

Christopher Heath Wellman  
A. John Simmons

# Is There a Duty to Obey the Law?



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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*.

# *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

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

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

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

# Acknowledgments

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 Schaubert (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

# Contents

<i>General Editor's Preface</i>	page ix
<i>Acknowledgments</i>	xiii
<b>I Samaritanism and the Duty to Obey the Law</b>	
<i>Christopher Heath Wellman</i>	
1 Why I Am Not an Anarchist	3
2 Doing One's Fair Share	30
3 Just and Unjust Laws	54
4 Confronting Injustice	74
<b>II The Duty to Obey and Our Natural Moral Duties</b>	
<i>A. John Simmons</i>	
5 The Problem and Its Significance	93
6 The Theories	102
7 Natural Duties and the Duty to Obey the Law	121
8 Conclusions	189
<i>Index</i>	197

# I Samaritanism and the Duty to Obey the Law

*Christopher Heath Wellman*



# 1 Why I Am Not an Anarchist

I don't have many vivid memories from childhood, but among those that stand out, I distinctly remember sitting at a stoplight and seeing a bumper sticker that proclaimed "Taxation is slavery!" This sticker made a great impression on me because I found it so bewildering; I could not fathom why anyone would compare *taxation* – a natural and appropriate part of our lives – to *slavery* – a horribly unjust institution. Indeed, at the time (I think I was about ten), I positively *looked forward* to the day when I would pay taxes. This may sound farfetched, but I was in awe of all that the state accomplished. In particular, I used to sit in the car and marvel at the incredible network of roads; I remember being amazed that people were able collectively to build such an extensive system of streets by merely pooling a portion of their individual incomes. Thus, I looked forward to paying my taxes principally because I wanted to share in the credit for what I considered a monumental communal achievement.

Probably because I thought it was too outlandish to be explained, I did not ask my father why anyone would compare taxation to slavery. As a consequence, it was not until many years later that I finally understood the point of the bumper sticker.<sup>1</sup> Taxation and slavery are alike insofar as both involve others nonconsensually taking at least a portion of the fruits of one's labor. Just

1 The "light bulb" moment occurred for me the summer after my first year of graduate school when I had the good fortune to hear a series of lectures by the extremely compelling anarcho-libertarian Randy Barnett.

as a slave owner essentially puts a gun to the heads of her slaves and forces them to work, the state essentially puts a gun to the heads of its constituents and demands that they hand over some of their wealth. Indeed, not only does the state coerce its constituents, it forcibly helps itself to a portion of their money in order to finance its continued coercion. Thus, if a government takes a third of one's income, for instance, then there is a very real sense in which the state appears morally tantamount to a slave owner who enslaves her slaves for only a third of their working lives.<sup>2</sup>

Although it might initially seem ludicrous to compare citizenship to slavery, upon closer inspection it proves surprisingly difficult to show why this comparison is inapt. One might protest that citizenship is importantly distinct from slavery insofar as the former is consensual, but the truth is that widespread political consent is a fiction.<sup>3</sup> Governments could not function effectively without uniformly coercing virtually everyone within their territorial boundaries; therefore, states cannot afford the luxury of imposing themselves upon only those who have (or would have) consented. One might suggest that political coercion is legitimate because it produces benefits (and, more importantly, produces benefits for the citizens), but the institution of slavery also produces benefits (and, insofar as slave owners provide food, shelter, and clothing for their slaves, slavery also benefits the slaves themselves). Moreover, one cannot object to slavery on the grounds that it does not provide a *net* benefit to slaves for two reasons. First, it is implausible to suppose that absolutely everyone is better off because of the state's presence (think, for instance, of the rugged individualist who would prefer to take her chances in the state of nature), and thus one could not justify the state's coercion in terms of the net benefits to all those

2 Perhaps the most celebrated comparison between political coercion and slavery is Robert Nozick's "Tale of the Slave" in *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 290–2.

3 See A. John Simmons, *Moral Principles and Political Obligation* (Princeton, NJ: Princeton University Press, 1979), especially Chapters III and IV on the absence of consent.

coerced. Second, even if everyone benefited from political coercion, it would be objectionably paternalistic to suppose that this alone justifies the state's imposition because each of us has a right to choose whether and precisely how we would like to be benefited. (An investment company could not justify taking control of my life savings without my permission merely on the grounds that its money management would benefit me, for instance.) Finally, it will not suffice to point out that political subjects are generally *happy* to be citizens or that compatriots typically *identify with* one another because not all citizens are happy to be coerced or identify with their compatriots. What is more, even if all citizens were either happy to be coerced or identified with one another, it is not clear why this would justify the coercion; certainly slavery would not be justified even if one's slaves were happy with the arrangement or identified with one another.

Thus, when one pauses to look closely at the comparison between slavery and political imposition, one sees that it is surprisingly difficult to distinguish between the two. The key shared element is *nonconsensual coercion*. This feature that makes slavery impermissible is also utilized by all governments and thus places the burden upon any of us who are reluctant to label all political states unjust. Thus, the analogy between slavery and political coercion appears not only apt, it is helpful insofar as it motivates the central and most important question of political theory: Why not be an anarchist?

## **A Defense of Statism**

I am not an anarchist because I believe political states provide vitally important benefits that could not be secured in their absence, and they supply these benefits without requiring their subjects to make unreasonable sacrifices. This defense of statism openly depends upon the truth of three claims: (1) political states supply crucial benefits, (2) these benefits would be unavailable in the absence of political states, and (3) states can render their services without imposing unreasonable costs upon those they

coerce.<sup>4</sup> Let me quickly explain why I think each of these premises is plausible.

Perhaps the best way to get a sense of the benefits of political society is to imagine what life would be like if your state were to go completely out of existence. Unless one lives in a very close-knit, face-to-face community where everyone knows each other and is invested in the group as a whole (which almost none of us does), it seems unrealistic to think that life without a political state would be anything but a horribly chaotic and perilous environment where one would lack the security necessary to pursue meaningful projects and relationships. In other words, for the vast majority of us, it would be virtually impossible to live a rewarding life.

Let me stress that in positing this gloomy picture, I do not mean to suggest that all humans would be revealed to be inherently evil; rather, I believe that even well-meaning, rational people would end up in a horrible environment if there were no state. I think that unless the state is present to establish, enforce, and adjudicate a clear and uniform set of rules that everyone must follow, trouble would ensue. The problem is not that everyone would seek to violate the moral rights of others simply because they knew that they were unlikely to be punished (though some undoubtedly would); it is that conflicts would inevitably arise even among morally good people who genuinely prefer a stable and just peace.

Consider briefly just three things that social contract theorists have traditionally cited as unavoidable sources of chaos. First, in the absence of a state there would be no definitive body to establish a salient set of rules; as a consequence, conflicts would abound even among well-meaning people who sincerely disagree over what justice requires. The point here is that, even if one supposes that moral rights exist and are often generally recognizable and recognized by the vast majority of us, devils lurk in the details. Consider, for instance, property rights. Let us

4 I understand "statism" to be merely the denial of anarchism. Thus, all statisticians believe that political states *can* be justified, and many believe that (at least some) existing states *are* in fact legitimate. The defense of statism I offer here draws upon ideas I introduced in "Liberalism, Samaritanism and Political Legitimacy," *Philosophy & Public Affairs* 25 (1996): 211–37.