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Dirty Hands Defended

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Abstract

This paper defends the possibility of dirty hands against the longstanding skepticism that an action cannot be simultaneously right and wrong and that dirty hands cases are therefore impossible. While skeptics are right to recognize that moral duties may be overridden, they are wrong to deny that actions required by necessity may nevertheless remain wrong. Dirty hands cases capture the simultaneous necessity of disregarding moral duties in certain circumstances and the reprehensibility of wronging people even in cases in which this is all-things-considered permissible. Rather than indicating any deficiency in our moral reasoning, the capacity to accommodate the possibility of dirty hands, along with the reality of moral conflict, is a strength of a moral theory.

Keywords

consequentialism – dirty hands – moral conflicts – moral remainder

1 Introduction

It is a truth universally acknowledged that an individual wishing to succeed in politics must be willing to lie, cheat, deceive, be ruthless, and break all kinds of moral rules. This rendering of ‘Austen meets Machiavelli’ captures the pervasive assumption that certain people, politicians leading the way, must do what is morally reprehensible to achieve what is desirable. This applies not to those who are selfish and corrupt, but to those who genuinely wish to do good.

In September 2002, Wolfgang Daschner, the deputy police chief of Frankfurt in Germany, ordered subordinates to threaten to torture a man named Magnus Gäfgen, who, four days earlier, had kidnapped an 11-year-old boy. Gäfgen was refusing to reveal the child's whereabouts even after hours of interrogation, and Daschner feared that the child's life was in imminent danger.¹ At the time President Barack Obama was awarded the Nobel Peace Prize in 2009, he was the Commander-in-Chief of a military embroiled in two wars. And during the 9/11 attacks, after the first plane had crashed into the World Trade Center in New York, President Bush ordered any further suspected hijacked planes to be shot down.²

May leaders who strive for peace respond to terrorism with terror, safeguard liberal democracy through violent means, or surrender civil liberties for the sake of public health and safety?³ The *problem of dirty hands* describes the paradoxical idea that, in politics, it may be right to do what is morally wrong.⁴ The perhaps best-known contemporary formulation of this phenomenon is Michael Walzer's. His claim that 'no one succeeds in politics without getting his hands dirty' reverberates through a voluminous body of literature grappling with the question of why it seems that, in politics, it is right to do what is wrong.⁵ As Bernard Williams put the point, '[w]e may want – we may *morally* want – politicians who on some occasions ignore [moral] problems.'⁶

Such claims have attracted a great deal of criticism, mainly from opponents who question the coherence of dirty hands.⁷ While one action may plausibly

1 Richard Bernstein, 'Kidnapping Has Germans Debating Police Torture,' *The New York Times* (10 April 2003).

2 Dana Milbank, 'Cheney Authorized Shooting Down Planes,' *The Washington Post* (18 June 2004), A01.

3 For discussion, see Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror* (Princeton, NJ: Princeton University Press, 2005).

4 While dirty hands cases are paradigmatically at home in politics, they may occur in any sphere of human conduct in which moral conflicts arise. See Section III.2.

5 Michael Walzer, 'Political Action: Dirty Hands in Politics,' in Marshall Cohen, Thomas Nagel, and Tim Scanlon (eds), *War and Moral Responsibility* (Princeton, NJ: Princeton University Press, 1974), 66. See also Michael Ignatieff, *Fire and Ashes* (Cambridge, MA: Harvard University Press, 2013).

6 Bernard Williams, *Moral Luck: Philosophical Papers 1973–1980* (Cambridge: Cambridge University Press, 1981), 54.

7 For example, Kai Nielsen, 'There is No Dilemma of Dirty Hands,' in Igor Primoratz (ed), *Politics and Morality* (Palgrave-Macmillan, 2007), 1–7. See also Michael Yeo, 'On the One Hand and On the Other'; Michael McDonald, 'Hands: Clean and Tied or Dirty and Bloody'; David P. Shugarman, 'Democratic Dirty Hands?' all in Paul Rynard and David P. Shugarman (eds), *Cruelty and Deception: The Controversy over Dirty Hands in Politics* (Peterborough, Ont.: Broadview Press, 2000; Sydney: Pluto Press, 2000).

be right in one context and wrong in another, dirty hands cases purport to be both right and wrong *simpliciter*, which – so the criticism goes – is logically impossible. As a result, a considerable mass of scholarship is dedicated to untangling the paradoxical nature of the problem – attempting to show, for instance, that there is no real value conflict to begin with, or that the problem's paradoxical nature is, in the end, just another simple case of some values or duties overriding others.⁸

This paper defends the possibility of dirty hands cases against longstanding critiques that take issue with dirty hands' paradoxical nature. I argue that the paradoxical heart of the problem – the wrongness of doing something that is justified, perhaps even required – is neither captured by the notion that the end justifies the means nor the claim that certain political values simply override individual moral ones. This, I contend, holds even for committed consequentialists. Against the view that dirty hands cannot exist because it is logically impossible for something to be both right and wrong *simpliciter*, I defend a conception of dirty hands cases that is sensitive to the weight of consequentialist demands in the face of conflicting duties. Committing *pro tanto* wrongs is compatible with acting all-things-considered permissibly; in certain cases, committing *pro tanto* wrongs may even be required. Dirty hands cases, it follows, are neither logical impossibilities nor reducible to simple value conflicts. Rather, they demand that we view moral theory as considerably more multidimensional than opponents would have it. Accommodating the intractability of certain moral conflicts neither renders moral theory impractical nor does it reveal it to be incomplete. Far from being tantamount to denouncing moral theory as fatally deficient, acknowledging genuine, intractable moral conflicts reveals a richer, more accurate, and perfectly coherent picture of the moral universe.

The discussion proceeds in four steps: Section II outlines and dissects the problem of dirty hands, to lay bare the fulcra giving rise to its paradoxical nature. Section III addresses three principal objections to the possibility of dirty hands cases. The first rejects the possibility of genuine moral conflict altogether, by insisting that there is a plurality not just of values but of entire moral systems. The second assumes that political duties are by nature consequentialist, and claims that we can reduce moral conflicts to simple cases in which one duty overrides another, thus dismantling potential conflicts by providing a

8 Michael Stocker, *Plural and Conflicting Values* (Oxford: Clarendon Press, 1990), 85–126; Walter Sinnott-Armstrong, *Moral Dilemmas* (Oxford: Blackwell Publishers, 1988), Chs. 1–3. For a recent discussion of the relationship between the PHD and moral conflicts, see Christina Nick, 'Dirty Hands and Moral Conflict – Lessons from the Philosophy of Evil,' *Philosophia* 50 (2022): 183–200.

straightforward solution. The third presumes a specificationist view of rights that specifies rights so narrowly that they pose no obstacle to consequentialist demands; as a result, dirty hands cases never arise in the first place. Section IV defends the possibility of dirty hands – in particular, their defining paradoxical nature. The PDH does not merely acknowledge that an otherwise wrong, and hence impermissible, action may in certain circumstances be permissible; more importantly, the PDH insists that the act in question remains wrong, despite having been justified, or even required. The question of ‘what ought one to do, all things considered’ is not the whole story. Besides the aptness of reactive attitudes such as regret, guilt, and remorse, we should acknowledge the weight of rectificatory duties that may arise from doing even what is all-things-considered permissible.

Before we proceed, a few preliminary remarks, beginning with the type of conflict that underlies the problem of dirty hands. Moral conflicts involve two conflicting moral duties that are actual (that is, not merely *prima facie*) duties.⁹ A moral conflict arises when (i) there is a duty to perform act *a*, (ii) there is a duty to perform act *b*, and (iii) it is only possible to do either *a* or *b*, but not both.¹⁰ A moral dilemma is a particular kind of moral conflict in which neither duty overrides the other, so that no matter which course of action the agent chooses, she will commit a moral wrong by violating one of the conflicting duties.¹¹

Second, whether a moral duty obtains, roughly speaking, depends on a combination of certain moral reasons and facts. There is a great deal of disagreement about the extent to which moral judgments reflect facts, and which facts have the normative force to constitute moral reasons. My premise that moral conflicts recognize competing normative claims is neutral amongst those metaethical theories that deem it appropriate for us to think and act

9 For an argument that moral conflicts (of dirty hands) involve conflicting duties, see Michael Stocker’s ‘Dirty Hands and Ordinary Life,’ in *Plural and Conflicting Values* (Oxford: Clarendon Press, 1990), 9–36; Stocker, ‘Dirty Hands and Conflicts of Values and of Desires in Aristotle’s Ethics,’ *Pacific Philosophical Quarterly* 67 (1986): 36.

10 Stocker, *Plural and Conflicting Values*, 86; see also Bernard Williams, ‘Ethical Consistency,’ in *Problems of the Self: Philosophical Papers 1956–1972* (Cambridge: Cambridge University Press, 1973), 167. On the nature of moral conflicts, see also Thomas Hurka, ‘Monism, Pluralism, and Rational Regret,’ *Ethics* 106 (1996): 555–575.

11 Sinnott-Armstrong, *Moral Dilemmas*, 58; Martha Nussbaum, *The Fragility of Goodness*, 2nd ed. (Cambridge: Cambridge University Press, 2001), 30; see also Williams, ‘Ethical Consistency’; Stocker, ‘Moral Conflicts: What They Are and What They Show,’ in *Plural and Conflicting Values*.

as though there are moral facts, regardless of how our judgments or attitudes relate to them.¹²

2 The Problem of Dirty Hands

In essence, the problem of dirty hands (PDH) describes the idea that the profession of politics requires individuals to violate significant moral duties, and that doing so is, in some way, right but nevertheless problematic.¹³ An agent gets her hands dirty as a result of justifiably performing actions that are morally objectionable – for example, lying, breaking promises, coercion, blackmail, sanctioning physical violence, or killing.¹⁴ These actions are not performed for personal gain or advantage, but in dutiful fulfillment of legitimate political responsibilities.¹⁵ They are, in a sense, ‘part of the job.’ As Williams put it,

It is a predictable and probable hazard of public life that there will be ... 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.¹⁶

Although it is widely accepted, and expected, that certain circumstances will require the perpetration of severe moral wrongs, most people still find

12 Philippa Foot, ‘Moral Realism and Moral Dilemma,’ *The Journal of Philosophy* 80 (1983): 379–398.

13 C. A. J. Coady, ‘Politics and the Problem of Dirty Hands,’ in Peter Singer (ed.), *A Companion to Ethics*, (Oxford: Blackwell Publishers, 1993), 373.

14 In the relevant cases, the people who are harmed retain rights against being thus harmed; they have neither forfeited nor waived them. What nonetheless renders it permissible for agents to inflict these harms is a lesser-evil justification.

15 Susan Mendus, *Politics and Morality* (Cambridge: Polity Press, 2009), 8. As noted earlier, dirty hands are not necessarily limited to politics, but may result in any sphere of human activity in which moral conflicts arise. See Section III.2.

16 Williams, *Moral Luck*, 60. The PDH thus presupposes what is, in a sense, a ‘duty to do wrong.’ I do not discuss the notion of a ‘right to do wrong here’ (for that, see Jeremy Waldron, ‘A Right to do Wrong,’ *Ethics* 92 (1981): 21–39; David Enoch, ‘A Right to Violate One’s Duty,’ *Law and Philosophy* 21 (2002): 355–384; Renee Jorgensen Bolinger, ‘Revisiting the Right to Do Wrong,’ *Australasian Journal of Philosophy* 95 (2017): 43–57), but it is an interesting question whether the duty to do wrong presupposed by the PDH, a fortiori, supports a right to do wrong.

something unsettling in the idea of ‘dirty hands.’ How is it that we get our hands dirty by doing what we ought to do?

Michael Walzer’s seminal articulation of the phenomenon of dirty hands in politics suggests that two assumptions characterize the PDH: (1) the wrong action is required by necessity, for instance to avert a greater evil; (2) this action is nevertheless wrong, and the agent is consequently haunted by guilt. This is the sense in which her hands are ‘dirty.’

Let us consider these claims in turn. On Walzer’s view, politics constitutes a ‘world of necessity’ in which certain actions are required.¹⁷ This necessity arises from ‘a conflict between collective survival and human rights,’ and results from the politician’s professional duty to prioritize the former in adherence to a radical ‘utilitarianism of extremity.’¹⁸ The premise, in other words, is that political leaders’ professional responsibility requires them to prioritize the wellbeing of the collective over individuals’ rights. The starkly consequentialist implications for cases like ‘ticking bomb’ scenarios are familiar.¹⁹

But Walzer’s worry is not simply that political ends justify immoral means. The agent can only break out of the dilemma as a reluctant, remorseful quasi-consequentialist, all the while acknowledging that the overridden moral principles were not altogether eliminated by political necessity, but remained intact. This is why it is essential that the politician act as she must ‘with a heavy heart’: we do not, Walzer acknowledges, want to be ruled by people ‘who have lost their souls.’²⁰ On Walzer’s account, then, it is paramount that the agent recognizes the severity of committing a wrong. If she did not feel remorse and had no scruples about violating moral duties, she would not be a *moral* politician.²¹ And a moral politician is what we want.

Part of the assumption, as I understand it, is that agents must feel remorse, recognizing that their concessions of moral integrity retain their reprehensibility. In this sense, the justification of dirty hands, somewhat paradoxically, lies in their very unacceptability. The PDH insists on the validity of certain principles even though they must be superseded by a consequentialism that is born out of political necessity.

The PDH thus arises in cases in which agents are morally obliged, but can only fail, to reconcile competing duties. Acknowledging the possibility of dirty hands means acknowledging both that there is no way around the fact that political imperatives must sometimes override moral principles *and* that this

17 Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1996), 325.

18 Ibid.

19 Walzer, ‘Political Action: Dirty Hands in Politics,’ 68–69.

20 Ibid., 79.

21 Ibid., 73.

is fundamentally problematic, as immoral action is not simply justified by achieving political ends. The dirtiness of hands, and the agent's appropriate experience of guilt, on which more later, reflect the notion that the action in question, though necessary, remains a moral evil.²²

We have now identified the two fulcra of the PDH. Dirty hands (i) result from wrongdoing that is required, for instance by political necessity, and (ii) appropriately imbue a genuine feeling of remorse about the wrong perpetrated. Thus the paradox: even in cases in which it is right to do what is wrong, this wrong nevertheless remains wrong.

3 Skepticism about Dirty Hands

Many scholars have questioned the coherence and possibility of dirty hands cases. Actions, one prominent worry goes, cannot be simultaneously right and wrong simpliciter.²³ Common criticisms consequently are that accounts of dirty hands suffer from a logical impossibility, moral inaccuracy, or otherwise unwelcome theoretical implications to the effect that morality is impractical, incomplete, or simply unrealistic. To wit, while I stipulated that the problem of dirty hands arises from a moral conflict between two duties, which cannot both be fulfilled, some scholars argue that moral conflicts between duties are altogether impossible; others recognize that conflicts between moral duties are possible in general, but hold that one of the duties must always override the other.²⁴ Whereas the PHD presupposes that (i) it can be right to do wrong, but (ii) the wrong nevertheless remains wrong, skeptics insist that the wrongness of the wrong effectively loses its purchase, so that the required action is ultimately right, and there remains no meaningful sense in which it is also wrong.

²² Ibid., 63.

²³ See Kai Nielsen, 'There is No Dilemma of Dirty Hands'; Michael Yeo, 'On the One Hand and On the Other'; Michael McDonald, 'Hands: Clean and Tied or Dirty and Bloody'; David P. Shugarman, 'Democratic Dirty Hands?' all in Paul Rynard and David P. Shugarman (eds), *Cruelty and Deception: The Controversy over Dirty Hands in Politics*. For defenses of the PDH, see Ronald Beiner, 'Missionaries and Mercenaries'; John Allett, 'Bernard Shaw and Dirty-Hands Politics'; Tom Sorrell, 'Politics, Power, and Partisanship'; Evan Simpson, 'Justice, Expedience, and Practices of Thinking,' in the same volume.

²⁴ Even if we rank duties according to priority, moral dilemmas are still possible. See Sinnott-Armstrong, *Moral Dilemmas*, 31, 72, 95–97.

3.1 *Plural Moral Systems*

Isaiah Berlin's reading of Machiavelli's *The Prince* presents an attempt at eliminating the very circumstances that could generate dirty hands. What Machiavelli achieves, Berlin claims, is no less than to solve the 'insoluble dilemma' at the heart of our inquiry, explaining how, although certain political acts violate fundamental moral standards, they can be justified.²⁵ According to Berlin, what Machiavelli's account of political leadership reveals is something that cuts deeper than the commonly assumed divide between morality and politics – something that can only be expressed as a differentiation between 'two incompatible ideals of life, and therefore two moralities.'²⁶ Rather than individual conflicting values, the agent is facing a choice between entire moral systems, one governing the private life of ordinary individuals, the other the political life of rulers. What Berlin finds in Machiavelli's account is

that ends equally ultimate, equally sacred, may contradict each other, that entire systems of value may come into collision without possibility of rational arbitration, and that not merely in exceptional circumstances, as a result of abnormality or accident or error ... but ... as part of the normal human situation.²⁷

The view that ultimate values may be incompatible not only lies at the core of Berlin's favored account of value pluralism, but also leads him to conclude that there is no one right answer to the question of how people ought to live.²⁸ There are, Berlin claims, disparate moral universes that make different demands on us. They constitute equally ultimate and valid ways of life. But they are irreconcilable, and so one must, in choosing one, forego the other(s).

Different modes of life, on this view, require adherence to different values. To be a successful politician, one must abide by the values that shape political life, not values suited for a private life. If Berlin's Machiavelli is right, the paradox at the heart of the PDH dissolves. Then all we need to do is acknowledge the existence of different moral systems – 'exhaustive alternatives between two conflicting systems of value' – which simply make it impossible to be a morally

25 Isaiah Berlin, 'The Originality of Machiavelli,' in H. Hardy (ed), *The Proper Study of Mankind* (Berlin: Farrar, Straus and Giroux, 2000), 320.

26 *Ibid.*, 289.

27 *Ibid.*, 320. See also Hannah Arendt, 'Truth and Politics,' in *Between Past and Future*, revised edition (Penguin Classics, 2006), 223–259; Reinhold Niebuhr, *Moral Man & Immoral Society* (Westminster: John Knox Press, 2002); Max Weber, 'Politics as a Vocation,' in D. Owen, T. B. Strong (ed), *The Vocation Lectures* (Hackett Publishing Company, 2004), 92.

28 Berlin, 'The Originality of Machiavelli,' 312, 316.

virtuous individual and, at the same time, a good political leader.²⁹ On this view, the conflict between moral imperatives and political necessity that poses a threat to clean hands disappears as individuals are forced to choose one or the other way of life, and live by corresponding rules. Thus, if Berlin's Machiavelli is right, we avoid the problem by cutting the Gordian knot and choosing one moral system over the other.

The kind of pluralism that Berlin finds in the *Prince* divides morality into different spheres, so that values from one sphere do not come into conflict with those from the other. Machiavelli's Prince thus escapes conflicts between duties that pertain to different moral systems by committing to just one moral system to begin with.

On this view, the political leader's choice is neither tragic nor difficult. The answer will always be to take whichever measures are necessary for the building of a strong society. If one desires to take up political responsibility, one must be willing to give up the 'morally good life.'³⁰ As a result, there is no vexing notion that an action may be right in one sense but wrong in another. So long as the action in question accords with the moral system to which the agent is committed, the action is right. Machiavelli's Prince, then, will not get his hands dirty. He is not a moral politician in Walzer's terms, which is impossible, but just an ordinary politician.

But moral conflicts do not disappear just because we assume the existence of plural moral universes. And the separation between individual private life and public political life to the point that one is bound by only one set of duties does not preclude value conflicts within the same moral sphere. Even if there were plural moral systems, individual values and corresponding duties could still conflict within the same moral system, so long as fulfilling one duty would violate another sufficiently weighty duty. In politics, values such as equality and freedom, or peace and justice, conflict all the time. Dismissing such conflicts as symptoms of incompatible ways of life does not just miss the truth of agents' moral experience; it denies the distinctive urgency and ultimacy of moral decisions.

Henry Hardy's defence of Berlin against accusations of relativism highlights Berlin's commitment to the objectivity and universality of values. But the question remains: in deciding what to do, how are we to choose between competing values which we acknowledge to be equally valid? Apart from a nod to Machiavelli's concession that, in politics, the end seems to justify the means, Berlin gives us no answer.

29 Ibid., 303.

30 Ibid.

One approach is thus to deny the possibility of moral conflicts by advocating a compartmentalization between different systems of morality. If individual morality and politics are two separate spheres, politicians will not get their hands dirty, and there will be no basis for blame or guilt. Indeed, there may be no dirty hands-generating conflict at all, as moral principles may just not apply in politics. But such a response only misrepresents – and effectivley denies – the problem. The PDH does not arise from an incongruity between different moral systems. It arises from incompatible duties that inhere in the same moral system.

Consider a distinction Tony Coady highlights between claims about the comprehensiveness and claims about the dominance of morality. To say that morality is dominant is to say that it trumps all other considerations; to say that it is comprehensive is to say that it is always relevant, even if it does not always trump other considerations.³¹ According to Berlin's Machiavelli, morality is neither. By contrast, the idea of dirty hands recognizes the comprehensiveness of morality while remaining sensitive to the possibility that it is not always dominant. This helps explain why attempts at cordoning off a special section of human activity, in which actions are right that would otherwise be wrong, are unsatisfying. For regardless of whether they are right to deny that morality is always dominant, they may be wrong to deny that morality is comprehensive. The argument for a plurality of moral systems thus does little to eliminate the type of conflict that generates dirty hands.

3.2 *Political Consequentialism*

Consider now the notion that politics is in some way 'special' in that it requires certain actions that violate moral principles. While the argument for plural moral systems seeks to preclude the possibility of dirty hands-generating conflict altogether, the argument for political consequentialism purports to provide a solution to the conflict that does not give rise to dirty hands. I will say 'political consequentialism' to capture the common notion that political agents, more so than others, are bound by distinctively consequentialist demands. Political consequentialism has an exceptionalist flavour, due to its assumption that politics requires agents to ascribe greater weight to consequentialist demands than individual, 'private' morality.³²

Mainstream discussions of dirty hands attach great moral significance to a political agent's obligations to her community, which are typically taken to

31 C. A. J. Coady, 'The Problem of Dirty Hands,' in Edward N. Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition).

32 For example, Coady, 'Politics and the Problem of Dirty Hands,' 378; Williams, *Moral Luck*, 61.

imply broadly consequentialist duties.³³ The assumption is that political action demands a broadly consequentialist outlook – after all, politicians' primary professional responsibility is to bring about certain beneficial outcomes.

But dirty hands cases are not unique to political activity. Many professions and associative obligations prioritize outcomes in certain ways. Politicians' distinctive susceptibility to the PDH, I suspect, has its source in their commitment to their community, which requires them to prioritize what happens to that community, at least to the extent that politicians are meant to act in the interests of those whom they represent. In this sense, leaders, more so than most people, may be required to give special weight to consequentialist considerations.³⁴ Insofar as political actors are primarily representatives, Coady suggests, we may even need to assess them morally differently from other agents.³⁵

One way to understand this critique is as championing a monistic view on which morality is reduced to one moral principle, that of political consequentialism.³⁶ Treating consequences as paramount may eliminate the kinds of moral conflicts that give rise to dirty hands cases. If politics requires decision makers to prioritize certain outcomes over, say, individual rights, then there is no sense in which they get their hands dirty by violating individual rights, because they are merely fulfilling their duties.

But this approach explains away the PDH's distinctly troubling nature. Political consequentialism does not accommodate the possibility that doing what is all-things-considered permissible may nonetheless include wrongdoing. Hands simply never get dirty. But this obscures part of the story. It only tells us that the action in question is permissible on consequentialist grounds; it does not take seriously the notion that this comes at the cost of committing a wrong.

This is unsatisfying because the cost is real. The 'evil' in lesser-evil justifications is still relevantly evil. To illustrate, grant that, in the standard trolley case, turning the trolley away from the five and towards the one is permissible. But, even if one has a lesser-evil justification, killing the one is still

33 For discussion of a leader's special duty to her community, see Walzer, 'Political Action: Dirty Hands in Politics,' 81; Plato, *The Republic*, Allan Bloom, trans., 2nd ed. (Basic Books, 1991), 412 d-e; Coady, 'Politics and the Problem of Dirty Hands,' 378; Williams, *Moral Luck*, 64; Niebuhr, *Moral Man & Immoral Society*, 257.

34 For what it's worth, I think what I call political consequentialism here is ultimately most plausibly explained by an appeal to associative obligations rather than some claim that consequentialism somehow acquires special validity in politics, but this has no bearing on my argument.

35 Coady, 'Politics and the Problem of Dirty Hands,' 376.

36 See Sinnott-Armstrong, *Moral Dilemmas*, 32.

a real moral sacrifice. The fact that one acted all-things-considered permissibly changes nothing about the moral cost inherent in killing the one. After all, one's lesser-evil justification comes from the greater good of saving the greater number, which has nothing to do with the right of the individual. Even if that person's right not to be harmed may be permissibly infringed on lesser-evil grounds, their right remains intact.³⁷

A monistic theory that reduces morality to achieving desirable consequences cannot make sense of moral sacrifices inherent in permissible rights infringements.³⁸ If there is only this one end, only duties that serve to achieve desirable outcomes will have any force. As a result, agents will not feel the pull of distinct, conflicting duties; they will not experience the type of conflict that results in the notion of dirty hands. But if there are cases in which it is appropriate that agents feel remorse for wrongful actions, even if those actions are required, political consequentialism will not do.³⁹ It just provides a clear formula as to what ought to be done, all the while denying the moral cost of duties not acted upon.

3.3 *Specificationism*

Specificationism seeks to define rights as narrowly as possible. On this view, rights, properly understood, do not conflict. Once rights are delineated sufficiently specifically, they are, in Hillel Steiner's term, 'compossible.'⁴⁰ When rights are specified exactly, as John Oberdiek puts the idea, 'what is justifiable is not opposed to any right in any way.'⁴¹ The notion of justified rights transgressions, and with it that of dirty hands, thus becomes obsolete.

Accordingly, if X is justified in doing Y, then Z has no right that X not do Y. That is, Z might have a right that people not do Y, except in cases in which a justification for doing Y obtains. If people only have rights not to be treated in

37 Permissible rights infringements, following Thomson, stand in contrast to impermissible rights violations. See Judith Jarvis Thomson, *Rights, Restitution, and Risk* (Harvard University Press, 1986), Chapters 3–5; Thomson, *The Realm of Rights* (Harvard University Press, 1990), 122.

38 Or of resulting compromises of one's moral integrity. For example, Williams, *Moral Luck*, 63.

39 It would be a mistake to rely on moral emotions as an indication of moral permissibility; after all, our emotions might simply be mistaken. The point, rather, is about the one-dimensional structure of morality that denies the kind of permissible wrongdoing that might appropriately give rise to such emotions in the first place. I wish to thank an anonymous reviewer for pressing me on this.

40 Hillel Steiner, *An Essay on Rights* (Blackwell, 1994).

41 John Oberdiek, 'Lost in Moral Space: On the Infringing/Violating Distinction and Its Place in the Theory of Rights,' *Law and Philosophy* 23 (2004): 325–346.

highly specific ways, no rights are transgressed in situations in which agents otherwise would get their hands dirty.⁴²

On the specificationist approach, rights play no role in determining what constitutes wrongful conduct. Rather than functioning as primary considerations in moral deliberation, rights become conclusions at which we arrive as a result of already having decided what it is permissible, prohibited, or obligatory to do. Specificationism effectively demotes rights to features of the moral universe that are completely descriptive.

On my view, by contrast, rights make it the case that there are certain things that we must not do to others. Even if, in tragic situations, morality permits the transgressing of certain rights, this does not change anything about what people's rights prohibit. Value conflicts and dirty hands scenarios are troubling precisely because some rights transgressions are all-things-considered permissible *despite* the fact that victims have rights not to suffer the harms that may permissibly be inflicted on them. To say that turning the trolley in the standard case is permissible, *end of story*, would be deeply unsatisfying. In cases in which people's rights are infringed on lesser-evil grounds, the lesser-evil justification is decidedly not the whole story.

Specifying away any possibility of conflicts between rights leaves us unable to make sense of the notion that innocent victims' rights not to be harmed continue to exert normative power, even if agents act all-things-considered permissibly in contravening those rights. Specificationism simply denies that this kind of tension is possible. While the consequentialist rejection of dirty hands cases denies the abiding relevance of rights that may be permissibly infringed, the specificationist approach alters their very purpose.

Time to take stock. We considered three different ways to resist the notion of dirty hands. The first claimed that there is a plurality of moral systems, so that moral conflicts do not arise in the first place; the second claimed that politics is necessarily consequentialist, meaning that dirty hands conflicts straightforwardly call for a consequentialist solution. The third approach defined rights so narrowly that they pose no real obstacle to consequentialist demands, and so never give rise to dirty hands scenarios in the first place. I have begun to suggest that we should resist all three objections, because none satisfactorily addresses precisely what it is that renders dirty hands distinctly and paradoxically troubling. This claim requires further defense.

42 Oberdiek, 'Lost in Moral Space,' 346; see also Leif Wenar, 'Rights,' in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Spring 2020 Edition).

4 Defending the Problem

In Section II, we identified as one of the constitutive elements of the PDH the somewhat paradoxical claim that an agent may be committing a wrong in doing what is required by political necessity. Critiques based on plural moral systems and political consequentialism remove this sense of wrongdoing from the equation. These critiques deny the defining, peculiar feature of the PDH: that doing what is required under certain conditions may remain wrong – not wrong, *all* things considered, but wrong nonetheless.

The PDH arises from conflicting moral duties, neither of which naturally overrides or outweighs the other. The PDH at once attempts to sanction a path out of the conflict for the agent, without rejecting the validity of each of the conflicting duties. The fact that one duty is made to override the other, the PDH signals, does not actually resolve the conflict. That is why the problem does not dissolve once one determines what one ought to do, all things considered. Whichever course of action one takes, one commits a wrong. Hence, what the PDH tells us is not that an action is both right and wrong. What it in fact tells us is that a wrong action, such as the transgression of an actual, intact right, may be permissible under certain circumstances, without this rendering it any less wrong.

Consider the appropriateness of reactive attitudes, such as regret, in dirty hands cases. As Williams puts it, ‘whatever he does, the agent will have reason to feel regret at the deepest level.’⁴³ This is the case not least if one infringes another person’s right on lesser-evil grounds. The person who must get her hands dirty, through no fault of her own, finds herself in a situation in which she has no choice but to act in a way that subsequently renders it appropriate for her to feel regret for what she has done.⁴⁴

The PDH does not merely acknowledge that an otherwise wrong action may in certain circumstances be right; the PDH also insists that the act in question *remains* wrong, despite having been permissible.⁴⁵ This is why Walzer’s moral

43 Williams, *Moral Luck*, 31, 74; see also Williams, ‘Ethical Consistency,’ in *Problems of the Self*, 166–186. Stephen de Wijze terms the relevant reactive attitude ‘tragic remorse.’ See Stephen de Wijze, ‘Tragic Remorse – The Anguish of Dirty Hands,’ *Ethical Theory and Moral Practice* 7 (2005): 453–471.

44 For example, Nussbaum, *The Fragility of Goodness*, 27, 51.

45 This also explains why dirty hands cases sit some awkwardly with the distinction between justifications and excuses, as the action in question is justified, wrong, and the agent’s regret is appropriate all at the same time. For a discussion, see Sinnott-Armstrong, *Moral Dilemmas*, 42; J. L. Austin, ‘A Plea for Excuses,’ *Proceedings of the Aristotelian Society* 57 (1956–1957): 1–30. Not everyone believes that those with dirty hands are blameworthy.

politician suffers from her actions, and is plagued by a sense of guilt for having gotten her hands dirty.

We need not rely on reactive attitudes like guilt and remorse, as evidence of genuine moral conflict. Nor is the claim that our intuitions about *ex post* duties, such as duties of compensation serve as a reliable indication as to what *ex ante* duties there are – though they may well do so.⁴⁶ The point, rather, is that the moral realm is not exhausted by what agents ought to do, all things considered. The notion of moral remainders and the resulting aptness of certain reactive attitudes such as regret are also part of the story, as are certain rectificatory duties that may arise from doing what is, all things considered, permissible. Moral theory is about more than what to do at a particular point in time.⁴⁷

Moral duties that are overridden are not automatically eliminated. If X turns the trolley to save the five, killing Y as a lesser evil, the moral duty not to kill Y does not just disappear. Even if X acts permissibly, all things considered, this is not all that matters.⁴⁸ If a duty is overridden by overwhelming necessity, it is not necessarily eliminated. This is why the agent's hands are dirty, why it would be apt for her to experience remorse, and why she may owe a duty to apologize and make efforts to otherwise address the wrong done.

The 'problem' inherent in dirty hands, then, is the moral cost of failing in some duty, even if this is justified, all things considered. This cost is what mainstream challenges to the PDH are mistaken to discount. Dirty hands are a problem in that they result from doing *wrong*.⁴⁹

Principal critiques of the PHD, then, attempt to resolve its paradoxical nature at too high a price. The first objection, the argument from plural moral systems, seeks to avert the presumed moral conflict by rejecting its possibility from the outset. This sacrifices morality's comprehensiveness. The second

For an example, see Neil Levy, 'Punishing the Dirty,' in Igor Primoratz (ed), *Politics and Morality*. Palgrave-Macmillan (2007), 38–53. Thanks for an anonymous reviewer pressing this point, on which I remain agnostic here.

46 Judith Jarvis Thomson, for instance, regards *ex post* compensatory duties as evidence of certain *ex ante* moral duties. See Thomson, *Rights, Restitution, and Risk* (Cambridge, MA: Harvard University Press, 1986), 40–1, 66–68; Joel Feinberg, 'Voluntary Euthanasia and the Inalienable Right to Life,' *Philosophy & Public Affairs* 7 (1987): 102. See also Sinnott-Armstrong, *Moral Dilemmas*, 37, 44.

47 See Stocker, *Plural and Conflicting Values*.

48 For example, Sinnott-Armstrong, *Moral Dilemmas*, 92–95; Williams, *Moral Luck*, 63; Stocker, *Plural and Conflicting Values*, 123.

49 For a defense of the view that there are moral conflicts in which wrongdoing is unavoidable, see Christopher W. Gowans, *Innocence Lost: An Examination of Inescapable Moral Wrongdoing* (Oxford: Oxford University Press, 1994).

objection, the argument from political consequentialism, leaves us no choice besides consequentialist monism. This denies the moral wrong concomitant with permissibly prioritizing consequentialist demands in certain cases. The third objection, the specificationist approach, like the argument from plural moral systems, denies the possibility of dirty hands altogether. Its price is the distortion of the moral function of rights. None of these options are appealing.

What is more, such drastic measures are unnecessary. In what follows, I argue that accommodating the paradoxical aspect of the PDH, far from being a weakness in our moral theory, reflects an unsatisfying, but nonetheless real, part of moral experience.

5 Moral Theory and the Happenings of the World

The mere fact that an action may be all-things-considered required by certain circumstances is compatible with it containing a *pro tanto* wrong that must be addressed and rectified. Even a duty that is overridden does not lose its grip on the agent. This is why she has dirty hands. Some actions that are required by political necessity are regrettable because they fail in a moral duty and thus constitute a wrong. This is why the PDH is a problem: it describes a conflict between two actual duties, both of which retain their validity, even if one is made to override the other. We know that the overridden duty retains its moral force because there is nothing that made it go away; hence, the aptness of certain reactive attitudes such as regret. Victims may also be owed compensation.

There is a pervasive sense in the literature that there had better not be real moral conflicts. The worry is that, if actual moral conflicts exist, this implies something about our theorizing that ought to make us uneasy. For example, it might mean that our moral theory is (a) impractical, demanding that we pursue conflicting values, which is impossible; (b) incomplete, leaving us with no answer as to which of the conflicting values to pursue; or (c) non-realistic, dismissive of what is right as a matter of fact.⁵⁰ While some views therefore reject the possibility of genuine moral conflict, others conclude that moral theory as a whole is deficient if it accommodates what appears like a logical inconsistency.

But there is no need to try to eliminate conflict in moral theory. In recognizing the type of conflict that gives rise to dirty hands, we, in the first instance, recognize something about the world, rather than making a claim

⁵⁰ Stocker, *Plural and Conflicting Values*, 85–86.

about morality itself. Moral conflicts are not necessarily a symptom of defective thought; they are simply a result of circumstances in the world.⁵¹ Acknowledging the reality of actual moral conflicts need not entail existential anxieties for our theory, because conflicts between duties arise from external circumstances. Duties conflict as a result of things that happen, including other people's actions. To borrow Martha Nussbaum's phrase, it is 'under pressures endemic to life in a world where choice is constrained by necessity' that moral conflicts occur and the PDH arises.⁵²

There is nothing wrong with a moral theory that identifies conflicting duties. The problem is not with how the agent perceives the situation; rather, as Williams puts it, 'what is wrong lies in his situation itself.'⁵³ Conflicts between values, and between their corresponding moral claims, are, in Nussbaum's language, simply 'a correct description of the way in which natural circumstances restrict the possibilities for choice.'⁵⁴ A plurality of conflicting values is a reflection of the world as it is, not a logical contradiction that needs to be straightened out in our theory.⁵⁵

In the end, morality is about more than what we ought to do at a particular point in time. What matters about moral acts, Stocker was right to insist, goes beyond whether they are to be done. Recognizing that the notion of moral remainders captures something real, such as rectificatory duties, opens the door to questions about what is to be done about those remainders. Once we accept the possibility of dirty hands cases – and, more generally, genuine moral conflicts – we face the question what morality requires when one cannot do everything one ought to do.⁵⁶

Accommodating the possibility that there is something both right and wrong about an agent's potential courses of action in dirty hands cases is not a weakness of our moral theory. Moral conflicts are not indicative of morality's limits, but part of life in a non-ideal world.

51 For the kind of view I have in mind, see Philippa Foot, 'Moral Realism and Moral Dilemma,' *The Journal of Philosophy* 80 (1983): 379–398.

52 Nussbaum, *The Fragility of Goodness*, 38. For related defenses of the PDH as a part of moral reality, see Stuart Hampshire, 'Public and Private Morality,' in Stuart Hampshire (ed), *Public and Private Morality* (Cambridge: Cambridge University Press, 1978), 23–53; see also Gowans, *Innocence Lost*.

53 Williams, *Moral Luck*, 75.

54 Nussbaum, *The Fragility of Goodness*, 46.

55 As an anonymous reviewer points out, a consequentialist might agree with Nussbaum that natural circumstances restrict our choices, but still deny that these choices leave a moral remainder. My view is that such an account would be missing something.

56 Stocker, *Plural and Conflicting Values*, 103. In this sense 'ought' does not straightforwardly imply 'can' – but this is not a claim I can defend here.

Accepting that conflicting duties are generated by real-world circumstances rather than faulty mechanisms in moral theory also has significant practical implications. If the PDH is a real moral conflict arising from a particular type of situation, we should work to reduce and eliminate such situations in public policy. After all, getting one's hands dirty is an emergency solution. As Berlin put it, the only justification for employing certain measures is that they are exceptional and necessary for the preservation of a system whose purpose 'is precisely to preclude the need for such odious measures.'⁵⁷ Indeed, it would be a mistake to assume that difficult moral problems can be solved before they arise: getting one's hands dirty is an emergency measure, not an actual solution to the problem. It is not a blanket permission to employ all means necessary for the achievement of certain ends. This, incidentally, is something that the argument from political consequentialism neglects.

Accepting the moral burden of having to get one's hands dirty when necessary is not tantamount to a carte blanche for overriding all moral constraints. That is not the point of substantiating the possibility of the PDH. Acknowledging the pro tanto wrongs inherent in lesser-evil justifications should lead us to consider what is required to change the circumstances, including our background institutions, within which the need arose to commit a moral wrong in the first place.⁵⁸

This raises questions about the extent to which dirty hands cases are the result of someone else's wrongdoing. Paradigmatic examples of dirty hands involve someone else creating a situation in which the agent must do wrong, such as in ticking bomb scenarios. Indeed, Machiavelli argues that the Prince must learn how to be 'not good' only and precisely because other people are not virtuous.⁵⁹ One question is thus whether dirty hands cases are always generated by others' wrongdoing, or whether they may also arise from unfortunate circumstances, in the absence of any wrongdoing, though this is a discussion for another day.⁶⁰

57 Berlin, 'The Originality of Machiavelli,' 311.

58 A notable example of this was set by the British diplomat, Carne Ross, who quit his profession over the Iraq War, as his job demanded moral sacrifices with such frequency that dirty hands were the norm rather than the exception. See Carne Ross, *Independent Diplomat: Dispatches from an Unaccountable Elite* (Cornell University Press, 2007).

59 Niccolò Machiavelli, *The Prince*, George Bull, trans. (London: Harmondsworth: Penguin Books, 1961), 91.

60 For the view that dirty hands generally result from 'immoral circumstances created by other persons,' see Stephen de Wijze, 'Dirty Hands: Doing Wrong to do Right,' *South African Journal of Philosophy* 13 (1994): 27–33.

Before we conclude, let us briefly revisit our starting point. While Machiavelli suggests that one can be either morally virtuous or an efficient politician – decrying any attempt at reconciling the two as pointless, foolish, and doomed – Walzer hinges leaders' moral legitimacy on the attempt to be both: genuinely regretting the violation of moral duties and the inevitable failure to retain one's moral integrity make all the difference for the very legitimacy of political authority. Incidentally, Max Weber similarly suggested that the politician who has a sense of vocation must strive to reconcile 'an ethics of conviction' with 'an ethics of responsibility'.⁶¹ The politician who has a sense of vocation must both believe in transcendent moral ideals and remain sensitive to the constraints that political reality sets. What is required is the willingness to accept dirty hands as simultaneously necessary and lamentable.

6 Conclusion

The aim of this paper was to defend the possibility of dirty hands and the paradoxical nature that distinguishes it. I began with the assumption that the PDH arises from a conflict between actual duties, neither of which cancels out or naturally overrides the other. One feature of the PDH that I stipulated is its simultaneous acknowledgement of an *ex ante* necessity to commit a moral wrong and the *ex post* appropriateness of certain reactive attitudes such as regret. I then addressed three objections to the possibility of dirty hands cases: the argument from a plurality of moral systems, which denies the possibility of moral conflict altogether; the argument from political consequentialism, which attempts to turn the dilemma into an ordinary case of overriding duties; and the specificationist approach, which defines rights so narrowly that they pose no real obstacle to consequentialist demands, so that dirty hands scenarios do not arise in the first place. I argued that none of these approaches successfully dismantles the PDH, as none convincingly account for the fact that, although an action may be required by certain consequentialist demands, it may nevertheless remain wrong. Principal attempts at straightening out the moral conflict, I argued, fail to satisfactorily address the fact that the duties not acted upon nonetheless retain their force.

By insisting that the agent's hands are *dirty*, the PDH captures the realization that it is not enough to recognize that moral duties may be overridden. People are still wronged, even if one has a very good reason for one's action. This is

61 Weber, 'Politics as a Vocation,' 92.

why dirty hands appropriately entail not only certain reactive attitudes but also rectificatory duties of some sort, such as apologies or compensation.

To close, it will not do, with a resigning shrug, to console oneself with the truism that political duties demand moral sacrifices. The PDH remains, at its heart, a moral conflict. The appropriate response does not, ultimately, solve the problem, because the only thing to do is to recognize the problem for what it is. The problem of dirty hands thus, in the end, exemplifies what Wittgenstein describes as

a remarkable and characteristic phenomenon in philosophical investigation: the difficulty ... is not that of finding the solution but rather of recognising as the solution something that looks as if it were only a preliminary to it This is connected ... with our wrongly expecting an explanation, whereas the solution of the difficulty is a description ... The difficulty here is: to stop.⁶²

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62 Ludwig Wittgenstein, Zettel, Section 314, cited in Nussbaum, *The Fragility of Goodness*, 23.