Vehicles and Crashes: Why is this Moral Issue Overlooked?

Philosophers should begin to think more seriously about the many moral issues that arise from our frequent use of personal motor vehicles (automobiles, vans, SUVs, motorcycles, trucks, and the like). I will argue that greater attention is warranted for two simple reasons. First and most obviously, personal vehicles cause tremendous amounts of harm. Second and more controversially, much of this harm is caused culpably. When culpable conduct causes serious harm, the state often responds by imposing criminal or civil liability. Yet the specific problems I will discuss have never led anyone to recommend the enactment of criminal legislation. A few commentators have proposed the imposition of tort liability, but no courts have yet complied. Even more surprising, however, is the fact that moral philosophers have not been vocal in condemning the culpable, harmful conduct I will describe. The main point of this paper—the topic of section 1—is to correct this unfortunate oversight. But I am equally interested in the theoretical question of what this neglect reveals about the methodology of contemporary moral philosophers. If this problem is so significant, why has it been overlooked? I will speculate about this matter in section 2.

Personal motor vehicles give rise to a host of important and difficult moral questions I will ignore. I will simply mention five such issues, but the list could go on and on. We spend far too much time in our vehicles—on average, nearly an hour per day—and become sedentary, obese, and unhealthy as a result. Our environment is degraded by concrete and...
contaminated by pollution. Personal vehicles facilitate white flight to suburbia and beyond, contributing to the racial segregation and decay of our inner cities. Our international policy is distorted by our thirst for foreign oil. Erratic and discriminatory enforcement of our traffic regulations compromises our status as a government of laws, not of men. But these are not the topics I will examine. I cite them only to indicate that the following discussion merely scratches the surface in describing one of the many moral issues that arise from our use of personal motor vehicles.

1. Vehicles and Crashes

I will argue that a surprising amount of driving in the United States today is morally problematic. To support this conclusion, I must establish that the types of driving I will identify cause serious harms culpably. I will not make the trivial observation that many motor vehicle accidents result from speeding, alcohol impairment, or some other kind of unlawful mode of operation. The wrongfulness of this conduct is widely appreciated. I will defend the much less obvious claim that a great deal of driving is morally suspect even when persons drive carefully, conforming to all of the rules and regulations in the Code of Motor Vehicles. The objectionable but lawful kinds of driving on which I will focus involve trips taken for frivolous purposes in crash-incompatible vehicles.

My contention that many of the risks created by lawful driving are culpable is controversial partly because of disagreement about the nature of culpability itself. I believe that a significant number of these risks are imposed negligently—a low but familiar type of culpability. Although I hope to raise moral questions about the use of personal motor vehicles, I will borrow a conception of negligence from the law. Legal accounts vary a bit from one jurisdiction to another, but the most widely cited definition is that conduct is negligent when a person creates a substantial and unjustifiable risk of harm that deviates from a standard of care to which a reasonable person in his situation would have conformed. When

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4 Moral norms are evolving about other potentially dangerous modes of operation—like the use of cell phones while driving. At this time, it is hard to know what conclusion should be reached. According to one survey, “data tying cell phone use to crashes are scarce, and studies have yielded conflicting risk estimates.” See Insurance Institute for Highway Safety (IIHS), Status Report 38:8 (26 August 2003), “One Year After New York’s Cell Phone Law, Drivers Resume Previous Calling Habits,” p. 6.

5 American Law Institute, Model Penal Code, §2.02(2)(d). To differentiate criminal from civil negligence, this definition also requires that the former involve a gross deviation from a standard of care. I do not know whether the degree of negligence I subsequently describe qualifies as gross. Since I do not conclude that criminal liability is ap-
a person is conscious of these unreasonable risks, his conduct is reckless rather than negligent—a higher degree of culpability.\textsuperscript{6} But drivers need not be aware of the risks I will describe to be culpable.

In order to establish that many of the risks of driving are imposed negligently, we must identify the conditions under which driving subjects others to a substantial and unjustifiable risk that deviates from the standard of care we should expect from reasonable persons. This question requires a determination of whether and under what circumstances the risks of driving are (1) substantial and (2) unjustifiable. Each of these topics will be discussed in turn. If I am correct that the kinds of driving I will describe subject others to a substantial and unjustifiable risk, I assume that I will have shown that these acts are negligent and therefore objectionable from a moral point of view.\textsuperscript{7} I will suppose, in other words, that reasonable (non-negligent) persons would not engage in conduct that creates substantial and unjustifiable risks.

Virtually any activity involves some risk of harm; risks become negligent only when they are substantial. Everyone is aware that personal motor vehicles cause tremendous amounts of harm. Still, a few of the statistics are worth rehearsing. The love affair between Americans and the automobile shows no signs of abating, as households around the country possess more motor vehicles than ever—even more than the number of licensed drivers. About 204 million personal vehicles are available for regular use. Daily travel in the United States totals about 4 trillion miles annually, an average of about 14,500 miles per person per year. Americans took 411 billion daily trips in 2001, or about 1,500 trips per individual. Long-distance travel added another 760 billion miles to this total. Approximately 87\% of all daily trips and 90\% of all long-distance trips took place in a personal motor vehicle.\textsuperscript{8}

Although the safety of vehicles has improved,\textsuperscript{9} driving in the United

\textsuperscript{6}Ibid., §2.02(2)(c).

\textsuperscript{7}A few commentators believe that subjecting others to risks is not wrong unless these risks materialize in actual harm. See Heidi Hurd, “What in the World is Wrong?” Journal of Contemporary Legal Issues 5 (1994): 157-216.

\textsuperscript{8}The statistics in this paragraph are drawn from the U.S. Department of Transportation, Bureau of Transportation Statistics, Highlights of the 2001 National Household Travel Survey (2002). The 2001 National Household Travel Survey (NHTS) is the most recent update of the information gathered in the Nationwide Personal Transportation Survey (NPTS) conducted in 1969, 1977, 1983, 1990, and 1995, and the American Travel Survey (ATS) conducted in 1977 and 1995. Telephone interviews are the primary source of data for these surveys.

\textsuperscript{9}By most measures, driving in the United States is safer than ever. The rate of fatalities per mile driven continues its steady decline. As Americans drive more and more, a constant number of fatalities indicate that driving has become safer. See Insurance Institute for Highway Safety, Status Report 38:7 (28 June 2003), “Side Impact Crashworthi-
States remains an extraordinarily dangerous activity. The number of fatalities has remained fairly stable throughout the last decade, although it rose in 2003 to 43,200—a fourteen-year high. To put this figure in perspective, we might note that more Americans were killed in car accidents in the month of September 2001 than died in the terrorist attacks of September 11. Motor vehicle crashes are the leading cause of death for persons of every age from 4 through 33 years old. But the number of fatalities offers a very limited perspective on the real hazards of personal motor vehicles. In 2001, an estimated 6,323,000 crashes injured 3,033,000 people; 4,282,000 of these crashes involved property damage alone. The economic cost of these accidents in 2000 was a staggering $230.6 billion.10

We might have somewhat less reason to be alarmed about these grim statistics if the dangers of motor vehicles fell almost exclusively on drivers.11 It is plausible to suppose that our moral and legal theories should distinguish the risks imposed on oneself from those imposed on others.12 The use of tobacco products and the consumption of high-calorie foods compete as the leading causes of preventable death in the United States today, but (in the vast majority of cases) the victims of these behaviors are the same persons who engage in and benefit from them.13 Vehicles are different in this crucial respect. Admittedly, the driver himself is the individual most likely to be killed or injured in a motor vehicle accident. Nonetheless, controversies about paternalism need not detain us, since drivers subject other persons to enormous risks of harm. Passengers account for about 30% of all fatalities in motor vehicle accidents; many other victims of crashes were not occupants in motor vehicles at all. In 2002, pedestrians suffered 4,808 deaths in accidents involving motor vehicles; 662 cyclists were killed as well.14 Clearly, personal motor vehicles pose a public health problem fundamentally different from the hazards of smoking or excessive eating.

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10The statistics in this paragraph are drawn from the U.S. Department of Transportation, National Center for Statistics & Analysis (http://www-fars.nhtsa.dot.gov).
11Surprisingly, nearly all of the litigation involving the risks of driving has been brought by owners who allege that their vehicles contain defective designs that failed to protect them from harm. Passengers in cars that are hit have rarely sued on the ground that design defects make other vehicles dangerous to them. In de Veer v. Morris, No. GC 020209 (Cal. Sup. Ct. Mar. 28, 2000), one such suit was dismissed on the ground that the driver of the hitting vehicle owed no duty of care to occupants of the car hit.
13The same is true of the risks of illicit drugs—widely but dubiously condemned as unjustifiable. See Douglas Husak, Drugs and Rights (Cambridge: Cambridge University Press, 1992).
Do these statistics show that driving subjects others to a *substantial* risk? The answer is unclear—and not simply because of the lack of consensus about how great a given risk must be in order to qualify as substantial. More fundamentally, theorists disagree about what statistic is most relevant in assessing the magnitude of a risk. The degree of risk appears very different when we focus on driving as a type of activity rather than on tokens of driving. In the aggregate, no one doubts that the foregoing data suffice to show that driving creates a substantial risk of harm to others. No other type of activity comes close to injuring millions of other people each year. But the dangers of driving become far less apparent when expressed by the *probability* of harm on a particular occasion. The likelihood that a serious injury will result from a given incident of driving is very small. On average, Americans travel two-thirds of a million miles before causing a fatality. Still, it is not unusual for a person to drive a million miles in the course of his life, and most of us are involved in at least one fairly serious accident at some time or another. More significantly, driving is the riskiest activity in which the vast majority of Americans routinely engage. It is safe to predict that if the typical reader of these pages (directly) kills or seriously injures another person, his weapon is likely to be a motor vehicle.

So which statistic is more significant? No single answer will suffice for all normative purposes. In my judgment, both the total amount of harm and the probability of its occurrence on a particular occasion are relevant to deciding whether the risk of driving is substantial. For purposes of moral evaluation, aggregate figures must be taken into account in cases in which individuals tend to perform tens of thousands of tokens of the same type of activity. The same is true of prudential assessment. For example, no one should believe that the risks of smoking are trivial by examining data about the probability of contracting cancer from a single cigarette. It is fair to describe the risks of smoking as substantial because the vast majority of smokers consume several thousand cigarettes in their lifetimes. The same point applies to operating a motor vehicle. I conclude that driving *per se* should probably be thought to create substantial risks of harm to others.

But I do not claim that driving *per se* is wrongful; I reserve this judgment for a particular *type* of driving that satisfies two conditions. Operating a vehicle with an unacceptable degree of *crash incompatibility* is the first of these conditions. When one vehicle collides with another, the

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15Since *criminal* liability is imposed for act-tokens, we have less reason to consider aggregate risks. Typically, the fact that the defendant has engaged in a series of comparable acts—or that others behave similarly—is irrelevant to his guilt. I do not propose, however, that criminal liability be used for the kinds of objectionable conduct I describe here.
vehicle that hits may be described as the *encroaching* vehicle, and the vehicle being hit may be described as the *crash partner* vehicle. Consumers who purchase vehicles often are interested in data about how their own vehicle is likely to fare in an impact. Questions about crash compatibility—about how their vehicle will affect their crash partner—are seldom asked. Moral issues arise when persons drive vehicles with too high a degree of crash incompatibility.

Pickup trucks and SUVs (sport utility vehicles) are two common categories of vehicles that tend to exhibit alarmingly high rates of crash incompatibility. In other words, occupants of cars involved in accidents have good reason to prefer to be hit by other cars rather than by SUVs or trucks. Although precise data change each year, there is no question that these vehicles, as a class, pose enhanced risks for crash partner cars—even when the weight of the encroaching vehicle is held constant. For every million registered encroaching cars weighing two tons (a very heavy car), 45 deaths occur in crash partner cars each year. But in collisions between cars and SUVs of the same weight, the fatality rate in crash partner cars soars to 76, and rises still further to 87 in the case of pickup trucks. The net consequences of crash incompatibility are lethal. Keith Bradsher estimates that “the replacement of cars with SUVs is currently causing close to 3,000 needless deaths a year in the United

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16 This distinction is useful in order to assess the impact of one’s conduct on others. From a third-person perspective, however, there may be no fact of the matter about whether the vehicle in question is the encroaching or the crash partner car.

17 I make no attempt to “draw the line” by identifying the precise point at which a given degree of crash incompatibility becomes too high. I simply assert that this point exists. Everyone would agree that a tank, for example, has too high a degree of crash incompatibility.

18 The problem on which I propose to focus is that of vehicles with an unacceptable degree of crash incompatibility. All too often, SUVs and pickup trucks manifest this problem. But I do not mean to suggest that all SUVs have too high a degree of crash incompatibility, or that crash incompatibility is unvarying across the entire class of SUVs and pickup trucks.

19 Commentators have noted the oddity of the fact that crash partner cars are generally made by the very same manufacturers as vehicles with a high degree of crash incompatibility: “The manufacturers were improving the safety of their passenger cars through the adoption of crush zones while the same manufacturers designed their SUVs to miss the cars’ crush zones and to smash into the cars’ passenger compartments during multi-vehicle collisions.” See Howard Latin and Bobby Kasolas, “Bad Designs, Lethal Profits: The Duty to Protect Other Motorists Against SUV Collision Risks,” *Boston University Law Review* 82 (2002): 1161-213, p. 1170.

20 Perhaps the foremost difficulty in attempts to generalize about the entire class of SUVs is that no standard definition of an SUV is available. For a rough approximation, see Keith Bradsher, *High and Mighty: SUVs—The World’s Most Dangerous Vehicles and How They Got That Way* (Cambridge, Mass.: Perseus Books, 2002), p. 4.

Vehicles and Crashes

Weight, height, and stiffness of construction are the three most important characteristics of vehicles that contribute to their crash incompatibility. On average, SUVs and pickup trucks are 900 pounds heavier than cars, and the gap between them is widening as very large SUVs account for a higher and higher percentage of sales. The conservation of momentum in a collision places smaller vehicles at an enormous disadvantage when the encroaching vehicle is heavier. In addition, SUVs and pickup trucks, as a class, are much more rigid than passenger cars. These types of vehicles frequently use a stiff frame-rail design rather than the softer unibody structure employed in cars. Finally, SUVs and pickup trucks tend to ride much higher than cars. Although this differential creates a mismatch during frontal impacts, side collisions pose a far greater concern. Side impacts are a growing problem in highway safety; in 2001, they caused about half of all car driver deaths in collisions involving two vehicles. Most cars are equipped with beams designed to reduce cabin deformation during side impacts. But the higher bumpers of SUVs and trucks miss these side beams, striking unreinforced doors and increasing the probability of intrusion into the cabin of the crash partner car. In combination, these three factors give SUVs and pickup trucks their high degree of crash incompatibility. When side impacts cause a fatality, occupants of the crash partner car are six times more likely to be killed than occupants of the encroaching vehicle; this differential rises to 25 when the encroaching vehicle is an SUV or pickup truck.

Of course, incompatibility creates a problem only in the event of a crash, so one might be tempted to respond that the solution is to drive more carefully so that fewer crashes occur. It is far easier, however, to

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23 Other geometrical characteristics are also relevant, but to a lesser degree. See the discussion in IIHS, "Putting the Crash Compatibility Issue in Perspective."
24 Weight is the most important factor affecting crash incompatibility. Obviously, weight differentials make crash incompatibility a problem even in collisions between two cars.
28 Although my case against SUVs and trucks emphasizes their high degree of crash incompatibility, these vehicles contribute to accidents and jeopardize the safety of others even when no issue of crash incompatibility is involved. SUVs and trucks obstruct the vision of other drivers, increasing the risk of crashes between vehicles other than the truck or SUV. This difficulty may pose an even greater safety hazard to drivers of cars.
manufacture safer vehicles than to produce better drivers. In any event, it is important to notice that the problem of crash incompatibility is posed regardless of how fault is distributed in an accident. Suppose a vehicle with a high degree of crash incompatibility collides with a car that negligently goes through a red light or stop sign. The driver of the encroaching vehicle may have been as careful as anyone could have demanded. Nonetheless, by operating a vehicle with a high degree of crash incompatibility, he imposes elevated levels of risk on those drivers who are negligent. Even reckless drivers have a right to expect that others not subject them to unreasonable risks of harm in the event of a crash.

My claim thus far is that moral issues are raised when drivers subject others to substantial risks by operating vehicles with an unacceptable degree of crash incompatibility. But the supposition that one person imposes a substantial risk on another does not suffice to establish that his conduct is culpable. To be negligent, his risky behavior must also be unjustifiable. I believe that most of the controversy about the morality of personal motor vehicles centers around the issue of whether and under what circumstances the risks of driving are imposed justifiably. The textbook illustration of conduct that justifiably subjects others to a substantial risk is speeding by an ambulance to rush a seriously injured patient to a hospital. Some commentators argue that all justified actions share this feature; each prevents a more imminent or serious harm than it causes.29

Are the risks of driving imposed unjustifiably? Whether a risk is justifiable depends partly on its magnitude; I have already argued that these are substantial. But an equally important factor is the reason(s) to create the risk. What are these reasons? Why are vehicles with a high degree of crash incompatibility manufactured, and why do so many consumers choose to buy them? Might the answers to these questions justify the substantial risks that these vehicles impose upon others? Many consumers suppose that the structural features that contribute to crash incompatibility cannot be eliminated without negating the advantages of operating the vehicles in question. Buses and heavy trucks, for example, have extraordinarily high rates of crash incompatibility, but few commentators believe it is wrongful to operate them for the simple reason that these vehicles are indispensable and could not be made significantly safer without detracting from their valuable purpose. Is the same true of the categories of vehicles on which I have focused—SUVs and pickup trucks? In addressing this question, I will concentrate on SUVs—even though they have a better record of crash compatibility than small trucks.

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I focus on SUVs for three simple reasons. First, they are more popular than trucks. SUVs account for 37% of the registered vehicles in the United States, and represent 49.3% of the 5.9 million vehicles sold in the first eight months of 2003. Second, data about SUVs are more widely available. Third, the geometrical features that contribute to the high degree of crash incompatibility in pickup trucks allow these vehicles to haul heavy loads—a purpose that is more likely to justify the heightened levels of risk they impose. Still, it is important to remain aware that most of my subsequent remarks about SUVs apply even more forcefully to pickup trucks.

The three structural features of SUVs that contribute to their crash incompatibility—weight, bumper height, and rigidity—are included in the design of these vehicles mainly in order to allow them to be driven off-road. If altering these structural features precluded off-road driving, the substantial risks caused by these vehicles might be justified on grounds of necessity, and persons would not be negligent for operating them. But this supposition provides a dubious ground to believe that the risks of crash-incompatible vehicles can be justified. In the first place, as Howard Latin and Bobby Kasolas have shown in their pioneering study, there is good reason to suspect that SUVs could have been designed with greater crash compatibility without detracting from their off-road function. Of course, this matter raises empirical questions in engineering about which philosophers should remain cautious. Still, consider the recent announcements from representatives of the auto industry in December of 2003. Manufacturers promised to improve crash compatibility by making the rail frames and front-end structures of their SUVs and pick-ups overlap with at least half of the corresponding areas on cars by 2009. These innovations will not impair off-road performance, and are estimated to add only $300 to the cost of new vehicles. Perhaps more importantly for present purposes, these improvements do not require new innovations in engineering. I conclude that if existing vehicles could have been designed to be safer to crash partners at a reasonable cost, their substantial risks to others could hardly be justifiable.

The more fundamental problem, however, is that few of these drivers

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31When this issue is litigated, courts typically perform a risk-utility balancing process (RUB). In practice, RUB simply requires a balancing of the risks, costs, and benefits of the product as it existed against those of the product if the safer design had been implemented. See Latin and Kasolas, “Bad Designs, Lethal Profits,” pp. 1185-86.
really have sufficient reasons to leave the road. Admittedly, *some* owners of crash-incompatible vehicles may have a legitimate need for off-road performance that would justify subjecting others to heightened levels of risk. But SUVs in particular are rarely driven for this purpose. Depending on how the question is asked, between 99% and 87% of SUV drivers *never* take their vehicles off-road; many of the remaining minority do so very infrequently.\(^3^4\) J.C. Collins, Ford's top marketing manager for SUVs, admits that "the only time those SUVs are going to be off-road is when they miss the driveway at 3 a.m."\(^3^5\) No plausible moral analysis of crash-incompatible vehicles would permit persons to impose substantial risks on others because corrective measures to reduce these risks would prevent an extremely rare activity of dubious value.

To be sure, many purchasers are attracted to SUVs not because of their off-road capabilities, but because they believe them to be safer.\(^3^6\) Although data on this topic are controversial,\(^3^7\) one matter is clear. Perceptions about the safety of these vehicles are typically exaggerated; SUVs fare better only in crashes involving other cars, not in single-vehicle crashes.\(^3^8\) In accidents not involving other vehicles—which account for almost half of all traffic deaths—the very features that make SUVs unsafe to others tend to make them unsafe to their occupants. In particular, SUVs as a class are notoriously susceptible to rollovers.\(^3^9\) Although less than 1% of crashes involve rollovers, these accidents cause one-quarter of all traffic deaths—more than side and rear impacts combined.\(^4^0\) More importantly, however, this attempt to defend crash-

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\(^3^4\) Bradsher, *High and Mighty*, p. 113.

\(^3^5\) Ibid.

\(^3^6\) Other buyers cite the need for space. But vehicles like minivans can be equally spacious without incorporating the geometrical features that contribute to the crash incompatibility of most SUVs.

\(^3^7\) "The risk to drivers of average midsize and large cars is about the same as for the average SUV." Tom Wenzel and Marc Ross, "Are SUVs Really Safer Than Cars?" *Access* 21 (Fall 2002): 2-7, p. 3. Bradsher's claims are somewhat stronger. He claims "SUVs are no safer than cars for their occupants ... SUV occupants die slightly more often than car occupants in crashes" (*High and Mighty*, p. 427). He also points out that "the safety hazards of SUVs have been mitigated until now because they have mainly attracted the safest drivers in America. The principal buyers of SUVs ... have been baby boomers in their 40s ... These affluent first owners of SUVs tend to be the most cautious drivers on the road, because they are mostly middle-aged people who have plenty of driving experience and still have acute vision, hearing and mental faculties. Half of them also have families, so they are much less likely to be out driving in the wee hours of the morning, when crash rates soar" (p. xvi).

\(^3^8\) See IIHS, "Putting the Crash Compatibility Issue in Perspective," pp. 3-4.

\(^3^9\) IIHS calls this fact "undeniable" (ibid., p. 6). Many courts have held SUV designs to be defective because they are prone to rollovers. See Latin and Kasolas, "Bad Designs, Lethal Profits," p. 1195.

\(^4^0\) Bradsher, *High and Mighty*, p. 150.
incompatible vehicles is completely unresponsive to the moral problem I have raised. As Nicholas Dixon observes, measures to protect my family and me are laudable unless they subject other equally innocent persons to substantial risks of harm. Only an ethical egoist could think that the pursuit of one's rational self-interest provides a justification for negligent conduct.

Thus far, my case for condemning some types of driving as wrongful has focused on the issue of crash incompatibility. But a second factor is just as important in supporting my conclusion. Why do people drive at all—even vehicles with an acceptable degree of crash compatibility? Recent studies yield surprising answers. All too often, our reasons for driving and subjecting others to risks are frivolous. Only 14.8% of all daily trips taken by Americans are to and from work (although an additional 2.9% are "work-related"). Even if we concede that trips back and forth to work are sufficiently important to the prosperity of our country to justify the risks they create, we should question whether the time and distance these trips involve is really necessary. Many persons elect to live great distances from their place of employment; the average time required to commute to work is longer than at any point in our history. On some occasions, the choice to locate one's home so far from work probably represents the lesser of several evils. On other occasions, however, this preference is based on no reason that would justify the elevated level of risk it creates.

More significantly, however, over 82% of all trips are not work-related. Travel to and from school and church consumes an additional 10%. Nearly half of all trips (44.6%) are for "family or personal reasons"; more than one-quarter (27.1%) are for "social and recreational" purposes. Reliable data that further subdivide the latter purposes into finer categories are hard to find. But everyone has ample experience with frivolous reasons for driving that would raise no moral qualms in any part of the country. Shoppers drive from one outlet to another to pay lower taxes on luxury goods like cosmetics and fashion accessories. People think nothing (apart from the prospects of being caught in traffic) of traveling across town to patronize a new bar or restaurant. Some simply sightsee or have no tangible objective other than to "go for a ride." No one would have any difficulty adding even more extreme examples of frivolous journeys to this list. Lots of driving in America today—perhaps more than a trillion miles per year—is purely recreational and cannot be justified under any plausible interpretation of a necessity requirement.

42 See U.S. Department of Transportation, Highlights of the 2001 National Household Travel Survey (see n. 8), p. 10.
43 Ibid.
Unless we pretend to be wholly agnostic about what activities have value, we must conclude that these reasons to subject others to risks of harm are unjustifiable. When the objective of a trip is truly frivolous, no one can pretend that it is necessary. Obviously, there are no precise criteria to decide whether the purpose for taking a given trip is truly frivolous. But if *these* reasons justify the most dangerous activity in which we routinely engage, what reasons could possibly fail to do so?

Thus I conclude that the two types of driving I have identified—operating crash-incompatible vehicles and taking journeys for frivolous purposes—are probably culpable. What other considerations might reinforce this conclusion? Economic analysis may be helpful. From an economics perspective, culpable automobile accidents might be conceptualized as cases of market failure. Owners of cars with a high degree of crash incompatibility fail to internalize the costs of accidents. When these costs are externalized, too many accidents involving crash-incompatible vehicles will occur. Transaction costs are too high for individuals to contract with one another to solve this problem. Under these conditions, many economic analysts believe that policy-makers should mimic the market and impose whatever solutions bargainers would have reached in a world without transaction costs. 44 What agreements would rational persons make about the kinds of vehicles individuals should be permitted to drive and the purposes of the trips they should be allowed to take? Frankly, I am unsure—although I am confident that there must be some limits on what we would permit others to do. 45 Perhaps, then, applications of an economic analysis may help to shed light on our problem.

Other theories of negligence seem to point to the same conclusion. Consider, for example, George Fletcher’s theory that a person is negligent when he causes harm by engaging in an activity that imposes non-reciprocal risks on others. 46 Individuals have an equal right to personal security, and cannot complain when a risk materializes in harm if they have engaged in conduct that creates a comparable risk. Driving a crash-incompatible vehicle is a paradigm case of nonreciprocal risk imposition. No one can be assured of avoiding a collision with a crash-incompatible vehicle without giving up driving itself. A motorist could choose to purchase a crash-incompatible vehicle as well, but this option only accelerates the “arms race” that led to the problem in the first place. A crash partner vehicle that was relatively safe in two-vehicle collisions only a few years ago is far less crashworthy today as larger, higher, and more

45 See n. 17.
rigid encroaching cars appear on the roads.

I have argued that many instances of driving in the United States today cause harm culpably: when people operate vehicles with unacceptable levels of crash incompatibility, or subject others to risks of harm for wholly frivolous reasons. A plausible case can be made that driving is wrongful when either of these two conditions obtain. This position might be described as the stronger version of my thesis. It may be too strong, and I prefer to be cautious and to minimize controversy. In light of the structure of our society and our nearly irreversible dependence on motor vehicles, I need not conclude that we act wrongfully by engaging in purely recreational activities like golf when we have no realistic alternative than to drive to our country clubs.

Therefore, I explicitly endorse only the weaker thesis—that driving is wrongful when both conditions obtain. Clearly, the risks of driving are most likely to be substantial and unjustifiable when these two considerations combine in a single case: a driver takes a frivolous journey in a crash-incompatible vehicle. According to the weaker thesis, we are permitted to drive to a prime location just to view a sunset, as long as we take a vehicle with an acceptable degree of crash compatibility. Even this conclusion is a bit too sweeping, since I have conceded that some people have a legitimate need for crash-incompatible vehicles that justifies the heightened levels of risk they impose. Such a person may only own one vehicle, and it is hard to see why he acts wrongfully when he drives it across town to his favorite fast food restaurant. My conclusions apply to those individuals—certainly the vast majority of SUV owners—who have no justificatory need to own a vehicle with a high degree of crash incompatibility. These persons, I claim, act wrongfully when they subject others to substantial risks for frivolous purposes. I believe it is likely that far more driving is objectionable than my weaker thesis suggests. Still, my argument has its most powerful application to cases that satisfy each of my two conditions.

An extraordinary amount of driving turns out to be morally impermissible, even if only the weaker thesis is correct. If Americans drive more than 4.75 trillion miles each year, and about one third of all driving takes place in a vehicle with an unacceptable degree of crash incompatibility, and roughly one-quarter of all trips are taken for frivolous purposes—all fairly conservative estimates—nearly half of a trillion miles of driving per year is objectionable. Even the weaker thesis suffices to show that an astounding amount of personal motor vehicle use in the United States today is morally wrongful.
2. Why is this Moral Issue Overlooked?

I have argued that moral philosophers should think seriously about personal motor vehicles because the enormous number of deaths and injuries caused by driving frequently involve culpability, taking place under circumstances in which persons subject others to substantial and unjustifiable risks of harm. Mysteriously, however, moral philosophers have ignored this topic. None of the dozens of anthologies assigned to undergraduates in courses in current moral and social issues mention the behavior most likely to actually kill these students—which, coincidentally, is the very behavior in which these same students are most likely to kill others. Commentators in related disciplines have been almost as silent. Why do moral philosophers neglect this topic? This question, I believe, has both practical and theoretical significance. As a practical matter, we should not anticipate much progress in solving the problem I have identified unless individuals can be made to recognize that much of their driving is morally problematic. On a theoretical level, the failure to conceptualize the kinds of driving I have described as wrongful may betray some disturbing features of the methodology widely employed among contemporary moral philosophers.

First, consider the practical significance of this neglect. Clearly, we should strive to prevent the tens of thousands of unnecessary deaths and serious injuries caused by crash-incompatible vehicles driven for frivolous purposes. How might this objective be achieved? A willingness to label conduct as wrongful is probably the most effective means to improve behavior—even more effective than economic incentives or threats of punishment. Moral condemnation is an inexpensive but powerful deterrent. Understanding the ethical implications of one's own conduct—and a readiness to criticize the conduct of those who deviate from norms—is absolutely central to any realistic solution to the problem I have raised. Many of the most spectacular examples of social progress—like the reluctance to litter or the reduced prevalence of drunk driving—took place after ordinary people came to appreciate the moral significance of their behavior. Consumers who violate intellectual copyright protections by downloading music from the Internet, for example, are unlikely to desist unless they can be made to believe that their conduct is

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47 See n. 1.

48 Latin and Kasolas write: “Despite the thousands of motorists in other vehicles killed or injured each year as a result of arguably defective SUV designs, we have not found a single law review article or treatise focusing on this serious public safety problem” (“Bad Designs, Lethal Profits,” p. 1163).

objectionable. The same point applies to the present inquiry. State regulation of the automobile industry can help to enhance crash compatibility, but there is no comparable means to prevent persons from taking frivolous journeys.\footnote{I do not mean to suggest that the state has \textit{no} resources to combat this problem. One would expect that the demand for frivolous journeys would be highly elastic, and therefore might be reduced by higher gasoline taxes.} We should anticipate wide disagreement about the purposes of driving that qualify as frivolous. Even if a rough consensus on this issue could be reached, however, no device to enforce a ban on frivolous journeys is feasible. If progress is to be made here, the informal mechanisms that inhibit persons from behaving wrongfully must play a pivotal role.

The first step is education. No one can appreciate the \textit{moral} significance of an issue unless he is aware of an issue that might be conceptualized in this way. We tend to be ignorant of the matters I have discussed here—probably \textit{willfully} ignorant. In deciding whether or what to drive, motorists are almost exclusively concerned with the consequences to themselves and their passengers. If informed, I am optimistic that many would experience serious qualms about jeopardizing the safety of others in order to drive crash-incompatible vehicles for frivolous purposes. But the dangers of personal motor vehicles (at least when operated lawfully) are seldom framed in moral terms. If I am correct about the practical dimensions of the problem I have raised, increased attention from moral philosophers (who have a captive audience of undergraduates) might actually save lives.

I am equally interested, however, in the theoretical significance of the fact that this problem has been overlooked. In what follows, I will call attention to only one of the many possible factors that may explain the reluctance of philosophers to take seriously the moral issues in driving.\footnote{Two additional factors are possible as well. First, much of my case against driving depends on controversial empirical claims. The contemporary moral issues on which philosophers have tended to concentrate—abortion, euthanasia, animal rights, and the like—lack a strong empirical component. Second, I believe that contemporary moral theorists take most seriously those issues on which philosophers have worked for centuries. Thus they may be disinclined to direct their focus to new areas of ethical import.} The explanation on which I will focus is that my claims seem \textit{counterintuitive}. In deciding what position to adopt on a given topic, moral philosophers typically attach extraordinary weight to their moral intuitions.\footnote{See Jeff McMahan, \textit{“Moral Intuition,”} in Hugh LaFollette (ed.), \textit{The Blackwell Guide to Ethical Theory} (Malden, Mass.: Blackwell Publishers, 2000), pp. 92-110.} They are likely to dismiss my position if these intuitions lead them to doubt that so much driving could possibly be immoral. To be sure, these intuitions are tested by reflective equilibrium—by being brought into
conformity with principles and theories. If these intuitions are sufficiently strong, however, they are likely to be preserved by elaborate refinements of the abstract considerations with which they are in tension.

I am certain that my conclusion—that approximately half of a trillion miles driven in the United States today is morally problematic—will strike many readers as highly counterintuitive. I could illustrate my confidence by citing several examples from respectable philosophical sources, but I will restrict myself to a single illustration. David McCarthy writes:

Each Sunday morning I go for a drive in the country just for pleasure and thereby impose a one in a million risk of death on Jones, who lives near the road. That is clearly permissible. But suppose that I were to get an equal amount of pleasure from playing Russian roulette on Jones, with a bullet in one of a million chambers. Many people would find that impermissible.

The foregoing kinds of claims are routinely made in order to support or reject a more general principle. How much confidence should we have in this methodology? Skepticism goes beyond the difficulty of imagining a gun with a million chambers. More fundamentally, McCarthy fails to defend his judgment that it "is clearly permissible" to engage in an activity "just for pleasure" that subjects an innocent person to a risk of death. The statement that driving for a frivolous purpose is permissible is simply presented as a moral intuition used to test subsequent judgments about acceptable levels of risk.

Are my conclusions really so counterintuitive? How might someone respond to this allegation? I offer two quick rejoinders. The preferred strategy is to deny that one's claims are as counterintuitive as they first appear. To some extent, this reply is sensible here. After all, many modes of operating a motor vehicle—like drunk driving, speeding, or some other violation of the traffic code—are already recognized as wrongful. We have no reason to believe that existing laws exhaust the class of impermissible driving. My claim simply extends the reach of these familiar moral norms beyond their existing boundaries. In addition, I do not insist that the extent of wrongfulness in driving a vehicle with a high de-


55The controversy over cell phones is a good example. See IIHS, "One Year After New York’s Cell Phone Law, Drivers Resume Previous Calling Habits."

56Certainly it is easier to persuade persons that a moral issue exists by extending an existing norm than by creating a new one. This strategy is called "moral piggybacking" in Paul Rozin, "Moralizing," in Allan M. Brandt and Paul Rozin (eds.), Morality and Health (New York: Routledge, 1997), pp. 379-401.
gree of crash incompatibility on a frivolous journey is especially great. Culpability is low, and the probability of harm is relatively small. Thus the immoral conduct I have described is not very serious; I do not allege that it rises to the level at which criminal sanctions would be warranted. 57

But I do not pretend that these responses to the counterintuitive flavor of my position are wholly adequate. Alternatively, I think it is instructive to scrutinize the intuitions in question. No good account has yet been offered about the nature of intuitions, or why we should regard them as credible. 58 I do not contend that we should mistrust all appeals to intuition as simply masking prejudices and preconceptions. 59 In the present context, however, there are special reasons to be suspicious of the specific intuitions that contest my thesis. We know that characteristics of respondents can have a profound affect on the content of their intuitions. 60 In particular, a wealth of empirical data indicates that individual perceptions of risk, as well as judgments about what levels of risk are acceptable, are frequently erroneous or irrational. 61 Mistaken assessments of risk conform to well-known patterns, several of which are relevant to the present inquiry.

Consider a number of examples of this phenomenon. 62 Individuals tend to overestimate the small risks they face, such as those posed by tornadoes and floods. In contrast, they tend to underestimate the large risks in life, such as those from heart disease and cancer. Clearly, the dangers of driving belong in the latter category. Risks are exaggerated when they are heavily publicized, and are downplayed when given less attention by the media. Motor vehicle accidents in general, and those involving crash-incompatible vehicles in particular, are sufficiently common to attract little publicity. People worry more about risks they believe to be outside their control, like airplane crashes. The typical motorist

57Thus I do not regard my conclusions as incompatible with my previous work on drunk driving. See Douglas Husak, “Is Drunk Driving a Serious Offense?” *Philosophy and Public Affairs* 23 (1994): 52-73.
thinks he is more competent than average, and believes he is sufficiently
skilled to avoid an accident. People tend to exaggerate risks with a cata-
strophic potential, like those at nuclear power plants. Motor vehicle
crashes, by contrast, endanger small numbers of people at a time. Indi­
viduals are more likely to deem risks acceptable as they become more
accustomed to them. New risks, on the other hand, create greater anxie­
ties. For most people, driving (for whatever purpose) is an everyday oc­
currence, and is widely treated as providing a background or baseline
level of risk. Agents tend to generalize from their own experience; if they
have driven for years without being involved in a serious accident, they
are inclined to believe it is less dangerous. Risks are said to be unaccept­
able when caused by conditions that are apparent and obvious. Many
drivers are unaware of the properties in vehicles that contribute to their
degree of crash incompatibility. People downplay the risks of conduct
they hold to be beneficial, and overestimate the risks of behavior they
believe to have no utility. As a type of activity, driving falls squarely in
the former category.

Perhaps a final factor provides the most important explanation of why
my topic has been overlooked. People tend to regard risky conduct as
permissible when they (and those in the social group with which they
identify) engage in it themselves. We are quicker to condemn risks as
unacceptable when caused by conditions that are apparent and obvious. As Paul
Rozin bluntly observes, “people don’t want to pay a lot for virtue.” It is much
easier to be critical of others than to change our own behavior. As Paul
Rozin bluntly observes, “people don’t want to pay a lot for virtue.” Although I have no data on this issue, I am confident that many moral
philosophers are guilty of the negligent conduct I have described. A
quick glance at the parking lot of my department confirms my suspicion
that many of my colleagues own vehicles with a high degree of crash
incompatibility. I doubt that many academics have a legitimate need to
go off-road, and I assume that we are no less likely than other Americans
to drive these vehicles for frivolous purposes. Many of us live far from
our places of work. Perhaps, then, philosophers have missed the problem
I have identified because we are equally responsible for creating it.

This list of errors and irrationalities in risk assessment could continue.
But the point is clear. Each of these several factors contributes to our
tendency to underestimate the dangers of personal motor vehicles. The
psychological mechanisms that skew risk assessment seem tailor-made to
allow people to ignore the kinds of hazards I have described—or to deem

63Ibid.
64See Rozin, “Moralizing,” p. 394.
65Thus the risks of motor vehicles are typically prominent among those most likely to
be underestimated in surveys. See W. Kip Viscusi, Rational Risk Policy (Oxford: Claren­
them acceptable when they become aware of them. But reasonable persons—those who do not create substantial and unjustifiable risks—should not fall prey to these errors and irrationalities. The reasonable person is not the statistically average person; he represents an ideal. He curtails his freedom in light of the legitimate security interests of others.66 The thrust of my argument is that reasonable (that is, non-negligent) persons would not jeopardize the welfare of others by driving crash-incompatible vehicles for frivolous purposes.

As I have indicated, I see no reason to believe that philosophers are immune from the factors that lead ordinary people to miscalculate the probabilities of various risks and to make mistaken judgments about whether levels of risk are acceptable. The perceptions of philosophers, however, are dignified when granted the status of intuitions. In the present context, this label affords these judgments more credibility than they deserve. If moral philosophers are indeed subject to these same psychological tendencies, it becomes easier to understand their neglect of the issue I have raised. At the same time, their failure may become more difficult to combat. A reduction in risky behavior is unlikely to occur until persons understand it to be morally objectionable, but our very familiarity with this behavior is among the factors that decrease the likelihood we will come to this realization. Although it is hard to know how this cycle might be broken,67 the obvious long-term solution is for moral philosophers to rely less on intuition and more on empirical evidence.68

I repeat that my observations in this section are speculative, and other factors may help to explain why the problem I have described has passed beneath the radar screen of moral philosophers. Since driving has become progressively safer,69 we may be less likely to appreciate the gravity of the situation. The problem with complacency is that our highways could be much safer still. Only a generation ago, driving in the United States was less dangerous than anywhere in the world. By 2001, however, the United States had fallen to ninth place. Although our accident rates have decreased, they have not decreased as fast as elsewhere in the western industrialized world. Most of our recent progress has come from improvements in the design of crash partner cars—like side head air-

68For a general defense of the advantages moral philosophers can gain by attending to empirical data, see John M. Doris, Lack of Character: Personality and Moral Behavior (Cambridge: Cambridge University Press, 2002).
These innovations are welcome, but side head airbags (as well as other structural improvements in encroaching vehicles) will not become standard until 2009. What should we do in the meantime? If motorists could be persuaded to choose crash compatible vehicles and refrain from taking frivolous journeys, thousands of unnecessary fatalities and injuries could be averted.

I have no illusions that the general public will be receptive to my proposals. Pleas to curb driving are likely to be met with ridicule and hostility. Personal motor vehicles play a special role in American culture, symbolic of freedom and prosperity. Persuading drivers to relinquish their crash-incompatible vehicles or to abstain from frivolous journeys may be more difficult than convincing carnivores to become vegetarians. Yet the comparison is suggestive. Substantial reductions in deaths and injuries could occur if only a few minds are changed.

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71Perhaps the most important part of the recent plan of the automobile industry to improve crash compatibility is to make side head airbags standard equipment in all cars sold in the United States. See IIHS, “Automakers Pledge Series of Steps to Improve Crash Compatibility.”
72I would like to thank Ruth Chang, Jacob Ross, Chandra Sripada, and two anonymous reviewers from Social Theory and Practice for helping me to improve this paper.