. If you do not know any other way of living or being treated, you would probably have naturalized unfair situations. For example, “That is the way parents treat children” or “That is the way life goes” would be some of the victim’s thoughts. In other words, the case of Truman would have been a Rapunzel case if Truman had been always aware of the cameras without realizing what they meant.

This would be directly related to what Miranda Fricker called “hermeneutical injustice”—that is, “a wrong done to someone specifically in their capacity as a knower” (2007, p. 12). Although Fricker refers to the cases where the lack of social awareness creates a double victimization, cases of hermeneutical injustice can be cases of victimless damage, especially when the victim is in the same kind of active ignorance (Medina 2013) as the society, as to that type of damage. When there is no gap between the social and the personal perceptions of that given instance of potential damage, that event is normalized even by the victim, who does not see it as unfair. The victim will not see himself or herself as someone who deserves something different. The event would fail to shock any member of that society, the victim included. In light of Fricker’s work, hermeneutical injustice refers to the lack of social recognition and understanding of an unfair event as such. Thus, when the victims have internalized those collective beliefs, their moral compass could be somehow broken, so that they would normalize and accept as expected and deserved events that they themselves would not even label unfair or consider to be instances of moral damage. Hence, these cases would imply an idea of epistemic dignity.

At this point, it is also important to point out other closely related cases that, however, do not fall into this category of victimless damage and that are, therefore, outside the scope of this article.

One could argue, especially from a legal perspective, that freely chosen prostitution or self-harming behaviours, such as drug abuse, risky behaviours, could be considered cases of moral damage without victims. However, although these are also problematic in moral terms in terms of how to assess responsibilities, these cases do not express the idea of victimless harm. Unlike the cases shown in the previous classification, which are the centre of reflection throughout this article, these related cases are examples where the potential victims are aware of the supposed damage, know to some degree what they are choosing, know the social perception of it as a moral wrong or harmful situation (such that it does not fall under the category of hermeneutical injustice). Despite this, they think that the social perception is simply wrong, they do not care about harming themselves or they believe they can scape damage to themselves, so, when they choose to engage in the behaviour, they do not think it could entail some sort of

moral damage because is voluntary. Two questions in relation to internalism/externalism and moral intellectualism would be whether one chooses wrongness deliberately and, if so, what kind of autonomy a moral agent possesses when deciding to harm himself or herself. Here the debates on autonomy versus paternalism are frequent indeed, especially in those fields related to the health-care professions, such as psychology and social work. So, one could ask to what degree someone is freely choosing to do something that a priori will not be desirable, whether autonomy is compromised.

All the cases in the suggested classification evoke the thought “If only I had known.” But it is impossible for the individuals in the cases to think this, either because they were dead when the damage happened or because they were never born or because the damage either did not reach them or did not impact them directly. However, in the examples of risky behaviours, the potential victim knows, is aware of the damage, but chooses to harm himself or herself “all things considered” for a variety of reasons that surpass the scope of this article.

Other controversial cases that could be considered to be examples of victimless damage are climate change with respect to future generations and failed actions, or tentative damage. However, although they share some traits and the debate is reasonably open, I will defend the claim that they do not constitute pure cases of what is here discussed. Climate change would be a case of multiple direct victims: current young adults, children, newborns, and unborn future generations. In this sense, it would not be a core case of victimless damage, as this case implies direct aware and alive victims, not exclusively unaware or inexistent ones. In victimless-damage cases, the victim so called by the spectator does not perceive himself or herself as such, as shown in the Truman cases. Nevertheless, climate-change victims do and will do so. Even though they might not be able to live in a better world, they will know they have lost something and that they deserve something different (unless current generations destroy all the records about how life was, which seems highly hypothetical and unrealistic).

Likewise, cases concerning tentative damage, such as a drunk driver who luckily arrives home without killing anyone during his or her drive, are also hard to include in this category. Drunk driving is already penalized, as are attempted crimes. Therefore, it is sensible to infer that society recognizes itself as the victim of these types of incautious behaviours. In other words, there is an easily identifiable, although collective, victim.

Now that the concept of victimless damage has been explored, I will illustrate and discuss the arguments for and against this idea in the following sections. Once the idea of victimless damage has been clarified, the question is whether it de facto exists, or rather whether something is dismissed or confused when we perceive something as a case of victimless damage. In other words, these cases have identifiable recipients, but are they real victims in moral terms?

### 3. VICTIMLESS DAMAGE ON OBJECTIVIST ACCOUNTS

In the previous section, I examined certain characteristics of victimless damage and I suggested a classification of potential cases. In this section I will provide a metaethical overview of different arguments based on realism or moral objectivism. Thus, two subgroups of arguments, those against and for the notion of victimless damage, will be presented in the two following subsections.

Hence, in what follows, I will first present the main arguments against the notion of victimless damage on the basis of objectivist accounts and then I will present the arguments for the notion of victimless damage—that is, those arguments defending the thesis that not every moral wrong is an instance of moral damage inflicted on someone.

Finally, it is important to make clear that not every argument applies to each and every group of victimless damage, since every line of argument presented in the following sections focuses on a specific aspect. However, these arguments can lead us to the core of the metaethical challenge on victimless damage and therefore they deserve an individual examination.

#### 3.1. Arguments against the idea of victimless damage, on objectivist accounts

From an objectivist perspective, or, in other terms, from a perspective of moral realism, one could argue that victimless damage does not exist because every instance of moral damage is directed towards a victim and, most importantly, because the victim does not necessarily have to suffer to be considered one.

From this perspective, two main groups of arguments can be identified. Thus, the two main strategies used here would be as follows.

##### *3.1.1. The extension of moral status*

The first strategy would consist in expanding the moral community (Tugendhat 1997). That is, it would enlarge the concept of moral status in two directions—namely, to other, nonhuman beings and nonmoral agents, on the one hand, and to unliving agents, on the other hand. Thus, the moral community would become a larger group. More beings would be accorded some kind of dignity, and, also, the concept of dignity would be expanded, so that nonliving human beings would still be entitled to some kind of dignity. An example of this strategy would be the prohibition of some kind of apparently victimless behaviours, either because they affect beings previously considered to be outside the moral community or because these behaviours would damage our humanity.

Over the last decades, debates on moral and political philosophy have been articulated around the concept of moral standing and its consequences for the type of beings that could be found inside the so-called moral community (Tugendhat

1997)—namely, moral agents or moral patients, depending on whether or not they can be held responsible for their actions. In fact, the debate on moral status is at the base of other debates and disagreements on applied ethics, especially those concerning animal ethics, ecology, and bioethics.

Depending on who possesses moral standing, some beings could be identified as moral patients<sup>8</sup>—that is, as beings who morally matter, who deserve moral consideration (Goodpaster 1978). Thus, the first strategy would solve the problem of victimless damage by replacing anthropocentric views with physiocentrism (Pluhar 1983).<sup>9</sup>

In fact, since Leopold's work, *A Sand County Almanac* (1949), contemporary debates have centred on the need for an expansion or reconstruction of ethics from an ecological perspective (Velayos 1996). From Leopold's land ethics on, in the context of the ecological shift, the discussion on the expansion of moral standing has been undeniably fruitful and therefore could be a way of approaching and reducing the cognitive dissonance that the victimless-damage cases generate.

Besides the extension of moral status, an anthropocentric extension of the idea of dignity would be key to including post-mortem instances of damage and unaware damage as morally relevant, since the key to moral relevance would lie neither in the capacity to suffer nor on the fact of being a rational sentient being, but on the fact of being human. Thus, the argument would be based on a timeless and innate idea of intrinsic or anthropological dignity.

According to this group of arguments, not only would some victims be recognized and made visible with the introduction of an ontological way of understanding dignity and moral status, but also other unseen potential victims would be recognized as such by the extension of the moral community suggested by biocentrism and physiocentrism. Cases such as the glowing rabbit would fall under the category of normal direct damage, not on the basis of pathocentrism, but on the basis of ontological versions of biocentrism and physiocentric perspectives, if the idea of nature, of rabbit nature, were defended. From the physiocentric perspective, just as pouring toxic substances into a river or blasting through a mountain in order to build a tunnel would be instances of relevant moral damage (in that these actions break the nature of what there is), changing the nature of "rabbitness" would imply the same kind of intromission. This means that it is not necessary for there to be a *suffering* victim for there to be moral damage and for there to be a victim of this moral damage. This kind of argument, however, would have to face, among other questions, the old debate on nature versus artifice and it would need to justify what is morally relevant in being natural.

Hence, from this point of view, one could affirm that the paradox of victimless damage affects only pathocentrism—that is, the paradox would appear only if one connected moral damage to moral wrongness and the capacity to suffer.

Anthropocentrism, ontological biocentrism, and physiocentrism could give a good account of—at least some of—these cases: the first one, by applying an essentialist version of the idea of human dignity; the second ones, by enlarging the moral community and making nature the source of moral standing instead of suffering (and therefore respecting species' natures). So, Platonic universals and species, not only individuals, could be recognized as objects of moral considerations and therefore as victims without having to be aware of any suffering.

Needless to say, this kind of argument would work only for deceased-victim cases and biotechnological cases. Truman cases could not be addressed through this strategy. This does not mean that objectivism or moral realism has to accept some cases of victimless damage. Rather, this shows only that the argument for those cases rests not on the concept of moral status, but on the independence of three concepts involved: namely, suffering, damage, and wrongness. Hence, Truman cases could be addressed using a second group of arguments, which will be presented in what follows.

### *3.1.2. The extension of damage beyond suffering*

The second strategy would consist in the enlargement of the idea of damage instead of the enlargement of the moral community or of the idea of moral status. Obviously, this strategy would constitute the other side of the same coin, as moral status and moral damage are inseparable. However, it is important to point out that the argument here would not highlight who deserves moral consideration, placing the focus on who would be recognized as a morally relevant being. Rather, as a result of accepting moral objectivism, it would place the focus on discovering what damage unquestionably is. Thus, a list of prototypical cases of damage could be compiled, regardless of whom a given subject considers worthy of moral consideration. Damage will not here be related to a suffering victim, but to the nature of the action. One could argue that modifications in the genetic code, in the natural course of a river, or in the shape of a mountain are instances of moral damage or moral wrongs, not because some kind of moral status is attributed to the mountain, the river, or the genetic code, but because we recognize that some behaviours are objectively morally wrong, whether by classic moral intellectualism, objective intuitionism (Haidt 2001), or biological emotionism (see Prinz 2007).

Hence, the strategy here would be to shift the understanding of damage. Damage would not be a transitive concept here (I damage something or someone), but it would become a synonym of moral wrongness. Defending the idea that some things are wrong, irrespectively of what or how the patient of that actions feels, would give an answer to the paradox that the idea of victimless damage entails. However, damage does not enter the debate. In this sense, this strategy would be an example of “solving by dissolving” and, as such, it would be tautological: some things are always wrong because they are wrong.



### 3.2. Arguments for the idea of victimless damage, on objectivist accounts

In this section, I aim to explore the main arguments in favour of the idea of victimless damage. That is, on this view, not every moral wrong is an instance of moral damage inflicted on someone. In other words, there are moral wrongs even if they do not hurt any moral patient. In order to defend this thesis, one could, again, either find some support using moral objectivism as an ontological basis or/and break the classic perpetrator/damage/victim structure.

This thesis would imply, on this view, that either evil in an ontological sense exists or the moral criterion is not linked to suffering and moral patients. Rather, according to these positions, the moral criterion for discerning whether something is right or wrong would be based on other key concepts, such as duty, for example. Thus, moral wrongness—and with it, in most cases, moral damage—would emanate from the consciousness of the moral subject that reasons, not from the victim's experience.

A normative ethics based on duty, such as a deontological approach, would be the perfect example of this response to the problem of victimless damage. Cases of apparent victimless damage would still entail moral damage not because the patient suffers an instance of moral damage, because the spectator's feelings constitute the main source for identifying damage, or because the victim is somehow unseen. On the contrary, according to this line of argument, the reason would be that the agents do not fulfil their duty or responsibilities towards other relevant beings, including themselves (either other human patients or nonhuman patients, depending on the assumptions about moral status and moral community previously discussed).

Here, however, there would be no damage in a strict sense, but a lack of commitment to your moral duties, for damage would be irrelevant in the moral equation. In this sense, the message does not arrive at the receiver, if we want to use linguistic terms. As a result, to defend this view, one should disassociate moral damage from wrongness in order to endorse the idea that, for something to be identified as moral damage, it is not necessary that it be inflicted against someone. In other words, the fact that something morally wrong hurts or does not hurt someone would be secondary. What turns something into a moral wrong is not the victim, but the lack of fulfilment of your moral duties. From this perspective—and this would explain the problem of victimless damage—you cannot find what is wrong by looking at the victim or by searching for a victim, but by looking at the agent. Otherwise, deontologists would say that a second-person perspective, where the victim and the suffering are morally crucial, would lead to relativism. In Kantian terms, duty would be sustained or justified not by the idea of damage, but by the rationality of the principle or the norm.



This group of arguments defending the idea that victimless damage cases may exist, because now there is no need to find a victim to label something morally wrong, could be categorised as follows.

### *3.2.1. Dissociation between moral status and damage*

According to this line of argument, it is not necessary to consider a being morally relevant to recognize that something morally relevant has been performed against it. That is, a being would not have to be recognized as part of the moral community or have to possess moral standing for us to recognize that something morally relevant (and wrong) has been performed against it. When the moral criterion rests on the side of the moral agent, the reason for the wrong could be either because the agent does not behave as he or she should or because it is an unnecessary action. It could even be an aesthetic reason. In fact, sometimes an aesthetic reason is used as a moral reason when a violent behaviour towards an irrelevant object is said to be “cruel” or wrong.” In a sense, it is said that actions of that sort would not properly portray humanity (Kant 1952, Yourcenar 1993). The same would be valid for dead victims. Here the arguments are closer to aesthetic reasons than moral ones.

### *3.2.2. Disassociation between moral wrongness and damage*

One could defend the claim, secondly, that not every moral wrong implies damage. This disassociation could also be understood as a breakage between the idea of damage and the idea of moral relevance. Damage would not be the key concept or the filter for determining whether something is morally relevant and, in turn, damage would be disassociated from moral wrongness.

In fact, this often happens in our arguments when we consider some kinds of moral damage, under certain circumstances, morally correct. This is possible, and, as a result, the fact that moral damage can be correct, from this perspective, would be proof of the fact that moral damage is not the key moral criterion. I refer here to cases where the privation of autonomy is defended as the right thing to do, as in the case of legal imprisonment, or when someone uses violence and hurts someone else who also possesses moral status in order to defend himself or herself, and finally, when the police executes an ambush to arrest some terrorists. Here wrongness could appear without damage just as damage could occur without being morally wrong—for example, intubating a singer to save her life does damage to her vocal cords, but it would not be considered morally wrong. Here, the victim’s experience would not enter into the moral equation used to morally judge an event.

However, this line of argument faces a problem—namely, it is not the case that moral damage turns into correct or right instances of moral damage. That would be an oxymoron. Rather, these are cases of tolerated moral damage, justified as the lesser of two evils or as minor wrongs justified as exceptions to a general rule.

### 3.2.3. *Intentionality*

This strategy would highlight that damage is identified not by the effect on potential victims, but by the agent's intention. This line of argumentation would place the criterion to judge whether an event is an instance of moral damage on the side of the moral agent, instead of on the side of the victim's reaction and experience. Therefore, whether the victim is sentient, rational, or alive would be irrelevant, and victimless-damage cases would, as a result, be perfectly defensible. If a moral agent, one could say, has the intention to hurt/destroy/manipulate someone/something, even if that person or object is not alive or aware, then we will be facing an instance of moral damage.

However, this line of argument is problematic in at least two ways. Firstly, the intention may not be to hurt someone. Intention itself is a complex concept that combines why someone does something and what someone does something for. That is, it entails reasons and aims, which may often lead to the classic problem of the double effect. I might read a friend's diary not in order to hurt him or her, but in order to learn about a quality or virtue that the diarist possesses. I might read a deceased person's diary to know him or her better, especially if the deceased person is an important figure in my society, such as a writer, a musician, or a scientist.

Secondly, cases involving genetic manipulation, such as the case of the glowing rabbit, would open the question as to whether manipulating the rabbit's nature in a concrete individual who does not yet exist entails the intention of hurting that rabbit or the idea of "rabbitness," or whether this is an action intended to improve that rabbit's life. Thus, unless one can justify the idea that genetic manipulation and changes are harmful per se, this line of argument would lead to an objective idea of wrongness linked to "something that differs from nature," such that the problem of a fuzzy boundary between facts and values would arise (Gómez-Heras 2012).

In other words, one could claim that there is something morally wrong in these biotechnological cases, for example, even if they are not linked to direct suffering, because that being's autonomy would be undermined by the self-optimization and self-instrumentalization that genetics allows. Thus, that action would become morally wrong even if the patient does not see it like that. Those seeing moral damage here would, with Habermas, defend the right to a nonmanipulated genetic heritage (Habermas 2001). However, the question is, firstly, how to know whether a given instance of instrumentalization is morally relevant and wrong, and, secondly, how to ascertain whether someone is in fact instrumentalizing someone else through genetic manipulation, when, without certain distinctive, albeit problematic, traits, the individual would not be himself or herself.

### 3.2.4. *Perfectionism*

Finally, in relation again to deontology, but also to virtue ethics, one could defend the notion of existence of victimless damage by putting the focus on the agent's responsibilities, instead of on the victims' experiences. Damage, according to this view, is not identified by the effect on potential victims, but by the agent's responsibility to ensure a sufficient level of development for himself or herself and for others. According to this notion of damage, you would be hurting yourself even if the damage were not causing you suffering. This type of argument would make the key moral criterion the agents' flourishing, or development of a proper moral character through rationality (Aristotle 2011). In other terms, the key moral criterion lies in the agents' development of a sufficient level of humanity, which would be lost or at least truncated by not respecting others' humanity, even if these others are dead or unaware of the event. Here, aesthetic reasons would play a role again, as, from this perspective, one could argue that even if the victim does not suffer, some actions, such as criticizing others, stultify or brutalize your moral character.

In turn, the idea of perfection or flourishing would depend on what position with regard to moral community is defended, who deserves moral consideration, and towards whom moral agents have a responsibility, not because this would define who potential moral victims are, but because this would be key to defining where the threshold of your humanity is, what is demandable of you. In other words, what kind of behaviours we consider make us human or not depends indirectly on whom we consider morally relevant and what ideal of human nature we defend.

Although the arguments in this section would explain why cases of moral wrongness do not need a victim demanding his or her own rights, it is important pointing out that this line of argument solves the paradox by not entering into it to some extent. As damage is no longer the key to moral wrongness, from this perspective it would be irrelevant whether the damage is inflicted on an unaware victim or not because damage itself would be irrelevant. In fact, the main difference between strategies in subsection 3.1.2 and the ones in this subsection would be linguistic. The difference would be whether one labels something that does not hurt anyone "damage" or whether one decides to use "damage" in a strict sense, maintaining its connection to suffering, but while defending the idea that "damage" is ethically irrelevant, for wrongness would be the key concept. As already discussed, strategies presented in the previous subsection, 3.1.2, would make "wrongness" and "damage" synonyms in order to overcome the need for a suffering victim. With this move, the word "damage" loses its link to suffering. As a result, suffering is not a moral criterion in either strategy.

Nevertheless, the arguments mentioned throughout the present subsection would provide a solution to victimless-damage cases, on the assumption that there is an objective idea of species' nature and on the assumption that humanity and dignity are nontemporal concepts, such that they do not disappear when the individuals do.

Yet this class of arguments would face the same objectivism-related problems that the arguments presented in the previous subsection did. The question now is whether arguing that the victim is humanity itself would be convincing enough for those against recognizing instances of victimless damage as a reality. Biotechnological cases where the potential victims may not be human, as in the case of the glowing rabbits, would still be problematic, unless deontology were combined with biocentric and physiocentric approaches, for example, such that moral agents would have a moral duty to protect and maintain what exists in the same conditions as now. Thus, the agents would have the duty to preserve nature the way it is. However, here again an explanation of why manipulation is intrinsically wrong when the individual victims are not adversely affected should be provided. This explanation, in turn, would open the previously mentioned debates on species versus individuals, on natural versus artificial, and on species' nature. In other words, this would require avoiding the distinction between facts and values and making a defence for the moral value in preserving "rabbitness" as it currently is, for example. This, as it is easy to see, would fall into the naturalistic fallacy.

#### 4. VICTIMLESS DAMAGE ON SUBJECTIVIST ACCOUNTS

In this section, parallel to section 3, I aim to delve into the arguments for and against the idea of victimless damage, this time from the perspective of subjectivism. Hence, I will address the main lines of argument made from that metaethical perspective. As I did previously, I will first sketch the arguments against the notion of victimless damage and, secondly, I will present the advantages and disadvantages of positions in favour of classifying these paradoxical cases under the heading of victimless damage.

Finally, it is worth remembering that the aim throughout this section, as it was in the previous one, is not to point out how these arguments fail to identify the wrongdoer, but how problematic it can be to identify the victim and to argue that this patient is in fact the victim of a moral wrong. Focusing on the wrongdoer would shift the focus onto the "harmless torturer" cases, instead of keeping it on the victimless-damage debate.

##### 4.1. Arguments against the idea of victimless damage, on subjectivist accounts

From a subjectivist perspective, one could argue that there is no such a thing as victimless damage and that seeing something wrong in those cases implies defending some kind of moral realism. On this view, one would need a suffering victim to have an instance of damage. Thus, one would have to be able to identify the victim. Otherwise, one has to conclude that there is no damage in those cases; there is nothing wrong in the so-called victimless-damage cases. The idea of victimless damage here would be to some extent illusory, so, if these cases seem morally wrong, that would be due to social prejudices, traditions, biases, or unquestioned intuitions that will not pass the test of moral scrutiny.

This argument would make suffering the moral criterion and therefore, the sentient patient the key to identify moral wrongness, so, if no one is suffering, it would be difficult, if not impossible, to claim that there is some moral wrongness involved. Here, again, we would be facing a case of “solving by dissolving.”

#### 4.2. Arguments in favour of the idea of victimless damage, on subjectivist accounts

In this section, I aim to explore the main subjectivist arguments in favour of the idea of victimless damage, as accepting this metaethical position does not entail denying that victimless cases may involve something morally wrong. On the contrary, subjectivism can provide arguments to justify the relevance of victimless-damage cases. It is true that subjectivism would have to identify a victim in order to claim that there is something morally wrong in victimless-damage cases. It is also true that once a victim can be identified, the case turns into a common case with a perpetrator and a damaged victim. As a result, one could argue that the following strategies are against the necessity for the concept of victimless damage, as they try to show the unseen victim involved. However, I think it is sensible to describe these arguments as reasons in favour of victimless damage, since, compared to the previous ones (in subsection 4.1), they aim to capture the paradox in victimless-damage cases, and they make an effort to identify the wrongness involved without accepting moral-objectivist premises.

Likewise, as previously mentioned in section 3, many arguments are interwoven. The distinctions between lines of arguments are due to the needs of analysis, as every branch of the argument would respond better to some of the three identified groups of victimless damage than to others and every line of argument would highlight some different aspects.

That being said, the main arguments that a subjectivist position could give for victimless-damage cases could be the following.

##### 4.2.1. *The extension of victims: The indirect victim*

The extension of the group of victims would differ here from that defended by the arguments shown in subsection 3.1.1. Here moral status could still be reserved for rational and/or sentient beings, according to anthropocentrism and/or pathocentrism, which are the two positions that best fit with subjectivism’s metaethical assumptions. However, cases of victimless damage could be explained as cases where the true victims are unseen or, in other terms, as cases of indirect victims. Thus, the victims of post-mortem instances of moral damage, such as the profanation of graveyards or the publication of a personal diary, would be the descendants, friends, or relatives who would suffer by seeing this damage. In a nutshell, the victim would be the moral spectator. The same could be said in reference to cases of inanimate victims, such as the mountain or the river; the Truman cases; and the biotechnological cases discussed. The victims would be not the being who is the direct recipient of the action, but those who



see it and experience it as an instance of damage. The spectator is in fact the one whose feelings of indignation are triggered.

Likewise, in a more pragmatic sense, arguments that highlight the importance of social trust and desirability could also be included, so some types of victimless damage would be recognized as such, not because of the direct victim, but because criticizing others and breaking promises, among other things, would hurt those who are aware of these actions by hurting moral expectations of reciprocity, relationships, and the sense of trust.

#### *4.2.2. The double victimization of unaware victims*

This argument would in fact solve the Truman cases. The fact that the victim is unaware and therefore does not suffer would not imply that there is no damage there, but that we are facing a case of double victimization. Hence, preventing the victim from being aware of the damage would be a key sign for identifying not only an instance of moral damage, but also a double victimization.

Moreover, as in the previous argument, the spectator would be key. The victim and the direct recipient of the action would be dissociated. The spectators are also victims since the action triggers feelings of indignation in them. Thus, one could also argue that there are two victims—namely, the recipient and the spectators. The spectators are the ones who can identify the action as an instance of damage and as a double victimization. This is especially true when the damage is normalized and the direct victim is desensitized or unaware of the damage, such as in cases of hermeneutical injustice. The victimization is double because the action is directed precisely at recipients who are unaware. Thus, from a subjectivist point of view, one could also say that in a strict sense those would not be cases of victimless harm, but cases of desensitized or anesthetized patients, on the one hand, and direct victims who find themselves in the role of moral spectators, on the other. In a sense, one could argue that these cases are cases of moral wrong because they break social reciprocity and trust, both for the spectator and for the victim. As in the previous argument, the spectator could think, “If they only knew,” which makes the spectator feel indignation, contempt, and so on, so becoming the direct victim needed to label something damage. However, this strategy faces the problem of not being able to distinguish these cases from instances of damage that the victim willingly accepts, such as self-destructive behaviours.

#### *4.2.3. The illusion (The moral-imagination strategy)*

Finally, another group of arguments based on moral subjectivism would argue that those instances of victimless harm are indeed cases of moral damage where the victim is the spectator because *you* know that, if you were in that position, you would experience it as an instance of moral damage. Here the focus would not be placed on the patient of that event and the way in which that patient would judge the situation if he or she knew better, but the focus is placed on *you*. Thus,



from this point of view, what is perceived as victimless damage would be a reflection on what you would consider damage *if you were* in that situation, such that the direct victim is the subject reflecting on that hypothetical circumstance—that is, the spectator. Therefore, the thought shifts from “If they only knew” to “If I were you.”

One could question the scope of this argument, as making yourself the victim of the case just because you imagine the suffering you would go through if you were in that position could lead to some kind of moral relativism and/or solipsism. In fact, one could argue that imagining potential instances of damage does not turn you into an actual victim of that case.

However, this second conclusion could be easily refuted, as it is well documented that witnessing violence provokes similar psychological effects as being the direct victim does.<sup>10</sup> A more radical interpretation of this idea of moral imagination would claim that the idea of moral imagination explains the illusion of thinking that there is a victim where actually there is no one suffering. Obviously, this interpretation would assume not only moral subjectivism, but also the idea that moral damage has to be connected to a sentient, conscious victim. This is true of some examples used by certain authors in experimental philosophy (see Prinz 2007) who try to challenge the idea of moral wrongness by asking what would be wrong in violating someone’s bodily integrity if the person is unaware (the person is anesthetized and does not suffer, and it would be guaranteed that he or she would not remember anything).<sup>11</sup>

But again, if one argued that no other victim is needed apart from the subject who thinks about the case, another challenge would arise: how could subjectivism then avoid falling into solipsism and/or relativism?

## 5. MOVING FORWARD: A MORE NUANCED ACCOUNT

Addressed through the idea of victimless damage, the triangle of victim, damage, and wrongness leads to the question of how to accept subjectivism without having to accept relativism and/or solipsism. As shown throughout section 4, one would need to search for a kind of indirect victim in order to be able to claim that there is something morally wrong in victimless-damage cases, so victimless-damage cases remain inside the ethical agenda without us having to accept ontological ideas of goodness and wrongness. Otherwise, proponents of subjectivism would have to accept these cases as the reflection of prejudices and biases challenging our moral intuitions.

However, making the spectator the victim faces the problems already shown in section 4. Arguing that I would not want to be so treated or that no one would want to be, implies a leap from the first- to the third-person perspective that is hard to justify. For this reason, I would suggest adopting a second-person perspective as a potential path to untangle some of the limitations shown in spectator strategies.

As stated in section 4, strategies based on making the spectator the victim in victimless-damage cases, as well as those lines of argument that make moral imagination the key, face the problem of not being able to distinguish these cases from chosen instances of self-harm, especially if I am just imagining what I would desire if I were in that position. Likewise, making moral imagination the centre of the argument may lead to an excessively paternalistic account, thereby truncating the chance to somehow include the recipient's voice. For this reason, the main limitation of this strategy lies in the leap from the first to the third person, while the actual recipient of the action is ignored. Moreover, by adopting this strategy, one would risk falling into solipsism and relativism. Therefore, I aim to advocate for a second-person perspective. If the second-person perspective is taken into consideration, one can still see victimless-damage cases as morally relevant without having to accept moral realism, which is problematic per se, especially in morally pluralistic societies.

In turn, a sense of moral damage that admits of degree, also open to context, would be necessary. From a second-person perspective, instances such as the deceased-victim cases and the Truman cases cannot be (and probably should not be) solved in absolute terms, for every person could have a different approach if they were in that situation. The question, from a second-person perspective, would not be what I would desire or how I would feel if I were you, but what *you* would wish to be done in that given situation. This strategy would lead to ambivalent answers. Yet it would open an ethically valuable space for individual differences. Of course, this strategy would require epistemic virtues, such as empathy and openness, and it would require a constant search for information as well. Nevertheless, it could help avoid dismissing cases that could entail some degree of moral wrongness. Likewise, a second-person perspective would take into consideration personal differences in values and life aims. Examples of how relevant a second-person perspective can be have already been given in the bioethical context. As Bermejo (2005) shows in relation to informed consent, in order to respect everybody's views, respecting the right not to know might be as crucial as respecting the right to know. This applies perfectly to Truman cases. This type of victimless damage would have a different solution depending on whether the victim prioritizes happiness over truth or vice versa. A heuristic similar to Bermejo's heuristic in relation to informed consent could be applied to deceased-victim cases. Evidently, one cannot ask the deceased victim directly. It is often the case that the person has not given any hint or information that could guide the posthumous ethical deliberation. However, making this information morally relevant and including these kinds of epistemic virtues (such as curiosity about how you see/saw your situation, what your values were, etc.) could lead us to a more cautious and thoughtful scenario, equally distant from moral relativism and moral arrogance. So, the normative principle would be not, not to do to others what I would not wish for myself if I were you, but rather not to do what they in fact do/did not wish to be done to themselves. With this shift in the normative principle, the unjustified leap from the first person to the third person is avoided, and the potential victims' voices enter into consideration as

well. Even if generalizations were established from information accumulated in similar cases, the conclusions one would come to would qualitatively differ from a simple leap from the first to the third person.

That being said, I would like to unfold two aspects tacitly implied in my suggestion of including a second-person perspective in moral consideration—the first one related to the role of autonomy, the second one related to the already mentioned need of gradational concepts.

When it comes to the second-person perspective, making the potential victim's autonomy key to identifying morally relevant cases can open new windows on victimless-damage cases. I would like to suggest an association of the idea of dignity with the ideas of freedom and autonomy. Dignity has traditionally been linked to worth and moral standing, to the question of whether someone deserves respect. In the two main conceptualizations of dignity—namely, intrinsic dignity and extrinsic dignity—someone is valuable and morally relevant depending on, respectively, who they are or what they do; that is, dignity lies in human nature or human behaviour. However, both approaches place the focus on the moral agent. However, if dignity is linked to autonomy instead of (only) to moral standing, cases such as those discussed in section 2 will still be relevant without us having to accept worldviews and ontological positions on objective wrongness or human nature that are the object of deep metaphysical disagreements. In other words, this move would allow some openness and would still maintain the second-person perspective as morally relevant, without placing the focus absolutely on whether the victim is sentient and aware of the event or not at that moment. Rather, the question would be whether whoever the object of the action is has or had the autonomy to refuse or accept it.

Bearing Truman cases, posthumous-victim cases, and biotechnological cases in mind, one could still find something morally wrong in many of these cases without assuming moral objectivism and from a second-person perspective if one could establish the link between the agent's action and the extent to which the potential victim (or at least the recipient) is prevented from choosing or having a word on that action due to unawareness or lack of awareness. Thus, some kind of moral damage would be present to some degree, not because moral objectivism or deontology has to be assumed, but because these actions attack or do not take into consideration the initial autonomy of their recipients. Of course, not every victimless-damage case would have the same characteristics. Linking dignity with autonomy would shed some light especially on victimless-damage cases involving humans or other sentient beings. However, cases where the information needed to give others the second-person perspective is impossible to obtain or is accessible only once the potential damage is done, such as the biotechnological cases, would hardly benefit from these strategies. However, they could be treated according to the caution principle, simply because the second-person perspective is not accessible, and this lack of information could be taken as a warning sign to be cautious in order to avoid disregarding some moral risk.

Finally, the need to avoid disregarding some moral risk connects to my last point. As mentioned, I would like to advocate for the need to develop gradated moral concepts, instead of binary ones. Addressing these cases as if they were potential damage or a subtype of damage leads us again to see gradated moral concepts as potentially fruitful.

Autonomy, moral agency, moral patient, and even moral damage are built to be exclusionary and absolute concepts: either you are a moral agent or a moral patient, either you are a patient or you are not, either something is a case of moral damage or it is not. However, reality provides us with plenty of in-between cases that challenge moral philosophy to enlarge and enrich its approach towards moral events. Young children are an example of in-between agents/patients, so they could be recognized as active moral patients or as developing moral agents. Thus, a rigid idea of autonomy or agency would not operate correctly to provide a good account of ethical events during childhood, for example. Likewise, victimless damage can be seen as a category between direct moral damage and neutral or morally irrelevant events, for, to some degree, indirectly, and probably in a very subtle way, some kind of damage occurs in all these given examples, even though they do not always entail direct and simple face-to-face victim/perpetrator interactions. Since victimless-damage cases fall on a continuum, our concept of victimless damage should be gradated

As theory of action has already provided gradated concepts, such as omission, causing, enabling, or allowing a certain action, gradated concepts could offer a more accurate and clearer lens on the given issue, which could be useful for labelling fuzzy realities. In short, a continuum of actions may imply a continuum of victims.<sup>12</sup>

One might say that gradated moral concepts are problematic, as most of the time they are simultaneously descriptive and normative concepts. This is the case in the debate on personhood. As personhood is key to deciding whether a being is recognized as morally relevant or not, abandoning a dualistic vision might be problematic. As DeGrazia (1997) and Francione (2005) discuss, a concept such as quasiperson may not solve the dilemma, which leaves the being who is labelled “quasi-person” in the same category as nonpersons. This is in fact a concern that moral philosophy should bear in mind and explore in relation to debates beyond those examined in this article. However, I also suggest that moral damage seems to be a more gradated and flexible concept, where different instances can be classified as more or less severe. Damage, contrary to personhood, admits of some degree of subjectivity and flexibility, depending, at least to some extent, on the recipient’s will, the context, and circumstances. Needless to say, being gradated or subtle does not mean being irrelevant.

Thus, victimless damage cases could benefit from a more nuanced perspective on damage, where extreme cases of torture and cruelty and indirect, subtle cases of moral damage do not have to be lumped together in order for us to take the latter ones into consideration. As a result, victimless damage could stop being presented as an all-or-nothing paradoxical case.

## 6. CONCLUSION

In this article, I have presented an in-depth and hopefully thought-provoking discussion on the concept of victimless damage, as well as its implications. I have presented a classification of victimless-damage cases, open to further discussion, as they are normally individually addressed. In so doing, I aimed to provide a more comprehensive analysis of victimless-damage cases, and I hope to have helped shed some light on how different cases relate to one another. I have also offered the main objectivist and subjectivist arguments for and against this concept, highlighting their limitations and benefits. I have also explored how the core of the paradox lies in the metaethical assumptions about the idea of damage: whether or not moral damage is a key criterion of morality, whether it must be connected to sentient victims, and whether moral wrongness can and/or should avoid the second-person perspective. Also, I have tried to show how the relation between moral wrong, damage, and victims is at stake in these paradoxical cases.

Needless to say, trying to solve and close a complex debate such as this one would be unrealistic and, to some point, intellectually arrogant. Therefore, three suggestions are at the core of my conclusion: the second-person perspective, the key role of autonomy, and the need for a gradated conception of moral damage.

I have advocated for the relevance of this paradoxical concept, victimless damage, as a way to recognize subtle cases, otherwise easily invisible. I have taken an intermediate path of argumentation that combines moral subjectivism's assumptions with the second-person perspective in order to avoid the argumentative risks of a leap from the first- to the third-person perspective. In so doing, I aimed to recognize some moral wrongness in victimless-damage cases without having to accept moral objectivism. The second-person perspective, where the victim's autonomy is taken into consideration, and a gradated concept of damage could help surpass the dichotomy and recognize some degree of relevance of some subtle cases of damage, as well as some indirect and secondary victims, without forcing us to accept ontological premises, which may be harder to accept in morally pluralistic societies. Thus, the second-person perspective and a gradated concept of damage can keep the debate on a more sharable ground, where generalizations, instead of universalization, could be reached. By taking the middle way, I hope to have enriched the debate and opened some pathways to further discussion.



## NOTES

- <sup>1</sup> The analysis of collective responsibilities and the cases of harmless torturers has helped make visible the fact that the same action, analyzed out a given context, could be morally irrelevant per se, but, when analyzed inside a given social context, could acquire a qualitatively different moral meaning as part of a hurtful system.
- <sup>2</sup> I will use “victimless damage,” “victimless harm,” and “moral damage without a victim” as synonyms.
- <sup>3</sup> In suffering I include both physical and symbolic suffering, such as betrayal, lies, etc.
- <sup>4</sup> The level of awareness is in part what is at stake in this article. Obviously, there can be victims of poisonings and murders that occur with the victim being unaware. However, they would consider those events to be cases of moral damage. On the contrary, the cases of victimless damage that I will discuss imply a victim who, even being alive and conscious of the facts, may not perceive the situation as an instance of moral damage.
- <sup>5</sup> Here it is important to make clear that a proto-idea of moral indignation can be found in some animals, especially great apes, even if they are not considered to be moral subjects, as they react emotionally to physical suffering, lies, etc., which can be understood as a criterion sufficient to label these experiences of nonhuman patients instances of moral damage and therefore to label them morally relevant (see Joyce 2005; De Waal 2006). In this respect, a wide literature of pathocentric accounts can be found (see Wolf 1990; Singer 1979). However, a deeper analysis on this matter would surpass the scope of the current discussion on victimless damage.
- <sup>6</sup> Another question here would be whether there is harm towards the species even when each and every member of the species does not perceive it as such. This would lead to the problem of individuum versus species, which, although closely related to the problem of victimless harm, I will not address in depth, as this would surpass the scope of this article, which is focused on individual beings and not collectives ones. Therefore, I will not take into consideration collective beings in this classification, such as corporations, cultures, nations, or species.
- <sup>7</sup> This is not the same as future-generation cases, for future-generation cases would imply a conscious victim suffering an instance of damage that was started by previous generations. They would be suffering victims only in interaction with other beings—that is, if you have known that you and your circumstances could have been different (if someone tells you that you could have been a hearing person, for example). This connects to the third group of cases that I examine.
- <sup>8</sup> Needless to say, being a moral agent implies being a moral patient.
- <sup>9</sup> Although pathocentric (or sentient) and biocentric perspectives enlarge the moral community, they would not completely solve the problem of victimless damage, as the moral criterion for these accounts would be being able to feel pain and pleasure or being alive, and victimless damage implies potential victims who do not suffer.
- <sup>10</sup> This has been well documented in the literature on interfamily violence. Being the witness of violence and abuse can trigger the same posttraumatic effects in the witness as it does in the direct victim. If you are a witness, you feel so helpless and victimized that you come to the conclusions that you could have been the victim and that you are also in danger (see Finkelhor 2007, O’Hagan 1993, Doyle 2014).
- <sup>11</sup> Given the fact that this imaginary scenario (also presented in Almodovar’s film *Talk to Her* (2002), in which a woman in a coma is raped by her nurse) is very close to what unfortunately happens in real life, and even though these examples are used in moral philosophy to challenge common moral intuitions and beliefs, I would like to clarify, for the sake of the current victims, that one of the problems with these kinds of imaginary exercises is that they are based on unrealistic premises, such as the following: there are pills that erase memory, no bodily memory is retained, no physical traces exist, and there are only binary solutions where only a and b are the possible options. Unfortunately, cases of rape under the effects of drugs



have shown us that, even if the victim is unconscious, and even if she was not brought into this state in a violent way, she will know and feel that something happened to her. Moreover, realizing that she was unconscious would imply a double victimization and an extra feeling of anguish, which is morally relevant.

- <sup>12</sup> Notice that this should not be directly translated into a normative theory without deeper discussion. It should not be inferred from the defence of the need for gradated moral concepts that victims should be compared and prioritized according to their amount of suffering or any other normative calculation that would exceed the scope of this metaethical article. Obviously, as a natural consequence, we should find a way to establish responsibilities. However, this does not imply that we should rank cases, dismissing those that tend to be subtle. Doing so would surely lead to a perverse blindness toward subtle instances of moral damage, emotional-abuse cases and cases of accumulated subtle harms.

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