

How to Avoid Being Driven to Consequentialism:
A Comment on Norcross

Alastair Norcross has argued that consequentialists must embrace the following thesis:

Life for headaches: there is some finite number of headaches, such that it is permissible to kill an innocent person to avoid them.¹

Given that *life for headaches* is so counterintuitive, one might infer that Norcross was arguing against consequentialism, but this inference would be mistaken. He instead offers a seductive argument that regardless of whether we accept consequentialism, we should embrace *life for headaches*. If Norcross is right, *life for headaches* is no less palatable than other moral claims we already accept. Hence, he concludes that his argument that consequentialists must accept that thesis poses no threat to consequentialism. I maintain that Norcross's argument that we should embrace *life for headaches* is not sound, nor is there any obvious way in which it could be salvaged.

Norcross begins with the premise that most people rightly believe the following:

Lives for convenience: We are not morally obligated to impose a national speed limit of 50 mph (or less).

He then points out that if we reject *life for headaches* and accept *lives for convenience* we must find some morally significant difference between them. However, he argues that there is no such difference. After all, he contends, a national speed limit of 50 mph would be highly probable to reduce accident-related highway fatalities, and save lives by reducing pollution. Since the only obvious justification for our not imposing such a speed limit is that it would be inconvenient for many people, we seem willing to trade lives for convenience. It is not obvious how this is different in a morally relevant way from trading lives for the prevention of headaches - a kind of inconvenience. Norcross surveys what he takes to be all the plausible candidates for a morally significant difference between the cases and argues against each. Hence, he infers that we should accept *life for headaches* on the basis of our well-grounded commitment to *lives for convenience*. More formally:

(1) We are not morally obligated to impose a national speed limit of 50 mph or less.

(2) For some finite number n , there is no morally significant difference between our not imposing a national speed limit of 50 mph or less, and killing an innocent person to avoid n headaches.

(3) For any two actions, x and y , if there is no morally significant difference between our not x -ing and y -ing, and we are not morally obligated to x , then it is permissible to y .

∴ There is some finite number of headaches, such that it is permissible to kill an innocent person to avoid them.

Norcross does not argue for (1), but suggests that he does not need to do so, since those who are inclined to reject (1) could, he thinks, be persuaded by an analogous argument whose main premise is that we are not obligated to impose a national speed limit of 30 mph, or to abolish the privately owned automobile. I return to this suggestion later, but for now I grant (1) for the sake of argument, and instead take issue with (2).

One seemingly important difference between *life for headaches* and *lives for convenience* hinges on uncertainty. In the latter case, we do not know for certain that more people will die, whereas in the former case we are dealing with death and "not simply the (overwhelming) likelihood of death." (163) In response to this worry, Norcross asks us to imagine in the *life for headaches* case that we are shooting the victim in the head at close range with a Magnum .44; in that case there is some small chance the victim would survive, but surely, Norcross suggests, this would not diminish the seeming counterintuitiveness of *life for headaches*. Or perhaps we should imagine that the victim is "made to play Russian roulette with a thousand-barreled revolver with only one empty chamber." (164) As such changes do not change most people's reactions to *life for headaches*, Norcross infers that the element of uncertainty introduced in *lives for convenience* does not mark a significant difference between it and *life for headaches*. The idea seems to be that accepting *lives for convenience* at least forces us to accept these modified versions of *life for headaches* which have been injected with an element of uncertainty. Since it would be difficult to see how one could defend accepting those modified versions of the case while rejecting the original version, Norcross infers that we should also accept the original.

The problem is that the modified cases Norcross presents are *not* analogous to *lives for convenience*. Call the modified cases *Magnum* and *Russian Roulette*. In each case, we are presented with an action that is very likely to lead to the death of at least one innocent person. In *lives for convenience* we also are considering an action that is very likely to lead to the death of at least one innocent person - not lowering the speed limit to 50 mph.² Vehicles traveling at higher speeds are less able to stop in time to avoid an accident, and high-speed collisions are more likely to involve fatalities. If all we had to consider were the chances that one innocent person dies as a result of higher speed limits, the 99.9% probability represented by *Revolver* is, if anything, too low. So far, so good.

However, the chances that at least one innocent person dies as a result of higher speed limits are *not* all we need to consider. We also need to consider the chances that some innocent people's lives are *saved* by higher speed limits. Indeed, the chances of this are also quite high - perhaps much better than 99.9%. Consider the following:

(1) Variability. Variability in the speed of motorists is a better indicator of the risk of accidents than average speed, as it increases unsafe habits - tail-gating, abrupt maneuvers, etc.³ Lower limits increase variability, as many, but not all, people do not obey them.

(2) Reduced respect for the law. An Institute of Transportation Engineers report suggests that lower speed limits risk a loss of respect for all speed limits, leading to increased fatalities for the very reasons emphasized by those in favor of lower limits.⁴

(3) Misallocation of resources. Lower limits have lead to an increased highway patrol presence on interstates, reducing their potentially life-saving presence on non-interstates. However, interstates are much safer than rural and secondary roads.⁵

(4) The "scenic route." Lower limits encourage drivers onto more dangerous rural roads. Such considerations suggest that imposing a 50 mph speed limit will cost some people their lives, just as not imposing such a limit will also cost some (other) people their lives. This shows that *lives for convenience* is inappropriately named, since lives are at stake *either way* - whether we stick with current speed limits or adopt a national speed limit of 50 mph. Hence, we are not so much trading lives for convenience, as trading some lives

for some other lives and some convenience. More importantly, this means *lives for convenience* is importantly different from *Magnum* and *Russian Roulette*. In those cases, we are trading a high risk of taking some innocent person's life for the convenience of other people. That one action trades an innocent person's life for nothing but convenience, while another trades the lives of some innocent people for the lives of some (other) innocent people and some convenience is a morally relevant difference. Premise (2) of Norcross's argument is false. We can accept *lives for convenience* on the grounds that it, unlike *life for headaches*, holds out a chance of saving some innocent lives, and avoids some inconvenience. If these are our grounds for accepting *lives for convenience*, we can accept it and reject *life for headaches*.

Indeed, *lives for convenience* looks much more analogous to the following case:

Mystery Bombs. You must decide whether to press a button. If you do, bomb A will explode, almost certainly killing some and causing many others an inconvenience. If you do not press it, bomb B will explode, almost certainly killing some people.

In *Mystery Bombs*, just as in *lives for convenience*, an agent must choose between two courses of action, each of which is likely to cost some innocent people their lives and one of which will also cause many people inconvenience. Surely, though, there is all the difference in the world between *Mystery Bombs* and *life for headaches*. In *Mystery Bombs* some innocent lives are lost whatever the agent does, whereas in *life for headaches* if the agent does not kill the innocent person, then no innocent life is lost.

It might be objected that while the considerations mentioned above show how lower speed limits would cost some innocent lives, they do not establish that doing so would, most likely, cost more lives, on-balance, than the status quo. Perhaps a good case can be made out that a 50 mph speed limit would on-balance minimize premature deaths, though there are legitimate grounds for skepticism of even this claim. Let us suppose, however, that such a case can be made out. A wide gulf remains between *life for headaches* and *lives for convenience*, since in one case innocent lives will be avoidably

sacrificed in any case, but in the other case the agent can act in a way that does not cost any innocent lives. One might accept *lives for convenience* without accepting *life for headaches* even if lowering the speed limit would, most likely, minimize premature deaths. One could hold this constellation of views on the grounds that in situations in which either of your options will most likely lead to the premature death of numerous innocent people, you are not always obligated to choose that option that will lead to the fewest premature deaths - considerations of convenience can sometimes justify choosing the option that will, most likely, lead to more premature deaths. Such a view might be defended by way of the radical doctrine that when innocent lives are at stake either way, the numbers do not matter.⁶ More plausibly, one might defend such a view by arguing that it is in accordance with principles that would be chosen behind a suitable veil of ignorance - principles that might admit that the numbers of people who will die do count, but that if the numbers on each side are close enough, or if there is sufficient uncertainty, then, but only then, may one appeal to non-life-or-death considerations to decide the case.

Perhaps no such view is plausible, though. We are still not forced to accept *life for headaches*. We might instead embrace the following principle:

Innocent lives always dominate convenience. Whenever innocent lives and convenience are all that is at stake, one's moral obligation is always to choose the option that would, most likely, prevent the most premature deaths of innocent people.

Such a principle is congenial to anyone initially inclined to reject *life for headaches*, and it is not obviously implausible. Nor is it a principle Norcross can dismiss lightly, as he is addressing those initially inclined to reject *life for headaches*. Moreover, consider:

Mystery Bomb #2: You again must choose whether to press a button. If you do then, more likely than not, a bomb will explode and kill fifty innocent people. If you do not press it then, more likely than not, a bomb will explode and kill forty-nine innocent people *and* cause some very large number of people a mild inconvenience (say, a mild headache).

It is somewhat plausible to suppose that in this case you have a moral obligation not to press the button, even though pressing it would prevent an enormous number of people

from experiencing a mild inconvenience. *Innocent lives always dominate convenience* provides a plausible explanation of this conviction, and so gains further confirmation.

As *Mystery Bomb #2* illustrates, though, *innocent lives always dominate convenience* also entails that we do have an obligation to adopt a national speed limit of 50 mph, on the assumption that doing so would, most likely, prevent the most premature deaths of innocent people, and nothing other than innocent lives and convenience are at stake. So on that assumption, we have reason to reject the *first* premise of Norcross's argument. Norcross faces a dilemma. Either the evidence suggests that adopting such a speed limit would most likely prevent the most premature deaths or it does not. If it does not, then, as we have seen, there is a morally relevant difference between *life for headaches* and *lives for convenience*; Norcross's second premise is false. If, however, the evidence *does* suggest that adopting a 50 mph speed limit would, most likely, prevent the most premature deaths, then, in virtue of the plausibility of *innocent lives always dominate convenience*, we have reason to think that we have an obligation to adopt such a speed limit; in this case, Norcross's first premise is false - we should reject *lives for convenience*.

At this point, Norcross would employ the following strategy:

There are those who react to what I say about the 50 mph speed limit by declaring that I have convinced them that it *is* wrong not to impose it. But what I say about the 50 mph speed limit can also be said about a 40 mph speed limit, or a 30 mph speed limit, or even about abolishing private automobiles altogether. Very few are hardy enough to follow their respect for life to such extremes. (159-160)

Norcross's strategy for those who think we do have an obligation to impose a 50 mph speed limit is to get them to concede that we are not under an obligation to abolish the private automobile, and then argue that there is no morally significant difference between our not doing so and someone's killing an innocent person to prevent an enormous number of headaches. After all, he might argue, abolishing private automobiles would save lives, whereas not abolishing them would only generate some inconvenience - what

he says about "the 50 mph speed limit can also be said about...abolishing private automobiles altogether." (160) Again, we seem to have a case of *lives for convenience*, and if we accept one such case, we are forced to admit *life for headache*, on the grounds that it is not different in any morally significant way.

Upon reflection, however, the assertion that there is no morally relevant difference between not adopting a 40 mph speed limit, or abolishing the private automobile, and killing one person to prevent countless headaches is outlandish. Start with the case of adopting a 30 or 40 mph speed limit. All the aforementioned reasons for thinking lower speed limits increase traffic fatalities apply with *much* greater force to these proposals. If a 55 mph speed limit undermines respect for the law and dangerously increases variance, imagine what a 30 mph limit would do! Also, there would be other, perhaps more significant costs associated with such proposals. They might undermine the economy, leading to unemployment and stress-related fatalities. Also, there would have to be an enormous expenditure of financial and political capital to adopt and enforce such limits. Such investments might otherwise have been made in ways that saved more lives. Finally, for many people, such a change represents more than an "inconvenience" - it might mean, e.g., that some cannot visit loved ones because the trip would take so long. Again, there are moral differences between not adopting such speed limits and *life for headaches*. Not only are lives at stake with each option, and is it unclear that such lower speed limits would minimize the number of premature deaths, they also would involve much more substantial non-death harms than mild headaches.

Now turn to the case of abolishing private automobiles. Assuming such an abolition could be enforced, we can no longer mobilize *all* the arguments made above. The assumption that such a law could be enforced is itself incredibly naïve, though, suggesting that many of those arguments would still apply. Moreover, any serious effort to enforce such a law in a culture in which many people seem to think they have a God-given right to drive, would require an *enormous* political and financial expenditure. Such

financial and political capital could no doubt be used in more productive ways - ways that would prevent more premature deaths. Further, the other arguments of the preceding paragraph apply with more force to this proposal. The negative impact on the economy is hard to overestimate, and throwing the nation into a deep recession or depression could easily cost countless lives in all sorts of indirect ways, in addition to causing enormous unhappiness (as opposed to mere mild inconvenience!). Further, the imposition such a law would directly constitute on car owners is hardly comparable to a mild headache in the minds of most people! One might reasonably reject *life for headaches* but still think lives could be traded for non-death harms much more severe than a mild headache.

So Norcross's "back-up" arguments for those unpersuaded by his original argument are even less persuasive than the original. At this point, one may worry that my argument relies too much on the details of Norcross's example to have wider significance. Surely, one might complain, some other actual case could be used to make Norcross's point, or, if not, we could consider a case in which we stipulate that the empirical facts are more congenial to his argument. Perhaps imposing higher fuel efficiency standards, for example, would be a better case. In fact, however, neither of these strategies is very promising. Suppose Norcross tries to find some other actual case to make his point. We have already seen that we have relatively good intuitive grounds for accepting *innocent lives always dominate convenience*. Hence, insofar as Norcross finds a case that really is analogous in all morally significant ways to *life for headaches*, we have reason to suspect we will legitimately balk at the suggestion that we do not have the corresponding obligation in that case. Just as we might legitimately come to think we *do* have an obligation to impose a 50 mph speed limit if we were convinced that doing so would minimize premature deaths, we can expect to have a similar legitimate reaction to any other such case Norcross generates. Consider, for example, the proposal that we increase automobile fuel efficiency standards. Norcross might argue that though we do not have an obligation to do so, doing so would save lives lost to air pollution at the mere cost of

inconveniencing consumers. Of course, we might reasonably doubt that raising such standards really would minimize premature deaths; higher fuel efficiency standards force automakers to produce smaller cars, which are correlated with increased traffic fatalities. Assuming we were convinced that such doubts were unfounded, though, it would not be unreasonable to conclude that we do in fact have an obligation to impose higher standards. At any rate, Norcross has given us no independent reason not to embrace that conclusion, nor is it obviously mistaken. Similar remarks apply to any thought experiment Norcross might generate; once it is clear that the case is identical in all morally relevant ways to *life for headaches* we may legitimately conclude that we have the corresponding obligation. I cannot demonstrate a priori that no such case could be used to make Norcross's point more effectively, and I do not claim to have done so. Rather, I claim to have provided grounds for skepticism about the prospects of such an attempt.

I should add in closing that I do not take the present argument to be a knock-down objection to consequentialism, assuming Norcross is right that consequentialists must embrace *life for headaches*. Rather, I merely take myself to have defended the more modest thesis that *life for headaches* really is very counterintuitive, even after a good deal of reflection on cases like *lives for convenience*. We may still be forced to accept *life for headaches* in spite of this. My point is that if we do so, we should see that we are swallowing a bitter pill. Norcross's efforts to sugar-coat that pill are in vain.

¹See Alastair Norcross, "Comparing Harms: Headaches and Human Lives," *Philosophy and Public Affairs* (Spring 1997), pp. 135-167. Unprefaced page references in the text are to this article.

²In characterizing this as an action, I assume that omissions can count as actions, but everything in the text could just as easily be put in terms of omissions for which someone can be held accountable.

³See Eric Peters, in "Why Must Motorists Drive only 55?" (*Consumer's Research*, November 1995).

⁴Peters, previously cited, p. 14.

⁵Bill Jackman of AAA, as quoted in *Policy Review*, September/October, 1996, p. 12.

⁶See John Taurek, "Should the Numbers Count?" *Philosophy and Public Affairs*, 6, pp. 293-316.