



## **Hume on the Morality of Princes**

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## HUME ON THE MORALITY OF PRINCES

"There is a maxim very current in the world," says Hume (Treatise III, ii, sec. 11) "that there is a system of morals calculated for princes, much more free than that which ought to govern private persons."<sup>1</sup> He interprets the maxim to mean that "the morality of princes ... has not the same force as that of private persons, and may lawfully be transgress'd from a more trivial motive." And he gives as an example: "we must necessarily give a greater indulgence to a prince or minister, who deceives another; than to a private gentleman, who breaks his word of honour" (T 569).

This passage, cryptic though it is, makes Hume sound bad. He seems to be a cynic, or a skeptic, or an immoralist, with respect to the morality of nations. Does he think that princes have a special right to act immorally? Even worse is the reason he gives: international relations just don't matter very much, he says. And the chapter in question is not just a self-contained essay more or less tacked on to the Treatise. Hume tries to connect it integrally with his theory of justice. The point of the chapter is not to put forward a view about the morality of international relations (a view Hume himself admits may be found shocking), but to demonstrate the power of the theory of justice by showing how the "maxim current in the world" can be defended upon the theory's principles.

The passage has not won approval from recent commentators. One, Marshall Cohen, labels Hume a "moderate skeptic" with regard to international morality and argues vehemently that Hume's position should be condemned as immoral.<sup>2</sup> Cohen, who thinks that there is only one system of morality and that it

applies "with equal force to princes and private persons,"<sup>3</sup> evidently thinks any system weakening ordinary standards is immoral by definition. He traces Hume's allegedly morally flawed views to what he regards as a deep flaw in Hume's moral theory, namely, his conventionalism. J.L. Mackie<sup>4</sup> and Jonathan Harrison<sup>5</sup> are both considerably more sympathetic to Hume's general position, but nevertheless are critical of the chapter in question. They agree with Hume's observation that international morality is weaker than private. (Harrison points out that people tend to regard breaches of private morality as more serious than breaches of international morality: "A minister may be dismissed for sexual misconduct, although he breaks solemn treaties with other nations with impunity."<sup>6</sup> But, contrary to Hume, they find this weakness deplorable, Harrison arguing that, given the relative amount of harm princes do, the indulgence allowed them is irrational.

Harrison in fact at first agrees with Hume: "He is right, too, in suggesting that the obligations of nations to be just in their dealings with one another is [sic] of less force than the obligations of private persons."<sup>7</sup> But after ten pages he has evidently changed his mind: "[with respect to] what Hume says about the comparative force of the morality of princes and the morality of private persons, though it is clear that there is nothing in principle wrong with Hume's view that the former has less force than the latter ... it is doubtful whether he is right in saying that the former do in fact have less force than the latter."<sup>8</sup> Like Cohen, who holds that "Injustice among nations should be regarded as being as reprehensible as injustice among individuals," Harrison concludes (more tentatively than Cohen) "my

own feeling ... is that though Hume is right in thinking that the morality of princes is commonly regarded as being of less force than private morality, he is wrong ... in thinking that ... they [sic] are of less force."<sup>9</sup>

So none of our commentators agree with Hume that international morality not only is, but is properly, weaker than domestic. How did Hume go wrong? Hume argues that international morality is weaker because the interests at stake are less. Where the interests at stake do not matter very much, Hume thinks, it is not so important what people do, and thus the moral obligations involved are weaker. (Hume thinks this idea simply follows from his theory that justice is a convention based on universal interest.) But all three critics reject the contention that relations among nations do not matter as much as relations among private gentlemen. Princes who seize territory do more harm than private gentlemen who steal each other's land, notes Harrison.<sup>10</sup> All three point out that the problem of war is more serious in our time than it was in Hume's, although Cohen complains that even in Hume's time the problem was serious enough to render inexcusable Hume's evident complacency about the less vigorous condition of international morality. The problem is not that international morality is less important, but that states have less of an incentive to obey the rules since the rules are less "securely established," as Mackie puts it.<sup>11</sup> As a remedy, Harrison supports "world government with adequate power,"<sup>12</sup> Mackie "some strengthening of international government."<sup>13</sup>

Thus Mackie and Harrison seem to concede to Hume that if international relations were less important than domestic, international morality could

reasonably be defended as weaker; whereas Cohen seems to reject the very idea of a weaker system of morals. This surely points to serious disagreement in underlying moral theory. Now Hume in section 11 clearly holds that there is a close and interesting connection between his general theory of justice, and his views on international morality; and the critics do not overlook this connection. Cohen, as noted, traces Hume's immoralism ultimately to his conventionalism. Mackie thinks that Hume's failure to appreciate the true importance of international morality indicates that the theory of justice is in need of "partial revision"; justice cannot be derived from "self-interest alone" (assuming prudence) as Mackie thinks Hume holds, but from self-interest plus moral sentiments, stable dispositions, and a reserve of sanctions (nations have the interest, but lack the sentiments and dispositions).<sup>14</sup> Like Mackie (but unlike Cohen), Harrison accepts the connection between justice and interest and the principle that justice doesn't matter as much where the interests at stake are not as great. But Harrison thinks that Hume's conclusion that misdeeds done by princes are therefore more permissible than misdeeds done by private people is a consequence of his failure to note a distinction between the harm done by collective breaches of the law and that done by individual breaches. Collectively, Harrison agrees, breaches of domestic morality would do more harm than breaches of international morality; but individual breaches by princes do more harm than individual breaches by private people.<sup>15</sup> Hence it is not true, as Hume thought, that because private morality is more important, breaches of international morality are less serious.<sup>16</sup>

But despite this rejection of Hume's conclusions, none of the commentators explores in detail just what those conclusions might be. What is the content of the "system of morals calculated for princes"? Although Hume is by no means clear about it himself, each critic has his own idea. Cohen seems to think that on Hume's views, princes are entitled to break the moral rules in various unsavory ways, for reasons good or bad. He finds this "unacceptable"<sup>17</sup> saying plaintively, "But surely Hume cannot think it would be acceptable for a prince to repudiate his obligations under a treaty after the other side had performed, or to violate the territorial rights of others [except for] self-defense...."<sup>18</sup> Mackie seems to think that at the very least, Hume condones lying, but he does not guess how much further Hume might go. And Harrison thinks Hume means two things, which he says are "quite distinct." The first is that it is permissible for princes to break the moral rules in circumstances where it would not be permissible for private people to do so. The second is, that although it is "reprehensible" for princes to break the rules, it is less reprehensible than for private people to do so.<sup>19</sup>

So we seem to have at least four positions attributed to Hume. Cohen thinks Hume is prepared to condone what seem to be rather serious kinds of moral transgressions. Mackie, without committing himself very far, thinks that Hume condones possibly minor kinds of infractions such as lying. And Harrison attributes to Hume two views which are not only distinct, as Harrison notes, but in fact inconsistent. For if it is permissible for princes to break the rules, it cannot be reprehensible for them to do so. Now the plain fact is that with the

exception of lying, none of this can be demonstrated from the text and (as we shall see) Hume does not even in so many words say that princes may lie (he does say in so many words that they may not break their word). Clearly Hume cannot be asserting all four of these positions and may be asserting none of them. There is, however, one point about which Hume is quite clear and the commentators get wrong. For contrary to all three, Hume does not allow princes to violate treaties and international law.

I will begin my discussion of this somewhat perplexing chapter by stating some of my conclusions. First, the contention that Hume allows deviations by princes from ordinary moral standards is based on the assumption that he not only reports and analyzes the "current maxim," but that he endorses it as well. I agree with this assumption, but do not think it is as obvious as it appears to be. Second, it is also not obvious that Hume's intention is to say something about what princes should be allowed to do; it is possible that he wants only to say something about what we as observers should be allowed to judge about what princes do (but Harrison is mistaken in saying that Hume's view is that a prince's deviations are less reprehensible than a private person's). Third, it is impossible to know just what kind of deviation from ordinary standards Hume allows; the chapter is too cryptic to determine this. But it is not difficult to know what Hume does not allow; subtracting this, it turns out that the kind of immorality Hume might allow is of the relatively inoffensive kind illustrated by Mackie's example of statesmen who lie. Nevertheless, and fourth, it seems reasonable that the deviation Hume does endorse should be regarded as immoral. But the reason for this is different from anything suggested by any of

the three critics. No great principle of the general theory of justice is involved. On the contrary, insofar as the general theory does enter into Hume's argument for weaker international morality, it does so through a principle which seems to be unobjectionable. The difficulty, in my opinion, is that Hume simply overlooks that international morality may be more important to some countries (primarily, little, dependent ones) than to others. Violations directed against them are more serious, and should be regarded as such.

Finally, hopes that international morality may be strengthened, or that world government may save us from our lack of wisdom, prudence, and international moral sentiments, ignore the obstacles which nations put in the way of international cooperation. Though Mackie points out that nations are very much different from natural individuals, he nonetheless thinks that nations can achieve a morality not dissimilar to that achieved by individuals. But if Hume is right that international morality is relatively unimportant, this is not because the goal of international good relations is not important, but because nations are unlikely to achieve this goal by stronger morality.

#### I. "A system ... more free"

Hume says that the morality for princes is a "system" which is "more free" than that of private persons. What is this "system"? Mackie for some (unstated) reason thinks Hume "hesitates" between saying that international morality consists of the same rules of justice as everyday morality, "and saying that it contains different rules," namely, treaties and the like.<sup>20</sup> But Hume shows no

hesitation in holding that "the three fundamental rules of justice [which are stability of property, its transference by consent, and the obligation of promises] ... are duties of princes, as well as of subjects" (T 567). He distinguishes these rules from another set of rules, 'super-added' to the former; these latter "we call the laws of nations." Though Mackie, Harrison, and Cohen all three surprisingly think otherwise ("the most solemn treaties ... may be broken on slighter excuses," says Mackie),<sup>21</sup> Hume in no way endorses international lawlessness, the violation of treaties, or the like: "no one of ever so corrupt morals will approve of a prince, who voluntarily ... violates any treaty," he says unequivocally (T 568-69). When he refers to the specific conventions which constitute international law (he mentions diplomatic immunity, the declaration of war, and the prohibition of poisoned weapons) he gives no hint that he regards these as anything less than absolutely binding. It is only the ordinary rules of justice, which apply both to princes and private persons, whose moral force is in question.

Because these rules are exactly the same for princes as well as for private persons, Hume does not hold that statesmanship is a 'special sphere' with rules of its own, or that ordinary morality simply doesn't apply to nations. A prince cannot avoid keeping his promises by saying that promise-keeping does not apply to princes, or that as a prince he is governed by different rules entirely. (Hence Hume is not a "realist" or total skeptic in Cohen's terminology.) Further, Hume says that ordinary rules apply to princes to the same "extent" as to private persons, which seems to mean that they govern the same actions, in the same circumstances. Hence a prince cannot maintain that he is more free than

other people to pick and choose which promises he shall keep, or that in some particular situation the duty to keep a promise applies to private persons but not to him.

So princely morality is not a "system" in the sense of a different set of rules, or of the same rules with different ordering, or with different criteria of application. What is systematic about princely morality is that the rules have systematically different "force" than the rules of ordinary morality. They are weaker. They may "lawfully be transgressed" for more "trivial" reasons.

But Hume does not mean that the rules may be broken for absolutely trivial reasons: he does not hold that princes may ignore the rules for whim or personal fancy, or other truly trivial motive. Still less does he hold that princes may break the rules for reasons which are disreputable or shameful or morally wicked. There is nothing in Hume to give comfort to aggressor nations, to nations which support terrorism, or which lie to or conceal vital information from the international community, or to unfair traders and 'dumpers,' or to nations which steal high-technology, or the like. Even where not excluded by treaty and international law, these transgressions are excluded by the rules of justice. To hold otherwise would be to say, not that the moral laws have less "force," but that they are virtually impotent. Hume, who does not endorse international lawlessness, does not endorse international wickedness or gross immorality either.

One way in which princely morality might be systematically weaker than ordinary is if princes carried a special responsibility which allowed them to transgress ordinary rules. But unlike many

writers, including recent ones, Hume is not in chapter 11 offering some romantic view about the burdens of kingship. This point is worth developing, as elsewhere Hume does offer such a view.

Many writers take the position that statesmen may violate ordinary moral rules when important questions of state are at issue. Thus both Bernard Williams and Thomas Nagel have written as if it were simply obvious, hardly in need of defending, that there are occasions when statesmen ought not obey the ordinary rules of morality. "But it is a predictable and probable hazard of public life," writes Williams, "that there will be those situations in which something morally disagreeable is clearly required. To refuse on moral grounds ever to do anything of that sort is more than likely to mean that one cannot seriously pursue even the moral ends of politics."<sup>22</sup>

But in section 11 Hume is not taking the view ("Uneasy lies the head that wears a crown": II Henry IV, III, i, line 31) that princes must make tough moral choices. It is simply not his point that the 'moral ends' of politics cannot be pursued unless one is willing from time to time to do something morally disagreeable. Such an argument assumes that if statesmen may (say) lie, it is because politics, international or domestic, is important: too important, one might say, to be bound up in the constraints of ordinary morality. But Hume's point is that statesmen may lie, just because politics, at least international politics, is not important! He says that princes may transgress moral rules from a more trivial, that is, morally weaker, motive, not from a morally compelling one. And they may do this because the rules themselves are weak when applied to princes.

Nonetheless, that Hume did hold Bernard Williams' view, at least sometimes, is certain. I cite as evidence a passage from the History, and a comment on that passage by Michael Walzer.<sup>23</sup> In the History, Hume relates a celebrated incident which occurred at Agincourt: Henry V gave the order to kill the French prisoners. Hume describes the incident in part in the following terms: "Henry, seeing the enemy on all sides of him, began to entertain apprehensions from his prisoners; and he thought it necessary to issue a general order for putting them to death; but on discovering the truth [that there was nothing to fear], he stopped the slaughter, and was still able to save a great number."

About this passage Michael Walzer makes the following comment: "Here the moral meaning is caught in the tension between 'necessary' and 'slaughter.' Since slaughter is the killing of men as if they were animals ... it cannot be called necessary. If the prisoners were so easy to kill, they were probably not dangerous.... When he grasped the actual situation, Henry, who was (so Hume wants us to believe) a moral man, called off the executions." And Walzer concludes, "for ... Hume ... and for us too, Henry's command belongs to a category of military acts that require scrutiny and judgment. It is ... morally problematic, because it accepts the risk of cruelty and injustice."<sup>24</sup>

Nothing here would lead us to believe that Hume condones princely immorality, or that he is in any sense a "moral skeptic." At the same time, nothing indicates that he thinks the rules of justice are weak when applied to princes. On the contrary, as Walzer points out, Hume demonstrates a nice grasp of the tension which animates morally responsible princes engaged in fighting a war. Killing prisoners

is a great moral evil; it is "slaughter." The cruelty and injustice such an act entails are at best morally problematic, i.e., gravely in need of justification. Surely Hume does not conceive "Not to slaughter prisoners" as a rule for princes which has less force than the comparable rule (whatever it might be) which constrains private persons! Nor does he say that the rule may be transgressed for "more trivial" motives, but only from the gravest apprehensions of impending military disaster. Much of the sting would be taken from this Williams-Walzer analysis if we accepted Hume's section 11 contention that the rules governing princes simply don't count for very much.

But this is the leading idea in section 11 and it accounts for the relative weakness of international morality. But what are the implications with respect to princes? If Hume is not saying that princes may ignore international law, that they may commit gross immoralities, that they may violate the rules from trivial motives, or from morally wicked ones, or that they may expect to face situations in which they will have to violate the moral rules in order to achieve very important ends, then what is he saying? Is it Hume's view that princes may lie from time to time, provided the lie is not too monstrous? Mackie seems to think so: "Statesmen feel less bound to be honest in their international dealings than in interpersonal dealings," he points out.<sup>25</sup>

In fact, Hume does not actually say that princes may lie: nor does he say that the "free" morality gives freedom to princes. (He explicitly says that princes must not break their promises.) What he does say is that we must "indulge" princes when they do lie. So perhaps the system of morality

gives freedom, not to princes to act immorally, but to us, observers, to mitigate our judgments of princes who do act immorally. This gives us quite a different interpretation of Hume's view. On this reading, Hume thinks of princes roughly as we might think of college students.<sup>26</sup> We do not approve their minor misadventures, but neither do we judge them too harshly. We indulge them, which is to say that we regard their misconduct with less severity than that of their elders. And part of the explanation of this indulgence is that we don't think that what college students do matters all that much. So perhaps Hume's idea is that since (as he thinks) the conduct of nations is not very important (it just doesn't matter much what countries do), then we are free to, and do in fact, adopt a more relaxed attitude towards the moral infractions of rulers. The weaker force of the system is the force of the condemnation it authorizes us to make, not the force of the constraints it imposes on princes.<sup>27</sup> (It was said at the time of Watergate that many Europeans did not understand why the Americans were so outraged. It is not that Europeans approved the actions of the Watergate conspirators, but that they were more willing than were Americans to tolerate them. That kind of thing is expected from people in power.)

But perhaps this alternative reading does not really stand up to the text. Hume says the rules of justice may "lawfully be transgressed" by a prince. He also thinks the maxim whose meaning he is explaining will be thought "shocking" by some philosophers. And he says, not that we may indulge princes who deceive each other, but that we "must necessarily" do so. These expressions suggest that Hume did intend to allow perhaps considerable leeway to princes to act against the ordinary moral rules.

If princes have a right to act immorally, then it is not we who are free to withhold censure from them; they are free to act, and we must not judge them by conventional standards. But this is not to say that sometimes the moral rules do not apply to princes, or that they are free to pick and choose among them. The rules apply to the same extent, but not with the same force.<sup>28</sup> In those situations in which the rules apply, they do not provide to princes a reason for action which is equally forceful, significant, or morally compelling. Hence a prince may violate the rules for lesser motives, and thus, presumably, will from time to time be entitled to lie when the same lie would be prohibited to the private gentleman.

This is not to say that Hume encourages such conduct or thinks that it is morally right or justified. Princes are allowed to do things, not encouraged to do them. They are indulged but not commended. The fundamental underlying reason for all this is always that what princes do in the international arena simply does not matter very much. If princes cannot do much good, neither can they do much harm, hence they may safely be allowed to act by lower standards.

It might be interesting to speculate what Hume might think about a recent incident. Recently, counter-espionage agents of the French government blew up a civilian ship anchored in the harbor of a friendly country, destroying the ship and inadvertently killing a crew member. The ship was the Rainbow Warrior and its mission was to intrude itself into a zone in the Pacific where the French planned to explode a nuclear weapon. The French Interior Ministry conducted an investigation and officially concluded that no French agents were involved.

The original action was a violation of treaty and international law and amounted to reckless homicide among other crimes and Hume's system would not allow it if my interpretation is correct. The ministry's cover-up, however, seems to be the kind of action which arguably falls within the system. Normally we are not permitted to lie in order to get out of a tight spot, but if the rule against lying has less force for nations, lying in this situation might very well be the kind of lie the rule allows. The Ministry lied to save face, not for some grossly immoral motive (it was not a question of paving the way for a military attack on New Zealand, for example). Again, I do not think we have to read Hume as saying that such a lie is justified, only that it is not prohibited. If the prince has a plausible, non-outrageous, motive to lie, morality does not prevent him, Hume seems to be saying. And why not? Because, as a general rule, it is simply not that important whether princes lie or not.

II. "... a convincing proof, that all men have an implicit notion of the foundation..."

Or so the "current maxim" seems to say. But does Hume himself hold this view? It is reasonable to assume that Hume not only reports the maxim, but endorses it. He does after all say that the maxim will be "easy to defend" on the principles of his general theory of justice. So the maxim appears to state not only popular opinion but Hume's own view of international morality.

But there is a problem with this. Hume suggests<sup>29</sup> that the maxim offers "convincing proof" of his general theory and this does not seem entirely consistent with saying that the maxim is "easy to

defend" on his principles. Is he defending the maxim by using his theory, or proving his theory by citing the maxim? It is possible that in section 11 Hume is not interested in putting forth a theory about international morality at all, but rather in using a theory which he finds in wide currency to make a point about his own theory of justice. His point is that anyone who accepts the maxim about international morality ought thereby to accept his theory of justice. In fact, they already do, "implicitly," he says. Now the fact is that, with the exception of "certain philosophers," practically everybody does accept the maxim, as their actions, if not their words, attest: Hume says the maxim is "authoriz'd by the practice of all ages" (T 568). This enables Hume to make a kind of oblique argument for his theory of justice: if you accept the maxim about international morality, you implicitly accept that theory, so the fact that practically everyone accepts the maxim is a pretty good argument for the theory. (It is certainly a good argument as far as those who accept the maxim are concerned.) And Hume can make this argument without necessarily accepting the maxim himself.

But on this reading, how do you explain his statement that the maxim is easy to defend on the principles of his theory? It is possible to argue that something is defensible without necessarily arguing that it is true. Perhaps Hume thinks that the general theory explains the maxim by giving reasons for the maxim. If the maxim is correct, then his theory would explain it. This does not entail that the maxim is correct, but only that it could be. So perhaps Hume is being noncommittal on the question. What interests him in this section, one might think, is not international morality, but his

theory of justice: he has simply found a clever way of defending his theory, based on a common understanding of international morality.

The problem is that Hume's two claims about the maxim are not entirely consistent. When he says that the maxim "will be easy to defend" on his principles, he seems to assume the theory of justice in order to defend the maxim; but when he says the maxim offers "convincing proof" that everyone explicitly accepts the theory, he seems to assume the maxim in order to defend the theory of justice. So is Hume defending a view about international morality by invoking his theory of justice (the "easy to defend" argument), or is he supporting his theory of justice by appeal to a view about international morality (the "convincing proof" argument)? For even if Hume held, as perhaps he does, that the maxim and the theory implied each other, he would still have to decide which was more certain than the other, in order to establish the priority of proof. It is odd that Hume wants to assert both that the maxim can be used as proof of the general theory (or, what he seems to think is virtually the same thing, as proof that everybody implicitly holds the general theory), and that the theory can be used to defend the maxim. It seems inconsistent to make both claims, since one claim seems to suggest that the general theory is better established than the maxim, whereas the other takes the maxim as given (or at least as unquestioned) and uses it to establish the theory.

Hence one can argue that it might not be the case that Hume himself holds the maxim. His intention is not to defend the maxim on the basis of the theory of justice, but to argue that everybody who accepts the maxim also accepts the theory; and he can make this argument even if he himself is

noncommittal towards the maxim. Nevertheless, everyone who reads this chapter assumes Hume does accept the maxim, and so do I. I now want to show why, for internal reasons, he must accept it. Briefly, my argument is this. If it is his intention to defend his general theory by citing the maxim, then his argument is a failure, unless the maxim is true. The "convincing proof" argument depends on the maxim's being true; and since the "easy to defend" argument concludes that the maxim is true, Hume must accept the maxim on either interpretation.

Let us examine the connection Hume sees between the maxim and his theory of justice. According to the general theory, justice is a convention based on universal self-interest. That everybody implicitly believes this is the point which is "convincingly proved" by the maxim. If justice is a convention based on self-interest, then, Hume tells us, it must follow that where the interest in the rules of justice is less, the obligation to obey them is weaker. Hume doesn't give this important idea a name; let us call it the 'proportionality principle,' since it says that the moral force of a rule is proportional to the importance of the interests the rule protects. The proportionality principle Hume offers is a consequence of the general connection between justice and interest. Without giving any other defense of this idea, Hume simply tells us that it follows from the fact that justice is a convention based on interest.

Now according to the general theory, the natural obligation to justice arises simply from the fact that society would be impossible unless people restrained their appetites; this fact gives rise to a natural obligation, based on self-interest, to obey the rules of justice.<sup>30</sup> But this in turn gives rise

to the moral obligation, since we approve or disapprove actions as they tend to the peace, or disturbance, of society. Now the same principles which apply to individuals apply to states: the moral obligation to justice arises from the advantageousness of the rules of justice. Since states have interests comparable to individuals, states must obey the same rules of justice that govern individuals. "But here we may observe," Hume says,

that tho' the intercourse of different states be advantageous, and even sometimes necessary, yet it is not so necessary nor advantageous as that among individuals, without which 'tis utterly impossible for human nature ever to subsist. Since, therefore, the natural obligation to justice, among different states, is not so strong as among individuals, the moral obligation, which arises from it, must partake of its weakness... (T 569).

So the reason why the morality of princes is weaker than that of private individuals is that the interest of states in the principles of justice is less, and obligation is proportional to interest. Now let us consider Hume's "convincing proof" argument. What is the proof? Hume is arguing that if justice were a convention based on interest, then, where the interest is less, the obligation would be less. But in international affairs, the interest is less. And (behold!), the obligation also is less, as the current maxim tells us. Hence the existence of the maxim confirms the theory.

But surely this argument only works if the maxim is true. (Even then, Hume's claim to "proof" is too strong.) For suppose Hume is holding no more than that the maxim is believed, but not necessarily true. Why could not someone believe the maxim and

reject Hume's theory? Hume seems to assume that when people hold this maxim, the reason they hold it is that they agree with him that intercourse of states is less advantageous than that of individuals. But people who do hold that moral obligation of princes is weaker, might hold this for some other reason altogether (even if they also happen to agree with Hume that intercourse between nations is less important): they might for example be realists and hold that states have a strong obligation to national interest (whereas individuals do not have a comparably strong obligation to self-interest). Anyone who accepted the maxim for some reason other than Hume's could not be said to implicitly accept Hume's theory of justice. Hence the mere fact that people accept the maxim does not prove that they hold Hume's theory. We could go further, and argue that even if people did accept the proportionality principle, and accepted the current maxim because they accepted the proportionality principle, even this would not show they accepted Hume's theory of justice. For even if Hume is correct in thinking that the proportionality principle follows from the general theory (that justice is a convention based on interest), it is not the case that if you hold the principle you must hold the theory. To show that it is the case, Hume would have to show that the principle could not be explained equally well by some other theory of justice. But for all we know, the principle might be explained by a great many theories of justice, any one of which might be held by a person who accepted the principle. Furthermore, even if Hume could show that the principle cannot be explained by any other theory of justice but his own, this would still not "prove" his theory, for the principle might be an independent moral truth, not

founded on any theory. Hume has to show that the principle is not even consistent with any other theory of justice, in order to show that someone who holds the maxim implicitly accepts his theory; and this he does not even try to do.

So if Hume is arguing nothing more than that the existence of the maxim provides support for his theory of justice, his argument is a failure. If, however, Hume accepted the maxim as correct, then he would be entitled to make a more modest claim, namely, that the fact that the maxim is entailed by the general theory, together with the truth of the maxim, lends support to the theory; for theories are strengthened by the truths they entail, especially if those truths are initially surprising and controversial.

Hence Hume cannot make his "convincing proof" argument unless the maxim is assumed to be true. But how to reconcile this with the other argument, which defends the maxim on the basis of the general theory? For this argument, as already noted, implies that the controversial nature of the maxim is to be resolved in the maxim's favor by reference to the general theory; and this would make it implausible for Hume to also argue that the truth of the maxim supplies confirmation of the theory.

One way to resolve this is to suppose that Hume wants to say that the two ideas imply each other, so that whichever you consider better established, theory or maxim, you can then defend the other. This may be what he had in mind, but it will certainly not speak to critics like Cohen, who reject both maxim and theory. Or as an alternative, perhaps he means what he says and what the order of presentation suggests. He is not trying to use the maxim to establish the general theory of justice;

this has already been well enough established in the appropriate sections earlier in the Treatise. For those people ("certain philosophers") who have doubts about the maxim, his answer is to show how it follows from the theory. Once he has shown this, he can then speak to the presumably far more numerous group who accept the maxim independently of any theory of justice, and point out to them that, since the truth of the maxim provides support for the theory of justice, those who accept the maxim should also accept the general theory. He thus has two strong arguments: first, that since the theory of justice entails the maxim, the maxim must be true, since the theory is true; and second, that the (independently acknowledged) truth of the maxim tends to confirm the general theory.

Unfortunately, he confuses the issue by claiming that people who accept the maxim already accept (implicitly) the theory, as if there could be no other reason for accepting the maxim but the theory itself. The fact that he makes this argument gave us some reason to think that perhaps he does not actually endorse the maxim; but this is a bad argument, and as the good ones require that he accept the maxim as true, we shall carry on as if he did so.

III. "...they arise merely from human conventions..."

We have seen that, although it is impossible to know exactly what kinds of actions Hume had in mind, and despite his explicit statement that princes must not break their word, it appears that Hume most likely would tolerate princes who lie and deceive and perhaps who commit other relatively innocuous violations of ordinary moral rules as well (Hume gives no other examples). For this, Cohen labels him a

"moderate skeptic"<sup>31</sup> who endorses limited international immorality. Picking up on the connection Hume sketches between the maxim governing princes and his general theory of justice, Cohen, as already noted, tries to trace Hume's faulty system of international morality to a deep flaw in his moral theory, namely, his conventionalism.

It is his identification of justice with convention that is the root of Hume's endorsement of immorality, Cohen thinks. Because Hume holds that justice is conventional, he endorses the conventions of international relations, forgetting that conventions can sometimes be immoral. "...I argue," says Cohen, "that Hume's view ... derives from his false identification of the conventions of international conduct with the actual requirements of justice. These conventions are often unjust...."<sup>32</sup> This oft-reiterated criticism is the heart of Cohen's attack on Hume's theory of justice. "Hume's analysis is unsatisfactory because he does not distinguish clearly enough between the requirements of international conduct and the requirements of international morality.... These conventions and practices are, however [sometimes] unjust, and they must be judged by the standards of morality which apply ... in the domestic and in the international arenas."<sup>33</sup> And again, "we cannot acquiesce in Hume's assumption that whatever system of rules is chosen will qualify as a system of justice."<sup>34</sup> And again, "Hume has confused the received conventions of property with rules of justice."<sup>35</sup> Cohen thinks that justice is not conventional: "We shall have to judge the rules that inform these conventions ... by the natural moral requirements Hume refuses to acknowledge."<sup>36</sup>

But of course Hume does acknowledge "natural moral requirements" and his conventionalism does not

entail the relativism Cohen evidently attributes to it. In calling the rules of justice conventions, Hume nowhere suggests that they be identified with whatever conventions happen to be current. There is nothing arbitrary about the rules of justice, as Hume elsewhere in the Treatise goes to pains to point out: "Tho' the rules of justice be artificial, they are not arbitrary. Nor is the expression improper to call them Laws of Nature; if by natural we understand ... what is inseparable from the species" (T 484). Interestingly, Cohen's complaint here seems to be not that Hume allows princes to violate correct moral laws, but that he requires them to follow incorrect ones, namely, the accepted laws and practices of nations. Presumably Cohen thinks that princes should violate those laws and conventions which are not consistent with high moral standards. So apparently Hume is a moral skeptic because he is not a moral crusader.

Hume does not mean to be a relativist, and Cohen does not identify any sense in which Hume's conventionalism might lead him into relativism. Nevertheless, perhaps Hume is a relativist despite himself. Can this be true?

Hume is clearly not a moral relativist in one of the senses evidently attributed to him by Cohen: he does not hold that a rule is just, simply because it has been adopted. Clearly on Hume's theory rules which did not serve the general interest would not be just, even if they had somehow been adopted by law or convention. And there is no reason to imagine that Hume holds that a rule cannot be just unless it has been adopted: the three rules of justice are just, whether or not they have been adopted or established as conventions. Nor does Hume hold that moral principles vary with different cultures: "...we give

the same approbation," he argues, "to the same moral qualities in China as in England. They appear equally virtuous, and recommend themselves equally to the esteem of a judicious spectator" (T 581).

What Hume does hold, presumably, is that no matter how just a rule may be, it is not binding until it is adopted; his view is that we ought to adopt just rules, but we are not bound to obey them until they have been adopted. Thus he writes: "justice establishes itself by a kind of convention or agreement; that is, by a sense of interest, suppos'd to be common to all, and where every single act is perform'd in expectation that others are to perform the like" (T 498). And more forthrightly: "a promise ... before human conventions had establish'd it ... wou'd not be attended with any moral obligation" (T 516). It is Hume's view that people, and presumably nations as well, are not morally bound to obey the rules of justice where they reasonably believe that "others" will not perform the like. This is the sense in which Hume's conventionalism may be called relativistic, and may be said to endorse immoral actions. But such a view is by no means contradicted by a theory of "natural justice." For someone who holds that justice does not depend on conventions but on "nature" (this is Cohen's explicit view),<sup>37</sup> might nonetheless agree with Hume that no one, state or citizen, is bound to obey the rules of justice if he or she reasonably believes that others will fail to reciprocate.

Nevertheless, one can consider this immoral if one wishes. To take such a position, one need not maintain what may seem to be an extreme "strict moralism" view, that even in situations of the most cutthroat competition, it is always obligatory to adhere scrupulously to the requirements of morality.

One can take a more moderate position, which puts limits on what one may do, even in the fiercest competitive situation: one may not take immoral offensive actions, for example; one's immoral defensive actions must be limited to what is strictly necessary; and, even arguably necessary immoral defensive measures may be prohibited if they are too vicious.<sup>38</sup> Now, we may not only find this moderate strict moralism attractive, but may well conclude that a theory of "natural justice" is a far more plausible foundation for such a view, than Humean conventionalism. The point to be made here is that this is not a criticism of Hume's views about international morality, because this is not the reason Hume gives for his contention that international morality is more free. Whatever his private opinions may be on the matter, Hume is not making the argument that nations are exempt from the strictest moral obligations because they may reasonably expect that other nations will not comply. On the contrary, such a conclusion would appear to be inconsistent both with his general theory and with his views about the state of international morality. For if nations could expect widespread non-compliance, then on Hume's theory, they would be exempt from all the rules of justice, and not only from the more stringent applications of the rules. And of course Hume does not hold that nations are exempt from the rules of justice. Quite the contrary.

Hume is of course a conventionalist in another, and 'deeper' sense, which is also touched on by Cohen, again confusedly. Hume thinks that without conventions, we do not even have the concepts of justice (property, promises, even right and moral obligation) (T III, ii secs. ii, v). Hence there can be no justice in the state of nature. Cohen prefers

Locke's view, according to which it would be wrong to take someone else's property, or to fail to honor your promises, even in the state of nature.<sup>39</sup> Whatever one thinks of this contention, it is irrelevant to establishing that Hume supports relativism or immorality outside of the state of nature (even if he condones it within the state of nature). For once we have the concepts of justice, we leave the state of nature and establish the rules of justice. Every civilized country has already done this. Further, as Cohen recognizes, Hume does not hold that nations exist in a state of nature relative to each other, not even in a modified one. (This is because Hume, unlike Hobbes, does not define the state of nature by the absence of controlling force, but by the absence of moral concepts.)<sup>40</sup> So even if Hume's conventionalism leads him to draw immoral conclusions about the state of nature, it cannot be the explanation for why he draws immoral conclusions (as Cohen thinks) about international relations.

IV. "...the moral obligation ... must partake of its weakness...."

So Cohen has not persuaded us that Hume's moral mistake is traceable to his conventionalism. But there are two principles about morality which Hume links to the objectionable maxim. The first is that justice is a convention, and the second is that justice is a convention founded on interest. So if Hume's moderate immoralism is to be traced to his moral theory, the villain must be the second proposition, that justice is based on interest. But the question here is neither utilitarianism (to which Cohen vehemently objects)<sup>41</sup> nor enlightened self-interest (Cohen, taking shots at everything that

moves, does not think this theory works either),<sup>42</sup> but rather Hume's special principle that obligation is proportional to interest. Cohen nowhere identifies this principle; even Harrison refers to it only obliquely, and somewhat circumspectly: "And I personally agree with Hume that the reason why obligation of nations is less stringent than the obligation of individuals is that justice is less necessary among nations...."<sup>43</sup> (Later, as already noted, he changes his mind about whether justice is less necessary. But he does not reject the principle that if it were less necessary, the obligation would be less stringent. One assumes here that his merely "personal" agreement with Hume is on the relative importance of international justice, not on the principle that moral obligation is weaker where the rules are less important.)

It can be noted here, what is clear from the preceding, that Hume's defense of the maxim can be represented as an argument from two premisses:

1. Moral obligation is proportional to interest, that is, obligation is weaker where the interests protected by the moral rules are less important.
2. International affairs are less important than domestic relations.

From this follows Hume's conclusions that international morality has less force than personal morality.

We do not find useful discussion of the proportionality principle in our authors. Harrison indeed complains that moral philosophers have neglected the question of "degrees of morality" and what makes duties "more or less stringent,"<sup>44</sup> but, in my opinion, his own discussion is not very helpful. Yet it seems clear that this principle is the central

theoretical idea in Hume's treatment of international morality. Worse, the principle generates the central paradox in Hume's view. For the principle appears sound, yet Hume's conclusion that international morality is weaker does seem morally dubious.

At first blush, the proportionality principle may seem an acceptable, if not very exciting, moral principle. We do tend to think that the obligation to obey a rule is proportional to the importance of the rule. Many examples can be given. People do not drive at 55 miles an hour on the open highway, and are annoyed to be given a traffic citation for a violation at an otherwise empty intersection. Municipal ordinances (building codes, health and safety regulations) are replete with trivial provisions that even inspectors don't enforce.<sup>45</sup> And the same seems to be true of moral rules, which is why people tend to forget small debts and other obligations, and do not always show a scrupulous regard for the truth where nothing much seems to rest on the information conveyed (relating an adventure in an amusing way is often considered more important than getting the facts exactly right.)<sup>46</sup>

However, it is extremely doubtful that this is what Hume had in mind. Were Hume to hold that we may make exceptions to a generally good rule in those instances where it would be more or less pointless to follow it, he would appear to be inconsistent with the strict rule moralism of Treatise III, ii, sections 2 and 6, and III, iii, section 1, passages in which he argues on grounds of utility that rules of justice must be inflexible, and must never admit of exceptions based on "particular judgments." One can argue, however, that this inconsistency is only apparent. One can argue that the inflexibility of justice defended in these sections holds only against

exceptions to the rules of justice motivated by such passions as benevolence, concern for the public interest, natural humanity, and so on, all of which he mentions in the passages in which he argues for inflexibility. If this is the case, inflexibility would not necessarily hold against the kind of pointless obedience we are considering in the present context.

Although his argument for inflexibility is not entirely clear, it looks as though he has two different reasons. The less important is that once we allow exceptions in the name of good motives, it will be difficult to avoid exceptions done out of other motives: he refers to "the avidity and partiality of men" and "spite and favour" in this context. The more important reason is that exceptions, presumably by making it unclear what rights people really have, would produce "confusion in human society" and upset the "stability" which the rules of justice guarantee. (Hume is thinking always of property rights, but I am assuming he means his argument to be as general as he seems to say it is). Better to admit no exceptions, even well-motivated ones, to the general rules, than to make all rights insecure by making them contingent on the absence of any preferable alternatives in particular cases.

However, that the rules must be inflexible against benevolence does not strictly imply that they must be inflexible against triviality. The triviality cases do not have to be based on "particular judgments" at all, but may be built into the rule as limitations on its extent. For example, the traffic rule (always stop at the stop sign) may be said simply to not apply on deserted streets late at night. On the other hand, it seems implausible to argue that exceptions based on benevolence could be

built into the rule as implicit limitations: could it be part of the stop sign rule that the sign need not be obeyed whenever a driver thinks he can do more good by running the sign? That you can do more good in a given case is a particular judgment which, were we to allow people to legally make it, would indeed invite the very "confusion" Hume thinks it is important to avoid.

So it is not out of the question that Hume, in taking the view that rules of justice must be inflexible against benevolence, might allow that they need not be inflexible against triviality; in which case he might hold simply that the obligation to obey the rule is weak in just those cases in which it is relatively pointless to obey it. Nonetheless, this does not seem to be Hume's argument. His point is that the whole subject of international justice is not important (not as important as domestic justice). He is not arguing that we can make exceptions in particular instances in which it would be pointless to apply the rule, but that we can make exceptions because the rule itself is not all that important. In other words, the principle that obligation is proportional to interest does not mean that the obligation to obey in any given case is proportional to the importance of obedience in that very case; what it seems to mean is that the obligation to obey is proportional to the importance of having the rule at all. We can all admit that it is very important to have traffic regulations, and thus the obligation to obey them is very strong, while yet holding that in certain cases, the obligation is weak or non-existent. But Hume thinks that the reason that the obligation to obey the rules of international morality is weak, is that it is not very important that there be such rules in the first place. (This

is said always in comparison to domestic morality: Hume does not pass judgment on whether the rules are important in some absolute sense.) Hume considers international morality to be a system of rules which are not very important. The interests the rules protect just do not matter very much. And this is why it is not so serious if princes violate the rules.

So Hume is to be taken seriously when he calls morality for princes a "system." We have already seen one sense in which the morality is a system; the rules are systematically weaker. We now see another sense, which is the reason for the first: the rules of international morality are systematically less important.

But what makes the second the reason for the first is, the proportionality principle. And the way to discuss this is by stating what seems to be the central paradox in the entire discussion. For it is hard to see this principle as other than a conceptual truth: if a set of rules really is not very important, then of course the obligation to follow the rules should be relatively weak. Why then should there be any resistance to Hume's conclusion, that princely morality is more free? And why should anyone think that the problem is traceable to Hume's moral principles, and not to a disagreement about the importance of international rules of justice?

I think there is a wrong answer, a partial answer, and a right answer to these questions. The wrong answer is to blame Hume's utilitarianism. One could agree that less important rules carry weaker moral obligation, while arguing that the measure of the importance of the rules is not necessarily the importance of the utility interests the rules protect. The measure of importance is also the

importance of the moral interests, and this is different, one could say. For example, a rule requiring doctors to obtain consent from their patients is not important because it protects patients' health (a utility interest), but because it protects patients' autonomy, which is a moral interest. Thus a doctor who performed a procedure on a patient without obtaining consent could not excuse himself on grounds that the consent rule is not important (since it is the doctor and not the patient who knows best what procedures are necessary for the patient's health). (Consider a Humean case: the doctor's motives for failing to obtain consent are "trivial": he was too busy, or simply couldn't be bothered.) The consent rule is important, not because it protects a utility interest, but because it protects a moral interest. And although it is correct that a violation of a rule may be excused if the interests the rule protects are not important, it is not correct that the violation may be excused if the utility interests are not important. The moral interests must also be unimportant, if the violation is to be excused.

This point is a familiar (and in my opinion powerful) argument against utilitarianism (or one form of it), and it may seem telling against Hume because he, of course, bases the importance of the rules of justice on the utility interests the rules protect. Nevertheless, I don't think it explains the sense that Hume tolerates immoral conduct in international relations. The reason is that the maxim which Hume defends does not distinguish between utility and moral interests; basing importance on utility is Hume's own refinement (or explanation) of the maxim. Thus presumably the maxim, and Hume following it, would excuse violations of rules, even

where the importance of the rules was measured by moral interests. Yet it is the maxim (and not Hume's utilitarian foundations) which seems to improperly tolerate immorality. Since it is the maxim which is at fault, and the maxim is neutral as to how importance is to be measured, what is wrong with the maxim cannot be that it measures importance by utility interests only.

But this seems to sharpen the paradox: for we have conceded that the obligation to obey rules is proportional to the moral interests the rules protect. Yet we seem to want to say that it would be wrong to tolerate many princely violations, even of rules which do not protect important moral interests.

The partial answer to the problem is to blame the critics for confusing different classes of people to whom a rule may apply. Consider the rules protecting confidentiality. These rules may be violated by anyone who has access to confidential information, for example, doctors and teachers; but since information possessed by doctors is likely to be of a more personal or private nature, doctors are in a position to do greater damage to privacy interests by violating these rules than are teachers. Hence violations of confidentiality by doctors are, in general, less excusable than violations by teachers. Now it may be that someone who thinks that violations of confidentiality by teachers are inexcusable, is applying to teachers the standards more appropriate to doctors. The critic commits the fallacy of undistributed middle: violations of confidentiality are inexcusable, this teacher violated confidentiality, therefore what this teacher did is inexcusable.

The rules that protect confidentiality are the same in both cases: do not gossip, do not reveal

private information to anyone who does not need to know it, protect files to prevent unauthorized access, etc. Yet by the nature of the information protected, violations of these rules are more serious in the one case than in the other. But if you look only at the rules and not at the interests they protect, you would think otherwise. And this may be exactly the error made by Hume's critics. They see that the same rules govern princes as private persons, but do not see that the interests protected are not the same, or at least not equally important (they may be the same in kind, unlike our confidentiality example).

But this answer is only partial, for even after we have cleared away this confusion, we may still think that Hume's view is too soft on immorality. The paradox does not seem to want to go away; there must be something about the way in which the proportionality principle is applied which accounts for the sense that Hume has reached a result which is not quite acceptable.

The correct answer, I think, is to blame Hume for overlooking an important distinction. With respect to violations of the rules, some participants in the moral order will have more to lose from these violations than others. This is because the same interest may not be equally important to everyone who shares the interest. An interest which may be less important to most people may be much more important to some people. When this is the case, violations of the rules which protect that interest, while in general unimportant, may not be equally unimportant to everyone. From the point of view of these high-risk participants (who have more to lose from violations of the rules), a violation is more

serious, hence less excusable, than it may be to the others.

Now Hume is arguing that the excusability of any violation is inversely proportional to the damage the violation does, the damage in turn being measured by the interests the rule protects. Consider rules governing a certain activity, say, international trade. Let us suppose (as Hume surely did) that international trade is not a terribly important activity, compared with domestic commerce. (Suppose that most people's standard of living would not drop very much if international trade ceased to exist, everything else remaining the same.) The result would be that we would not find it terribly outrageous if someone violated one of the rules of such trade, by, let us say, 'dumping,' i.e. selling products abroad at near or below cost. (Recall my example here of building codes and health and safety regulations.) We would not approve of such a violation, but we might indulge it, since the excusability of the violation is inversely proportional to the importance of the rule, as measured by the interests the rule protects.

But in making this point Hume overlooks the distinction between high-risk and low-risk participants. International trade, to continue the example, is significantly more important for some countries than for others; this might be true even if such trade were not very important for most countries. Here the same interests (commerce) are protected by the same rules, but these interests are not equally important for everybody. From the point of view of a high-risk participant, any violation of the rules, even a violation not directed specifically against itself, endangers interests it considers important. Hence, the high-risker might well insist that all

violations be condemned as equally serious breaches of the moral order.

So it looks as if Hume is taking the point of view of the low-risk participant, who considers all violations as relatively excusable because not terribly damaging, whereas his critics take the point of view of the high-risker, who considers all violations as more damaging and thus less excusable. Now an impartial observer would agree that a violation directed specifically against a high-risker is a more serious breach of the rules, hence less excusable, than a violation directed against a low-risker. Dump your products in a country where the high-risker competes, and you are hurting him badly. At the same time, the observer would reject the protest of the high-risker that, since any violation threatens the rules which protect its interests, every violation should be considered equally serious, even violations directed against low-riskers. Violations which threaten interests directly are less serious than those which threaten interests indirectly. Hence the high-risker should not complain (as much) if I dump my products in countries where he does not compete. However, the impartial observer might acknowledge that when there are high-risk participants, the level of seriousness of all violations, even those not directed against the high-risker itself, is raised. Given the presence of high-riskers, a violation directed against even a low-risker is less excusable than otherwise. Thus, we do not find ourselves in a situation where we are forced to make two sets of judgments about violations, depending on whether the victims are low- or high-risk participants. We have a single standard of judgment, but the standard is set to take into account the differential interests of both high- and

low-riskers. (But I think that, having set the standard, we might still wish to condemn more vigorously a violation specifically victimizing the high-risk participant.)<sup>47</sup>

Thus the proportionality principle would have to be applied properly to allow for the interests of those countries or individuals whose interests differ in importance from the majority; failure to do so would lead to results which are morally lax because excessively indulgent. But with this modification, I believe, all remaining appearance of moral impropriety in Hume's view has been eliminated.

To achieve this result I have introduced certain qualifications and clarifications into Hume's stated view. I have distinguished between utility interests and moral interests, and have argued that Hume's doctrine can be read to take the latter into account. I have asserted that moral judgments made under the rules must be made with the point of view of the vulnerable victim, and not merely the typical victim, taken into account. Most important, I have argued that, contrary to appearances, Hume is not defending immoral conduct, such as telling lies and making false promises. When he seems to say (which he does not in fact actually say) that such conduct is excusable, even permissible ("lawful") when done by princes, what he means is no more than that the conduct is not as bad as it would be if done by private gentlemen. He is never making a point about what conduct is or is not immoral. (Where one draws the line between tolerable and intolerable conduct is not a matter for philosophy, he thinks.) His point always is that the extent to which immoral conduct is to be condemned is not an absolute quantity, but is to be determined by the damage the conduct does, measured by the interests harmed. That is really his

main and in a sense his only point. International morality confirms what domestic morality has already proposed: that justice is after all a convention based on interest.

On one point, however, Hume is not only open to criticism, but to the very criticism that his view is morally loose because conventionalistic. Hume is explicit that it is not philosophy but "the practice of the world" which is to determine the extent to which princes are to be freed from the restraints of ordinary morality. Presumably the practice he has in mind is the practice of princes, not the practice of moral critics in complaining about what princes do. But here he is too soft. He shows no awareness of the tenacity with which princes push against the limits of the tolerable. To rely on "practice" as a moral guide is to ignore that the standards of practice are subject to deterioration to accommodate the practices of the least scrupulous. As Hume insists, the philosopher is in no position to determine moral boundaries by reason alone. Yet as moral critic who knows that the pressures of international strife will inevitably push practice towards standards that are low, the philosopher might better serve the interests of justice by holding princes to the highest possible standards, albeit standards of a "more relaxed" morality, than simply to point out the relaxation and leave it to the princes themselves to determine how much looser the standards shall be.

#### V. "...not so necessary nor advantageous..."

To this point I have discussed Hume's position that the strength of moral obligation depends on the importance of the rules. Now I want

to turn briefly to his minor premise, that because international morality is less advantageous than domestic morality, it is less important. Here it is complained against Hume that he undervalues international morality because he underestimates the threat of war, and thus fails to appreciate that what is needed is a strengthening of international law and co-operation. But the problem of war seems only marginally relevant to Hume's argument. It is possible that Hume underestimated the problem of war; it is even more probable that he did not overestimate the likelihood of controlling war through stronger international law and morality.

Mackie writes, "while Hume may have been right about the smaller amount of harm done by wars between states, in his time, than would be done by a breakdown of justice between individuals, the position is now reversed: the risk of world war is an immediate threat to the very survival of the human race."<sup>48</sup> Cohen is characteristically less generous to Hume: "even in Hume's day Rousseau's observation that 'we have taken all kinds of precautions against private wars, only to kindle national wars a thousand times more terrible' was probably correct. In the nuclear age it will certainly seem plausible to claim that maintaining peace among nations is more important than maintaining it among individuals."<sup>49</sup>

Here the argument seems to be that the rules of international justice are (at least) as important as those of domestic justice, because without such rules the consequence is war, and wars are 'more terrible' than domestic disorder. But although Hume does say that the absence of rules of justice leads to "perpetual war," his argument rests on the claim that the rules of international order are "less advantageous" than those of domestic order. This

seems as true today as in Hume's time. Granted that international trade and other forms of mutual dependency between nations are certainly vastly greater today; nonetheless, it is as true now as formerly that if, let us imagine, an impenetrable iron curtain were to descend around the British Isles, cutting them off from all foreign commerce whatsoever, the consequences to the ordinary Briton would be far less severe than if domestic government, law and morality were to all somehow mysteriously disappear. Hume seems entirely correct when he says, "...tho' the intercourse of different states be advantageous, and even sometimes necessary, yet it is not so necessary nor advantageous as that among individuals, without which 'tis utterly impossible for human nature ever to subsist" (T 569). However important it may be to avoid war (and surely in Hume's time one could be forgiven for thinking that foreign war was not as terrible as domestic strife), avoidance of war is but one, and probably not the chief, end of international law, much of which has to do with trade, tariffs, use of the seas, finance, civil jurisdiction, questions of personal status, protection of human rights, etc. And none of this seems as "necessary and advantageous" as domestic law and justice.

But there is a stronger point which Hume may well have had in mind. The importance of rules depends not only on the importance of the ends in view, but also on the likelihood of the ends being achieved by establishment of the rules. With respect to domestic morality, it is not unreasonable to suppose that, given the development of a set of rules perceived as fair and advantageous for everybody, then everyone would have a more or less equal motivation to honor the rules, which would become

internalized as part of common morality. The moral obligation to obey rules which you reasonably believe are fair, mutually advantageous, and likely to be obeyed willingly by others, is very strong. In the international situation, unfortunately, we have no similarly strong assurances. On the contrary, all sorts of considerations conspire to the conclusion that even given principles of law widely acknowledged as fair and advantageous, many nations would nonetheless retain strong motivation to violate the rules, or at least to declare certain self-serving exceptions and non-applications. The disparity in power between nations is only one such consideration; however they may acknowledge the principle of national independence and integrity, great powers do not give up willingly their domination of little countries. But in fact international relations are riddled with historical animosities, hatreds, rivalries and scores to settle, fears based on sad experience, powerful emotional currents such as nationalism and religious fundamentalism, racial, cultural and religious differences and prejudices and so on. These persistent causes of strife, though of course present to some extent even internally in many nations, seem to be vastly magnified on the international scene, with the result that, on the agenda of nations, fairness, mutual advantage, and peaceful resolution of disputes do not always take a very high place. Perhaps Hume did believe that a cause of war is the absence of clear rules about property. ("Where possession has no stability, there must be perpetual war" (T 567).) And it is not unreasonable to hope that clearer rules of justice on certain topics, notably on territorial sovereignty, might help to avert some wars.<sup>50</sup> Nevertheless even in a well-developed legal system, the possibility of

antagonistic parties raising colorable legal claims and therefore engaging in non-frivolous disputes, can not be excluded. What is required for "stability of possession" is not good rules alone, but the willingness to settle disputes in a rule-governed manner. Given the facts just noted, it seems unlikely that nations will develop such a willingness to the extent to which it is found among private citizens in well-governed countries.

Thus the analogy which is often drawn between nations and individuals is a weak one. The moral obligation to obey the rules of domestic morality is founded at least in part on the reasonable expectation that others share the same sense of justice: you are bound to feel obligated because you know others feel obligated. And this assurance in turn depends on a shared understanding of who we are and what we are about: in sum, that we are all rational calculators capable of acting on moral sentiments. It is precisely because nations, for good reason, do not share such understanding that international morality is relatively weak.

Now all this is consistent with Hume's general theory about conventions. But what Hume says is that international justice is less binding because less important; Mackie, who thinks it is not less important, thinks that the problem with international law is that it is less "securely established." But if my gloomy assessment of the world is correct, even if international justice were important in the sense in dispute between Mackie and Hume (namely, how advantageous obedience to the rules would be to nations) it would not be important in the other sense, namely, how likely it is that even a superior system of rules would generate the sense of allegiance required to support moral obligation.

Mackie writes, "The full prudential case for the practice of justice presupposes ... stable dispositions ... moral sentiments and a reserve of legal sanctions."<sup>51</sup> When the moral sentiments are weak, on the prudentialist view, the moral obligation must be correspondingly weak.

Now Mackie thinks that stronger government is the answer. "Without the moral, legal and governmental development there can be only a fragile basic system of conventions ... always liable to be wrecked by shortsighted actions."<sup>52</sup> And he concludes, "some strengthening of international government might be a remedy."<sup>53</sup> But if I am correct, it is not the absence of stable dispositions and moral sentiment, but the presence of dispositions and sentiments (moral and otherwise) which are inimical to prudent resolution of disputes, which accounts for much international strife. Nations are simply not rational calculators who unluckily happen to be excessively fickle and shortsighted. (And thus need government "to compensate for shortsightedness, for insufficient prudence," as Mackie puts it.) Given these powerful sentiments, international government, to large numbers of people, will inevitably be seen, no matter what rules it enforces, not as an impartial arbiter administering justice in the common interest, but simply as tyrannical. And clearly, nations will be unlikely to internalize rules which, from their point of view, arbitrarily deny them claims they are unwilling to relinquish.

Hence I conclude that Hume is correct in thinking that international morality is not as important for well-being as domestic morality; for no such system of rules is ever likely to generate the widespread sentiment of allegiance necessary to make the rule effective. The sentiment to ignore the

rules (or, more accurately, to save face by interpreting the rules for partisan purposes) is so strong as to make such a hope implausible. Strong international government is not likely to achieve much in changing this. And, therefore, if Hume is also correct in holding that the obligation to justice depends on interest by way of convention, so that the obligation is strongest where the rules are perceived as basically fair, mutually advantageous, and generally internalized through the sense of justice; then it follows, as he claims, that with respect to international order and justice, "the moral obligation which arises from it, must partake of its weakness."

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1. David Hume, A Treatise of Human Nature, ed. L.A. Selby-Bigge (Oxford: Clarendon Press, 1975), p. 568. Further references to the Treatise will be cited as 'T' followed by the relevant page number(s).
2. Marshall Cohen, "Moral Skepticism and International Relations," Philosophy & Public Affairs, Vol. 13, No. 4, Fall 1984, pp. 299-346. The identification of Hume as a "moderate skeptic" is on p. 329.
3. Ibid., p. 330.
4. J.L. Mackie, Hume's Moral Theory (Routledge & Kegan Paul, 1980). Ch. VI, section 5 is devoted to Treatise III, ii, section 11.
5. Jonathan Harrison, Hume's Theory of Justice (Oxford, 1981), section xi.

6. Ibid., p. 231.
7. Ibid., p. 229.
8. Ibid., p. 239.
9. Ibid.
10. Ibid., p. 231.
11. Mackie, p. 115.
12. Harrison, p. 230.
13. Mackie, p. 116.
14. Ibid., p. 115.
15. Harrison, p. 231.
16. Ibid., p. 239.
17. Cohen, p. 332.
18. Ibid., p. 337.
19. Harrison, p. 230.
20. Mackie, p. 117.
21. Ibid., pp. 113-14.
22. Bernard Williams, "Politics and Moral Character," in Public and Private Morality, ed. Stuart Hampshire (Cambridge, 1978), p. 62. Nagel's essay, "Ruthlessness in Public Life," appears in the same volume.
23. Michael Walzer, Just and Unjust Wars (Basic Books, 1977), pp. 18-19. I take the quotation from Hume's History from Walzer.
24. Ibid., p. 58.
25. Mackie, p. 114.
26. Mackie draws a stronger analogy. Because statesmen are often incapable of looking after their long-range interests, he says, "...a state is by nature analogous to those individuals in whom natural defects produce diminished responsibility" (p. 116).

27. Harrison attributes to Hume the view that it is "less reprehensible" for a prince to transgress the rules of justice than for a private person (p. 230). But this does not explain who it is for whom the system is supposed to be more free. It cannot be more free for princes, since, as Harrison himself points out, all wrong acts are equally prohibited, even if not equally wrong. Nor can it be more free for observers: if the act is less reprehensible, it ought to be judged as such, and more readily indulged (not to indulge it must be wrong). Hence if Hume is saying that the system is "more free," he cannot be saying that princely transgressions are "less reprehensible."
28. Mackie says that morality has "diminished stringency" (p. 114) in international affairs. "Stringent" means rigid, unbending. The metaphors "force," "stringency," and "weight" come to the same thing: that moral rules provide reasons for action which are less important, when opposed to other reasons, than they would be in domestic life.
29. Here I may seem to be taking liberties with the text, for Hume does not seem to say that it is the existence of the current maxim which furnishes proof that all men hold his general theory, but rather something else, which does so, namely, a certain "practice of the world." But both logic and Mackie are on my side.

The remark about "convincing proof" comes in the last paragraph of the section, immediately after Hume has raised, and resolved, the question of the relative strength of the two "species" of morality. Hume says this question can't be answered by philosophy, but by "the practice of the world," which, he says, "goes farther in teaching us the degrees of our duty, than the most subtle philosophy, which was ever yet invented." Having settled that question, he then in the next sentence goes on to say, "And this may serve as a convincing proof, that all men have an implicit notion [that] ... rules concerning natural and civil justice ... arise merely from human conventions, and from the interest, which we have in the preservation of peace and order" (i.e., his general theory of justice) (T 569).

Now both Mackie and Harrison evidently take the word "this" in this sentence to refer

restrictedly to the sentences just preceding about the "practice of the world," and not, as I do, to the entire argument of section 11 regarding the "current maxim." But this does not seem to make sense, for the fact that people take the relative strength of the two moralities to depend on practice (or convention) does not show that they think that the rules themselves depend on convention, still less on interest. And Mackie implicitly acknowledges as much, for when he goes on to explain how "this" can serve as proof of the general theory, he says that only on the general theory "can we understand how their [i.e. the rules of justice] moral stringency diminishes when they are transferred to a sphere where relevant interests are less strong" (p. 114). But that idea is the current maxim, and not the proposition that the proportionality between the moralities is set by practice.

30. Here Harrison is correct in saying that Hume fails to distinguish between the natural obligation to have rules of justice, and the natural obligation to obey them (p. 233). Only the former is founded on self-interest.
31. The term "moderate skepticism" is an odd characterization of Hume's view. If skepticism is meant to be opposed to rationalism, intuitionism, or some other form of moral objectivism, according to which moral principles either impress themselves on the mind or are in some way verifiable and capable of objective proof, then Hume's skepticism is not moderate but complete: morality for him is not analogous to mathematics, science, intuitive knowledge, or other forms of objectively known facts. But if skepticism is the view that we do not have reasons for our moral principles, and therefore moderate skepticism the view that we have some reasons but perhaps not very good reasons, then Hume is no kind of skeptic at all, for he holds that our morality is supported by excellent reasons. Hume's view is that the morality of princes is weaker than ordinary morality; this may be immoral, but it is not skeptical.
32. Cohen, p. 302.

33. Ibid., p. 330.
34. Ibid., p. 334.
35. Ibid., p. 338.
36. Ibid., p. 334.
37. Ibid., p. 333.
38. For an interesting discussion of the problem of compliance in a general environment of non-compliance (in the context of ethics in business), see N.C. Gillespie, "The Business of Ethics," in Robison, Pritchard, Ellin (eds.), Profits and Professions (Humana, 1983).
39. Cohen, p. 333.
40. Mackie is unclear on this point. He may or may not intend to attribute to Hume what is evidently his own view, "Sovereign states are not in Hobbes' state of war, but in a condition intermediate between this and a full system of justice" (p. 119). On my reading, Hume's view is that sovereign states do have a full system of justice ("the same notions of justice ... to the same extent"), which is, however, weaker than the system for individuals. Neither the existence nor the strength of a system of justice seems to depend on enforceability, for Hume; in this he is quite different from Hobbes.
41. Justice, Cohen asserts, is not based on universal interest: "...demonstrating that conventions are in every nation's interest does not establish their justice" (p. 302). He does not defend this assertion.
42. Cohen, p. 339.
43. Harrison, p. 229.
44. Ibid., p. 235.
45. I once had done in my house some electrical work, which involved installing a new box for the circuit-breakers. The electrician failed to follow the local building code, which required that the box be installed no closer than 18 inches to the nearest obstruction. The building inspector discovered this error; he had the authority to order the box removed and relocated (and to cite the electrician), but he didn't.

- (Perhaps in certain cities an inspector would expect a gratuity for this service.) Presumably there is some reason why there is such a rule, but in this case at least, neither the inspector, the electrician, nor I considered the rule worth enforcing. The transgression, if not lawful, was certainly tolerable.
46. Shakespeare notoriously in his historical plays altered the facts for dramatic purposes. Even in the late play Henry VIII, which related events very close to home and within the lifetime of the parents of some in the audience, he makes some important changes in chronology. Why do we not consider this deceptive? (Defenders of Richard III do consider Shakespeare deceptive.) Because "deception" is a term of condemnation and we do not condemn what seems unimportant. (Defenders of Richard III do not consider the depiction of Richard's character unimportant.)
  47. I think Hume would like the analysis given in the text, since he would find it one more confirmation that justice is a convention based on interest. Clearly our natural, uninstructed, sentiment is to condemn a violation proportionate directly to the interest it threatens, and not in accordance with some middle-ground compromise.
  48. Mackie, p. 114.
  49. Cohen, p. 338.
  50. Recent historical examples of wars fought over disputed territory include the China-India war of 1962, the Falkland Islands war, and of course the current Iran-Iraq war. In each of these cases, both sides could make a plausible claim to sovereignty over the territory in question, based on the applicable rules of international law.
  51. Mackie, p. 117.
  52. Ibid.
  53. Ibid., p. 116.