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Douglas Husak and Peter de Marneffe
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The Legalization of Drugs

In the United States today, the use or possession of many drugs is a criminal offense. Can these criminal laws be justified? What are the best reasons to punish or not to punish drug users? These are the fundamental issues debated in this book by two prominent philosophers of law. Douglas Husak argues in favor of drug decriminalization by clarifying the meaning of crucial terms such as *legalize*, *decriminalize*, and *drugs*; and by identifying the standards by which alternative drug policies should be assessed. He critically examines the reasons typically offered in favor of the current approach and explains why decriminalization is preferable. Peter de Marneffe argues against drug legalization, demonstrating why drug prohibition, especially the prohibition of heroin, is necessary to protect young people from self-destructive drug use. If the empirical assumptions of this argument are sound, he reasons, drug prohibition is perfectly compatible with our rights to liberty.

Douglas Husak is Professor of Philosophy at Rutgers University and Professor of Law at Rutgers Law School. He is the author of many articles and books, including *Philosophy of Criminal Law*, *Drugs and Rights*, and *Legalize This! The Case for Decriminalizing Drugs*.

Peter de Marneffe is Associate Professor of Philosophy at Arizona State University. A recipient of postdoctoral fellowships at the University Center for Human Values at Princeton University and at the Program in Ethics and the Professions at Harvard University, he has published articles on liberty and liberalism in *Philosophy & Public Affairs* and *Ethics*, among other journals.

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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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Douglas Husak

Rutgers University

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For Linda
—D.N.H.

For Katrin
—P. de M.

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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 around 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 the relation of this 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.

We are, it is sometimes said today, involved in a "war on drugs." Whole communities, including the most vulnerable segments of them, are held to be battlegrounds of this war, and our prison populations have grown as drug offenses are prosecuted with vigor. How are we to conduct this "war"? What are we to do about the growing number of drug offenders who swell our prisons? What

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steps ought we take to deal with the reality of drugs in our midst? The present volume takes up the very controversial and politically contentious matter of whether drugs should be legalized. Once certain conceptual issues are clarified, and once certain empirical matters are sorted out, Douglas Husak, a distinguished philosopher of law, argues in favor of legalization while Peter de Marneffe, a distinguished political philosopher, argues against it. Which drugs are involved, which drugs should be legalized, and how drug offenses should be regarded all figure in this discussion, as do issues involving soft drugs as the precursors of hard ones and the relationship of drug taking and crime. It should be possible for readers at the end of the discussion to understand the social/political issues involved, to have at least some grasp of the empirical questions that bear upon the debate, and to appreciate the clashing arguments by which each side hopes to buttress its case. As will become evident, the debate is spirited, but it is conducted in a clear and careful prose that should enable readers to decide for themselves where they stand on legalization.

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