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Christopher Heath Wellman and A. John Simmons
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Is There a Duty to Obey the Law?

The central question in political philosophy is whether political states have the right to coerce their constituents and whether citizens have a moral duty to obey the commands of their state. Christopher Heath Wellman and A. John Simmons defend opposing answers to this question. Wellman bases his argument on samaritan obligations to perform easy rescues, arguing that each of us has a moral duty to obey the law as his or her fair share of the communal samaritan chore of rescuing our compatriots from the perils of the state of nature. Simmons counters that this and all other attempts to explain our duty to obey the law fail. Concentrating especially on refuting Natural Duty accounts of the duty to obey, he ultimately defends the view that there is no strong moral presumption in favor of obedience to or compliance with any existing state.

Christopher Heath Wellman is Associate Professor of Philosophy at Washington University in St. Louis. He works in ethics, specializing in political and legal philosophy, and he is the author of *A Theory of Secession: The Case for Political Self-Determination*.

A. John Simmons is Commonwealth Professor of Philosophy and Professor of Law at the University of Virginia. He is an editor of the journal *Philosophy & Public Affairs* and the author of several books, most recently *Justification and Legitimacy*.

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For and Against

General Editor: R. G. Frey

For and Against offers a new and exciting approach to the investigation of complex philosophical ideas and their impact on the way we think about a host of contemporary moral, social, and political issues. Two philosophical essays explore a topic of intense public interest from opposing points of view. This approach provides the reader with a balanced perspective on the topic; it also introduces the deep philosophical conflicts that underpin the differing views. The result is both a series of important statements on some of the most challenging questions facing our society and an introduction to moral, social, and political philosophy. Each essay is compact and nontechnical, yet avoids a simplistic, journalistic presentation of the topic.

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General Editor's Preface

SINCE the mid-1960s, the application of ethical theory to moral, social, political, and legal issues has formed a growing part of public life and of the philosophical curriculum. Except perhaps during the 1950s and the flowering of ordinary language philosophy, moral philosophers have always to some extent been concerned with the practical application of their theories. On the whole, however, they did little more than sketch implications or draw provisional conclusions with regard to practical issues based upon some distant familiarity with a few empirical facts. Today, the opposite is the case: They have come to immerse themselves in the subject matter of the issues with which they are normatively concerned, whether these come from law, medicine, business, or the affairs of social and political life. As a result, they have come to apply their theories with a much broader and deeper understanding of the factual setting within which the issues in question arise and have become of public concern.

Courses in applied ethics now figure throughout the philosophical curriculum, including, increasingly, within philosophy components of professional education. More and more periodicals – philosophical, professional, popular – devote space to medical and business ethics, to environmental and animal rights issues, to discussions of suicide, euthanasia, and physician-assisted suicide, to surrogate motherhood and the rights of children, to the ethics of war and the moral case for and against assisting famine victims, and so on. Indeed, new periodicals are devoted entirely to applied issues, from numerous environmental

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quarterlies to the vast number of journals in medical ethics that today feature a compendium of philosophical, medical, and sometimes popular authors writing on a diverse array of issues ultimately concerned with life, quality of life, and death.

What is striking about the *best* philosophical writing in all these areas (I concede that there is much chaff amongst the wheat) is that it is factually informed and methodologically situated in the subject areas under discussion to a degree that enables specialists in those areas – be they doctors, lawyers, environmentalists, or the like – to see the material as both engaging and relevant. Yet, the writing is pitched at the level of the educated person, comparatively free of technicalities and jargon, and devoted to matters of public concern. Much of it, whether by philosophers or others, such as economists and political and social scientists, is known outside the academy and has had the effect, as it were, of taking philosophy into the public arena.

Interest in applied ethics will continue to grow as a result of technological/scientific developments, enacted social policies, and political/economic decisions. For example, genetic engineering raises a number of important moral issues, from those that concern human cloning, illnesses, and treatments to those that center on alteration in animal species and the “creation” of new animals. Fetal tissue research holds out the promise of help for diabetics and those with Parkinson’s disease, but even using the tissue, quite apart from how we acquire it, is a controversial affair. Equally contentious is the bringing to term of severely deformed fetuses who will die almost at once, in order to use their organs for transplant. But so, too, is xenography, or cross-species transplantation, in which animals are treated as repositories of organs for humans.

Social, political, and legal decisions always spur ethical interest. Topics such as obscenity, pornography, and censorship are of perennial interest, as are straightforwardly economic/political issues to do with capital punishment, equality, majoritarian democracy, the moral assessment of capitalism, and the provision of societal welfare. Today, some comparatively new issues have come to figure in this ethical landscape, from the place of

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children in society and all manner of interest in educational policy and practice to population policy and its relation to the distribution of various societal resources. And it is obvious that, throughout the world, issues to do with nationalism, political and judicial sovereignty, and immigration are of massive interest to educated persons and raise all kinds of moral questions.

This new series, *For and Against*, aims to cover a good many of these applied issues. Collectively, the volumes will form a kind of library of applied ethics.

Philosophy is an argumentative discipline: Among its best practitioners, whom this series will feature, it proceeds by the clear and careful articulation, analysis, and assessment of arguments. Clashes of arguments, ideas, principles, positions, and theories are its very lifeblood. The idea behind the series is very simple: It is to capture this clash. Two or more philosophers, in opposition on some moral, social, or political issue, will state and defend their positions on the issue in as direct and powerful a manner as they can. Theory will be involved, but the general aim is not to have two authors differ over the development or worth of a philosophical theory. Rather, it is to show the application of philosophy to practice, with each author using as much theory as he or she thinks necessary to state and defend his or her position on the topic. Educated people generally should be able to read and assess the success of the authors.

The volumes will be polemical but in the best sense: Each author will dispute and defend a position on some controversial matter by means of clear and careful argument. The end, obviously, is that each volume will exhibit to the full the best case each author can muster for his or her respective side to the controversy.

The central question the present volume addresses, one as old as philosophy itself, is whether there is an obligation to obey the law. The question is not whether a legal system does internally, as it were, demand that those subject to it obey its edicts; in some sense, all legal systems do this. The question, rather, is whether there are good moral reasons to do what the legal system requires of us and what society as a whole expects of us. What

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is the nature of those reasons? Are they persuasive? What are the underlying concerns of moral and political life that lead us to think that obedience to law is required of us? Does the notion of being a good citizen, a participating member of political society, require us to obey? And if we give a provisional answer in the affirmative, that, for example, to be good citizens we are at least provisionally obliged to obey the law, what kinds of qualifications do we acknowledge as affecting the issue of whether we are bound? Christopher Wellman argues that there is a provisional moral duty to obey the law. A. John Simmons argues that there is not. In a lively debate, conducted in clear and careful prose, these distinguished philosophers come to grips with the various facets of this issue, factual, moral, and political, in a way that should enable readers at the end to make up their minds about whether there is a duty to obey the law.

R. G. Frey

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WE are immensely grateful to the many friends and colleagues who have helped shape our thinking on the duty to obey the law, and here we would like to express our gratitude to the anonymous readers who reviewed our preliminary proposal, as well as those who generously supplied written comments on earlier drafts of this book. In particular, John wishes to thank Nancy Schauber (and his daughter, Sarah, who was wonderfully tolerant of her working father), and Kit is indebted to David Lefkowitz and Carl Wellman. In addition, Kit is grateful to the National Endowment for the Humanities for a fellowship that enabled him to work on this project.

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A. John Simmons
Christopher Heath Wellman