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**Political Obligation and the Particularity Problem: A Note on Markie**

*Abstract:*

P.J. Markie tries to solve the so-called particularity problem of natural duty accounts of political obligation, a problem which seems to make natural duty accounts implausible. I argue that Markie at best “dissolves” the problem: while his own natural duty account of political obligation still does not succeed in ensuring particularity, this is not an implausible but an entirely plausible implication of his account, thanks to the weakness of his concept of political obligation. The price for this, however, is that his approach has little to do with political obligation and the particularity problem as discussed in the literature.

*Key words:* natural duties; particularity problem; political obligation; universal jurisdiction

P. J. Markie writes:

Natural duty theorists of political obligation try to base a moral duty to obey the law on some natural duty, such as the duty to promote justice. Their critics say they confront an insurmountable obstacle in the particularity problem: Since natural duties do not bind us to some persons and institutions more strongly than to others, they cannot support a duty to one particular state or society. I solve the particularity

problem, by developing a version of the political obligation thesis, giving a natural duty argument for it and showing that the particularity problem does not arise for the argument.<sup>1</sup> (321)

I shall argue here that Markie does not solve the particularity problem. At best, he “dissolves” it: by this I mean that his account of political obligation definitely does not ensure particularity, but that given the weakness of his concept of political obligation this is not an *implausible* but an entirely plausible implication of his account. The price for this, however, is that his approach has little to do with political obligation and the particularity problem as discussed in the literature. His approach misses the point.

Markie endorses the following argument in support of what he calls “the Moderate Political Obligations thesis”<sup>2</sup> (327).

- II: (1) We have a natural duty to do acts that are acts of justice, as well as ones that promote justice.
- (2) The fact that a just law of our reasonably just government legally obligates us to do A makes it the case that, in doing A, we will be doing an act of justice and/or promoting justice.
- (3) If we have a natural moral duty to do Y, then the fact that, in doing A, we shall be doing Y makes it the case that we have a *prima facie* moral duty to do A.

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<sup>1</sup> P. J. Markie, “Political Obligation and the Particularity Problem,” *Ratio (new series)* 22(3) (2009), pp. 322-337. All page numbers in brackets refer to this text.

<sup>2</sup> “*The Moderate Political Obligation Thesis*: If we are legally obligated to perform an act by a just law of a reasonably just society, then that fact, that we are legally required to perform the act by a just law of a reasonably just society, gives us a *prima facie* moral duty to perform it.” (326)

(4) Therefore, the fact that a just law of our reasonably just government legally obligates us to do A makes it the case that we have a *prima facie* moral duty to do A.

He then refers to A. J. Simmons's particularity problem:

The claim is that natural duty arguments like (II) prove too much. For any natural duty argument in support of our *prima facie* moral duty to obey the laws of our government, there is a parallel argument for the obviously false conclusion that we have a *prima facie* moral duty to obey the laws of foreign governments. ... The first step in assessing this complaint is to consider the analog to argument (II) that threatens to commit us to a *prima facie* moral duty to obey the just laws of reasonably just foreign governments.

III (1) We have a natural duty to do acts that are acts of justice, as well as ones that promote justice.

(2) The fact that a just law of a reasonably just government legally obligates those legally subject to it to do A makes it the case that, in doing A, we will be doing an act of justice and/or promoting justice.

(3) If we have a natural duty to do Y, then the fact that, in doing A, we shall be doing Y, makes it the case that we have a *prima facie* moral duty to do A.

(4) Therefore, the fact that a just law of a reasonably just government legally obligates those legally subject to it to do A makes it the case that we have a *prima facie* moral duty to do A.

If our endorsement of argument (II) commits us to endorsing argument (III), we do indeed have a problem. Yet, does it? Can we give an adequate reason for rejecting

(III) that will not also commit us to rejecting (II)? The answer is that we can. (331-2)

Most of the things Markie says to support this answer are irrelevant; the rest is question-begging or wrong. Let me explain.

The irrelevant things include his example of a just foreign government “requiring its subjects to pay a certain percentage of their income in taxes” and the ensuing remark that “our act of sending that percentage of our income to the (surprised) foreign government” would “clearly” not be “an act of justice” (332). Leaving aside the question of how clear or unclear that is, the issue, one should remember, is, as just quoted, whether “*a just law* of a reasonably just government legally obligates those *legally subject to it*” (my emphases). Thus, the foreign government might be “surprised” not just if foreigners send it money, but also if citizens it has exempted from the law send it money. Conversely, it is not clear why a *just* French law prohibiting *everybody* (universal jurisdiction) from doing certain things to innocent people wherever they are should not put Canadians under a *prima facie* moral duty not to do what the French law prohibits them from doing, whether in France or elsewhere. If it’s *just*, it’s *just*, isn’t it?

Part (but only part) of the problem here, of course, is precisely the extreme moderateness of Markie’s “Moderate Political Obligation thesis.” Indeed, it is so moderate as to be uninteresting. I am not sure, for example, that an anarchist would have to object to it. We can see this more clearly by generalizing the “Moderate Political Obligation thesis” to a “Moderate Obligation thesis”:

If we are positively obligated (by this I simply mean that the instruction or norm

implicitly or explicitly *claims* that we are so obligated) to perform an act by a just instruction or norm of a reasonably just entity, then that fact, that we are required to perform the act by a just instruction or norm of a reasonably just entity, gives us a *prima facie* moral duty to perform it.

This thesis is also applicable to mothers, and raises the particularity problem there, too. To wit, if a reasonably just mother (I do not mean that she is merely just *as* a mother, but just *and* a mother) gives a just instruction to somebody, then that somebody – whether he is the mother’s child or not – is under at least a *prima facie* obligation to follow the instruction – how else could it possibly be when the instruction is *just*? If a just instruction (whether given by law, by my mother, or by a Ukrainian punk rocker) *applies* to me (and *this*, as Markie knows [323, n. 1], is the term used by Rawls, who came up with the natural duty justification of political obligation– Rawls does not talk about being *legally* subject to the institutions or norms in question), then how can this fact *not* give me a *prima facie* duty to obey? Such a duty or obligation seems to simply follow from what “justice” *means*.<sup>3</sup>

Markie finally acknowledges this problem (and hence also acknowledges at least

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<sup>3</sup> To avoid misunderstandings – I do not need to surreptitiously substitute here what Markie calls “the Weak Political Obligation Thesis” (324) for his somewhat stronger “Moderate Political Obligation Thesis”: the instructions of a mother can be just not only because they are completely independent of the mother (like the instruction not to torture babies for fun), but because, for example, the mother has arrived first at the site of a traffic accident and is best qualified to organize the efforts to help, telling you to call the ambulance, me to put up warning signs for the traffic etc. Here *the fact that she is saying what she is saying* is what (in this situation) confers certain specific duties on us that would not have existed independently of her issuing the instructions.

implicitly that his example of paying taxes to foreign countries is, as I have claimed, irrelevant). He says:

Proponents of the particularity problem may assert that if we say that we are doing justice by following the just laws of our own reasonably just government, then we must say the same thing about our following the just laws of reasonably just foreign governments. (334)

Indeed, that is exactly what they will say and what I just have said. But now Markie claims:

Yet, they overlook an important difference between the two cases. In the case of our own government, we are participants in a social practice to an extent capable of supporting a legal obligation; in the case of the foreign government, we are not. The laws of our government define specific dimensions of a social practice in which we are participating. The laws of a foreign government do not. (334)

However, this is again an entirely irrelevant (or question-begging) statement, since for Markie participation in the social practice seems to mean nothing more than having a legal obligation. (“Since we have a legal obligation to obey the law, we are, at least in whatever way is required to support legal obligation, participants in the legal system.” 333) Thus the problem lies elsewhere. After all, not all laws apply to all citizens, and some laws apply to foreigners. And again, Markie then acknowledges this real issue, namely with the sentence immediately following the last indented quote:

What if a foreign government extends its reasonably just legal system to our actions? Does not the natural duty approach implausibly assign us a moral duty to obey its just laws? (334)

I shall say something about the last sentence of this quote at the end of the paper; for now, however, let us concentrate on the first sentence. Markie tries to avoid the objection that with the possibility expressed in this sentence the particularity problem returns with a vengeance by claiming that:

[it] involves two mistaken assumptions; first, that a government could impose a legal obligation on any individuals anywhere simply by fiat or intention, and, second, that such a law would be just. Suppose the American government declares that all French citizens (in France) are to pay an annual tax of \$1,000 to the American treasury. On quite plausible accounts of legal obligation, the American law fails to generate a legal obligation for the French citizens. They are legally obligated to pay the tax only if they are required to do so by a valid rule of a legal system that exists in their society. The American law is not a valid rule of a legal system that exists in their society. Even if it were, it would certainly not count as a just restriction of their liberty.

We may then reject argument (III) and accept argument (II). The second premise of (III) is false; the second premise of (II) is true. The particularity problem is not an obstacle to the natural duty defense of political obligation as formulated in (II).

Markie is mistaken. To start with, the first assumption he mentions is actually correct, as the already mentioned real-world phenomenon of universal jurisdiction shows. Universal jurisdiction does create certain legal facts for everybody, whether one likes it or not. In contrast, his claim that people are *legally* obligated to pay the tax “only if they are required to do so by a valid rule of a legal system that exists in their society” is not an argument at all, but simply begs the question. Also question-begging is his remark, made

in a footnote, “that our legal duties are defined by the valid laws of the legal system of our society, and the legal system of another society cannot transform itself into the legal system of our society by its own decree” (335). To be sure, the latter part of this statement, starting with “and,” is quite correct. But it is correct for the banal reason for which it is also correct that the set of instructions issued by *your* mother cannot turn itself into a set of instructions issued by *my* mother by their own decree (or the decree of your mother). However, that is irrelevant. What is not irrelevant is the fact that the instructions of your mother can easily, by a decree of your mother, be turned into instructions that address, and are in that sense applicable to, me. She can do this by explicitly saying that they also apply to me. Denying this simply ignores what speech-acts can do. And denying that foreigners can be legally subjected to the laws of other states ignores what law can do and does do. After all, even short of the phenomenon of universal jurisdiction (which Markie, curiously, never mentions), millions of people are subjected to the laws of other countries, for example because they live in or travel in other countries. Thus, Markie’s remarks about what law can and cannot do ignore the actual legal reality.

Moreover, the two assumptions are not even necessary for the objection to work. If Markie does not have to claim “that a government could impose a legal obligation” on its citizens “simply by fiat or intention” and “that such a law would be just,” the critics do not have to claim such things either. What claim does Markie make? He claims that reasonably just governments could impose a *prima facie* moral obligation on citizens by imposing a *just* law on them. Thus, if he wants to counter the particularity problem, he would have to show that a reasonably just government cannot impose a *prima facie* moral obligation *on foreigners* by imposing a *just* law on them. He does not show anything of

this sort.

In fact, his actual reply in the last indented quote misses the issue. While it might be true that the US government cannot justly impose *certain* laws on foreigners, it is also true that it cannot justly impose certain laws on its own citizens. For example, on some “quite plausible accounts of legal obligation” the French government can impose on foreigners a just law requiring them to get a special permission in the form of a visa before entering France; while the USA cannot *justly* require its own citizens to get a special permission before going to certain countries (of course, the USA does make such requirements on its own citizens, but not justly). However, the fact that it might be true that there are certain laws that states can justly impose on citizens but not on foreigners does not at all show that there are *no* laws they can justly impose on foreigners.

Thus, Markie does not solve the particularity problem he sets out to solve. If just laws of reasonably just societies put citizens to whom those laws apply (and there are laws that apply to citizens) under a *prima facie* moral obligation to abide by those laws, then just laws of reasonably just societies also put foreigners to whom those laws apply (and there are laws that apply to foreigners) under a *prima facie* moral obligation to abide by those laws.

However, I deliberately said that Markie does not solve the particularity problem *he sets out* to solve; that is to say, he does not solve the particularity *problem* that is discussed in the literature. In fact, he himself does not really have a particularity problem (although he seems not to realize this). To explain this, I have to make good on my promise to return to the second sentence of the following quote:

What if a foreign government extends its reasonably just legal system to our

actions? Does not the natural duty approach implausibly assign us a moral duty to obey its just laws? (334)

The complication I have in mind is that the natural duty account assigns to us the political obligation to obey the laws of others countries only *then* implausibly if a sufficiently strong conception of political obligation is used, for example: “If we are legally obligated to perform an act by a law of our society, then that fact, that we are legally required to perform the act by a law of our society, gives us a *prima facie* moral duty to perform it, at least as long as the law or our society are not *grossly* unjust.” While I do not think that we have such a political obligation, the claim that we do might still have a certain *prima facie* plausibility for many people. However, what does certainly *not* have *prima facie* plausibility – excepting perhaps cases where we live or travel in other societies – is that we also have to obey *foreign* laws applying to us as long as those laws are not *grossly* unjust.

However, if the implausibility of the duty assignment disappears, the particularity problem disappears *as* a problem. This is precisely what happens under such a weak or “moderate” account of political obligation as Markie’s. For, as I have argued, it seems to be close to an analytical truth that we have a *prima facie* moral obligation to follow *just* laws that apply to us. How, then, could the fact that we are legally required by a just foreign law that applies to us and that has been issued by a reasonably just foreign society *not* give us a *prima facie* moral duty to do what the law asks us to do?

Thus, in a certain way Markie does “solve” *a* particularity problem. However, the solution is uninteresting because it does not refer to what is usually and reasonably understood as political obligation and the particularity problem in the literature.