Master Thesis

The Notion of Dirty Hands:
A critical analysis

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"Do you think you can govern innocently?"
Jean- Paul Sartre, *Dirty Hands*

Abstract
9/11 has shifted the debate about the moral justifiability of torture towards a more realist paradigm centered around the question whether we can afford to consider morality in the face of an existential threat. The underlying philosophical problem is the notion of dirty hands. This paradox has become one of the most important terms of reference in the academic debate on the issue of torture (Yemini 2014, 164). However, there is no consensus on how to understand the problem. Therefore, the main goal of this research is to provide a better understanding of the dilemma. In doing so, it is argued that the problem cannot play within either utilitarianism or deontology, but that it is still a very real dilemma that occurs within morality. Moreover, a framework based on 'reasons' will be developed to determine what situations constitute real dilemmas of dirty hands, as opposed to other situations of conflict. Finally, it will be shown that it is possible, indeed very likely, for a politician to get dirty hands. Four conditions will be formulated that determine whether a politician can justify getting his hands dirty.

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Chapter 1: Introduction

Torture is contrary to every relevant international law, including the law of war (Shue 2004, 47). Yet within six weeks after September 11, articles began appearing suggesting that torture might be required in order to interrogate suspected terrorists about future possibilities of violence (Levinson 2004). This thesis is part of the increasingly important debate over "the possibility that torture, at least in some carefully specified circumstances, might be a 'lesser evil' than some other 'greater evil' that threatens society" (Levinson 2004, 24). Since 9/11 the debate has somewhat shifted from questions of the moral justifiability of torture towards a more realist paradigm centered around whether we can afford to consider morality in the face of an existential threat (Torrente 2015, 4).

The underlying philosophical problem is the notion of dirty hands. This notion presents a paradox that is as interesting as it is complicated. As Walzer (2004) puts it: "the politician must do wrong to do right". The corresponding puzzle lies in the fact that "it is *prima facie* inconsistent to describe an action as both right and wrong" (Archard 2013, 778; Tillyris 2015, 64). The two most relevant philosophical theories seem to provide strong clarifications. In short, liberals would say that torture "is intrinsically wrong and can never be justified" (Yemini 2014, 167), because if an act is morally wrong, one should not do it (Moore 1989, 298). In contrast, utilitarians would argue that torture can be justified, when it provides the greatest good for the greatest number; in that case, one cannot be wrong or guilty (Walzer 2004, 35). Thus, it seems impossible to explain this paradox by appealing to liberalism and utilitarianism. "By accepting that either the action is not immoral, or that there cannot be a real moral obligation if the action is considered immoral" (van Erp 2013, 112), both theories deny the existence of the problem. Despite this denial, "the problem of dirty hands has become one of the most important terms of reference in contemporary academic scholarship on the issue of torture" (Yemini 2014, 163). Therefore, the main aim of this research is to provide a better understanding of the problem of dirty hands.

In doing so, this thesis will focus on the shortcomings of both liberalism and utilitarianism. With these shortcomings in mind, the goal is to offer a better insight and an encompassing understanding of the problem of dirty hands. Van Erp (2013) argues that "in order to take the problem of dirty hands seriously, it cannot be excluded *a priori* that the responsibility of politicians for the common interest obliges them, under exceptional circumstances, to immoral actions". In his influential essay, Walzer (2004) argues "absolutism represents, it seems to me, a refusal to think about what it means for the heavens to fall". Thus, to say that immoral actions are always prohibited expresses a kind of moral rigidity that does not acknowledge the reality of exceptional circumstances (van Erp 2013, 113; de Wijze 2009, 305). On the other hand, saying that the act is not really immoral involves the risk of creating too easily a justification of highly extreme and problematic actions (van Erp 2013 112-113; Walzer 2004, 40). In order to gain more insight into this tension between moral principles and political necessity (van Erp 2013, 110), the main question this research attempts to answer is whether, and if so under what circumstances, can politicians get their hands dirty?

Politicians acquire dirty hands by deliberately choosing an immoral act for the sake of the greater good (de Haan, 2001, 269; Matthews 2006, 3). In a situation of dirty hands, the public official "morally ought to do *a* and morally ought to do *b*, while he cannot do *a* as well as *b*" (de Haan 2001, 269). De Haan illustrates that there is "no logical incoherence because there is no propositional conflict" (de Haan 2001, 280). The problem is rather that "there are two different cherished principles in the premise set,

the satisfaction of one of which requires the violation of the other. It is a problem of incompatibility of values in specific circumstances" (ibid). This results in doing something that is immoral no matter the consequences: it is immoral when it fails and it is immoral when it succeeds (Matthews 2006, 3). As a consequence, the public official with dirty hands is guilty "even though he may have acted rightly in the circumstances" (ibid).

While there is general consensus on the definition, there is little agreement upon how we need to understand the problem of dirty hands in more detail. This question will be answered first. Thus, chapter two will provide an overview of the main approaches towards the problem, the underlying philosophical debate and will determine where the problem occurs. Some scholars, following a more realist line of thought, argue that the problem is caused by a clash of morality with some other rational necessity that correctly overrules it (Carr 1962), while others argue that it is a dilemma that occurs within morality (Nagel 1972; Yemini 2014; Walzer 2004).

The third chapter will show that even when scholars agree upon the nature of the problem, they can disagree about what circumstances cause a genuine dilemma of dirty hands. Thus, in chapter three, this research will answer the question what circumstances or conditions, if any, result in a genuine dilemma of dirty hands. Ultimately, a framework will be proposed to determine when a situation can be regarded a true dilemma of dirty hands. After all, a politician can only justify getting his hands dirty when the dilemma he faces can considered to be a real dilemma of dirty hands. In addition, this chapter will address the question how to deal with a dilemma of dirty hands.

Finally, in the fourth and final chapter, the answer to the research question will be formulated and a conclusion will be drawn. Also, there will be reflected upon this study and recommendations for future research will be done.

Chapter 2: How to understand the problem of dirty hands?

The ticking time bomb scenario is a hypothetical situation that is mostly used as an example of the problem of dirty hands related to torture. In short, the example describes the following: "a political leader has to decide whether he would allow the torture of a suspect in order to retrieve information about a ticking bomb that would potentially kill hundreds of people" (van Erp 2013, 109). While there are scholars that characterize this argument as an 'intellectual fraud', it is believed to have great rhetorical power and it thus "plays an important role in the broader moral discourse concerning the tension between moral principles and political necessity" (van Erp 2013, 110). When reading this scenario, one can intuitively apprehend the dilemma a public official might face. However, it is argued that the dilemma contains more than 'just' that one choice a politician is forced to make. This chapter will briefly explore the main approaches towards the problem of dirty hands, what the problem of dirty hands actually entails in the case of torture, and what the latter means for the structure of the dilemma. Then, the main philosophical debate will be critically analyzed. Finally, it will be determined whether the problem of dirty hands occurs within outside morality or within morality.

§ 2.1 The dilemma of dirty hands in more detail

The standard dirty hands thesis, as posed above, suggests that "politics and morality are in harmony until a significant paradox of action is presented to the public official" (Tillyris 2015, 64). Tillyris, however, argues that conceptualizing the problem of dirty hands as ´a momentary dilemma´ does not suffice (Tillyris 2015, 66). In addition, Walzer notes that "the dilemma of dirty hands is a central feature of political life that arises not merely as an occasional crisis… but systematically and frequently" (Walzer 1973, 162; Tillyris 2015, 66). Thus, it is argued that the standard display of the problem of dirty hands, as posed in the ticking time bomb example, is too "static" and "involves much more than a momentary and relatively rare paradox of action" (Tillyris 2015, 64). As a result, "the politician's decision is presented in abstraction from the political context within which that decision should be taken" (Tillyris 2015, 66). Moreover, it is likely that not only the public official who made the decision – whether to issue torture – gets his hands dirty. Matthews (2006) argues that also those who have to carry out the orders have to live with the guilt that remains.

2.1.1. A sociological fantasy

Henry Shue explores a similar though more detailed line of thought in his article about making exceptions (2009). He assumes that torture is wrong but that it can, in exceptional circumstances, nevertheless be justified (Shue 2012, 312). His main point is that the perfect case for torture (in which the act of torture is both rare and successful), as presented in most hypothetical situations like the ticking tomb scenario, is a sociological fantasy (Shue 2012, 314). He supports this claim by referring to the institutional context needed to effectively execute an act of torture. According to Shue, "torture takes skill, dispositions, and knowledge that are gained only from experience" (Shue 2009, 314; Tillyris 2015, 68). In fact, "if the conscientious offender is to be an effective and competent torturer, or to have them on call, he must… be the tip of a bureaucratic iceberg of institutionalized torture" (ibid). In other words, it is not realistic to have "rare, effective torture because effective torture needs a social institution with a bureaucratic life of its own" (Shue 2012, 315). Or, as Tillyris puts it: "torture is a

practice, not an ad hoc emergency measure" (Tillyris 2015, 66). It is not difficult to see that many more people than just the political official who approved the torture would be involved in the act and thus also get their hands dirty. But, more importantly, this argument alters the structure of the dilemma of dirty hands by suggesting that the problem is not merely about "the *exhibition* of certain vices but also about the *cultivation* of these" (Tillyris 2015, 66). Then, it is not just about one act in a unique circumstance anymore, but about a universal set of acts in possible circumstances (Matthews 2006, 9). Moreover, by not acknowledging that the problem of dirty hands is also about the cultivation of certain vices, Tillyris argues, the static account of the dilemma is "oblivious to Machiavelli's infamous messages" (ibid). What the messages of Machiavelli are is explored in the next paragraph.

2.1.2. Interpretations of Machiavelli

Niccolò Machiavelli (1469-1527) first and most clearly illustrated the tension between politics and morality (Hampshire 1989, 162). For many, he is the first modern who told the truth about politics (Hendrickson 2016, 108). In his era, and even today, Machiavellism stands for a doctrine of political success, by means however foul (Hendrickson 2016, 105). This makes him known as the political philosopher who justified official lying. In fact, in his famous work *The Prince* he argued that it would be irresponsible for 'a great office of state' not to be fully prepared at all times to take extreme measures of violence or cruelty in order to protect the state when necessary (Hampshire 1989, 162). In other words, the state official is not (always) able to practice the virtues of a good citizen without compromising the interests of his subjects (Hollis 1982, 389). At the same time, however, he should be seen to uphold those virtues: "he should get his hands dirty and wear clean gloves" (ibid). In short, "the virtues that bring great political achievements and civic glory have their cost in the loss of integrity and of fair dealing" (Hampshire 1989, 165). A true Machiavellian will accept those costs.

In the course of the centuries, however, the interpretation of Machiavelli's thought has become complicated, and thus the source of many scholarly disputes (Fuller 2016, 1; Berlin 1977, 25). It is therefore no surprise that *The Prince* can be interpreted in at least one other way. Central in this second interpretation is the assumption that "there exists an intractable and perpetual conflict between at least two different moral worlds – that of ordinary (Christian) morality and that of politics – each of which corresponds to two exhaustive and incompatible practices and ways of life, each with its own ends and values" (Tillyris 2015, 64). Acknowledging that there are "different spheres of value between which serious and sometimes incommensurable conflicts of value are possible" (Parish 2007, 10) would make Machiavelli a value pluralist. Thus, following this line of thought, in order to correctly conceptualize the problem of dirty hands requires one to conceive political morality as a whole and to view politics as both a practice and a way of life (Tillyris 2015, 64). As a result, one should approach political morality on its own terms (ibid).

The considerations as described above illustrate how the problem of dirty hands can (and perhaps should) be interpreted with regard to both the society and the political arena we know today. Moreover, thinking about the dilemma of dirty hands as something that encompasses more than just one public official who has to make one decision proves useful, if not necessary, when answering the questions posed in the next sections. In this research, the standard thesis of the problem of dirty hands, as described in the ticking time bomb scenario, is used as a starting point. At the same time, it is acknowledged that the dilemma is likely to have a much larger scope than is generally

assumed based on this standard model. Whether the problem of dirty hands fits best with the first interpretation of Machiavelli (the 'teacher of evil') or with the second interpretation (Machiavelli as a pluralist) is determined in the final part of this chapter, when it is established whether the problem of dirty hands occurs outside or within morality.

§ 2.2 The philosophical debate

Many of the dilemmas a public official might face (that result in dirty hands) are about whether to follow the general (moral) rule or to make an exception (Shue 2012, 308-309). "Some characterize these ethical challenges as genuine moral dilemmas, while others insist that it is not possible for such a thing as a moral dilemma to exist" (Parish 2007, 3). Thus, the underlying theoretical question is whether there are, or can be, genuine moral dilemmas. Both deontologists and utilitarians seem to provide a very clear cut answer. They claim that it is not possible, by definition, for a moral dilemma to exist (Parish 2007, 4).

2.2.1. Deontology

Deontology offers the strongest support for the unconditional prohibition of acts that are morally wrong, like torture (Matthews 2006, 1). For deontologists, the rightness or wrongness of an action depends on "the nature of the act and its conformity to moral norms and principles" (Ramsay 2012, 1). In this research, the starting point is the Kantian categorical imperative, and in particular the end in itself formulation (Matthews 2006, 1). Kant provided us with five different formulae of the categorical imperative. In this research, the focus will be on the formula of the end in itself: "So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means" (Paton 1967, 129).

Kant believed that individuals ought to be treated in a way consistent with their nature as autonomous persons, i.e. capable of a good will. At the risk of over-simplification, one might say that the arguments that make up the formula of the end in itself all rest on this one principle: "a good will has a unique and absolute value (Paton 1967, 171). If this is true, it must be morally wrong to subordinate it as a mere means to any end of lesser value" (ibid). Thus, this principle rules out treating people merely as a means, which is exactly what a torturer would do.

In order to gain a better understanding of the relation between principles and ends, we first need to consider what is meant by an end. To begin with, an end is an effect which the will seeks to produce (Paton 1967, 166). The will of a rational agent is, in turn, always directed towards an end he sets for himself (ibid). Furthermore, a rational agent sets himself to act in accordance with his conception of the law, that is, in accordance with principles (Paton 1967, 167). Thus, according to Kant, there is an important connection between ends and principles: our chosen ends are also the ground of objective principles (ibid). These principles are important because we know an action is "morally worthy not from the purpose that is to be attained by it but from the principle by which it is determined" (Parish 2007, 7).

Furthermore, Kant is well aware that men are not 'saints'. "For this reason it may at times be necessary to refrain from furthering their ends and even to thwart their wills" (Paton 1967, 171). Nevertheless, Kant strongly believes that "a good will is present in every man, however much it may be overlaid by selfishness, and however little it may be manifested in action. Because of this he is still entitled to respect and is not to be

treated as a mere instrument or a mere thing. As a being capable of moral action, a man, however degraded, has still an infinite potential value; and his freedom to work out his own salvation in his own way must not be restricted" (Paton 1967, 171). Thus, no amount of social benefit can justify overstepping the bounds of our principles and integrity (Parish 2007, 7).

In short, deontologists stress the absolute worth, dignity and freedom of the autonomous individual and his will. The principle that is central to this believe rules out treating people merely as a means and because (state) torture requires the torturer "to break the will of an individual through the infliction of intense physical and psychological suffering, it is a direct attack on the most fundamental value of deontological theory" (Matthews 2006, 1). The deontological response to the problem of dirty hands is thus, put simply, that moral actors must never get their hands dirty (Parish 2007, 7).

2.2.2. Utilitarianism

It is argued that considerations of utility have a different, more special, moral importance to the choices of political actors (Parish 2007, 6). Intuitively, the theory seems to work best when addressing questions of public policy with a broad impact (ibid). A typical utilitarian response to the problem of dirty hands would be to accept that certain apparent evils must be done in order to achieve maximum social utility (Parish 2007, 5).

Utility, or the 'Greatest Happiness Principle' holds that "actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain; by unhappiness, pain and privation of pleasure" (Mill 1879, 9; West 2006, 68). Thus, an action or a policy will be deemed right if it contributes to the greatest happiness of the greatest number (Wiggins 2006, 144). But, Mill argues, the suggestion that happiness is the end and aim of morality does not mean that people do not need guidance and advice when trying to achieve that goal 'the right way' (Mill 1879, 26).

This becomes even more important when analyzing one of the main critiques of the theory, which proves useful for understanding utilitarianism in a way relevant for this research. Because of this central notion of happiness and (social) utility, the doctrine is often called immoral by linking it to the concept of expediency (Mill 1879, 24). The most well-known implementation of expediency is opportunistic in character: "for the purpose of getting over some momentary embarrassment, or attaining some object immediately useful to ourselves or others, to tell a lie" (ibid). Thus, in this case, a politician would be guided by (individual) advantages rather than moral principles. According to Mill, inasmuch as any deviation from the truth weakens the trustworthiness of human assertion, the theory of utilitarianism holds that when someone, for the sake of convenience to himself or some other individual, rather than for the sake of the greater good, tells a lie is much more than expedient, he then "acts the part of one of the worst enemies" (Mill 1879, 24-25).

Yet, Mill argues, that even this rule permits possible exceptions is acknowledged by all moralists (Mill 1879, 25). For utilitarians, this would especially be the case when the withholding of information would preserve someone from some form of unmerited evil (ibid). Key is to make sure that the exception does not go beyond the need, and that it has the least possible effect on reliability and truthfulness, by both recognizing it and, if possible, by defining its limits (Mill 1879, 25). Here, Mill makes the case for utilitarianism: "if the principle of utility is good for anything, it must be good for

weighing these conflicting utilities against one another, and marking out the region within which one or the other preponderates" (Mill 1879, 25).

Furthermore, Mill acknowledges that it is because of the complicated nature of human affairs that it is impossible to frame rules of conduct without any exceptions (Mill 1879, 27). In other words, a public official must be able to take particularities of specific circumstances into account. This can be challenging, and often results in conflicting obligations, which is the real difficulty. But, if utility is the ultimate source of moral obligations, utility may be invoked to decide between them when their demands are incompatible (Mill 1879, 27).

To summarize: it is important to keep in mind that the utilitarian standard is not the agent's own greatest happiness but the greatest amount of happiness altogether (West 2006, 71). Thus, an exception can be made or a lie can be told only when it is in the interest of the general amount of happiness, when it is done in the interest of an individual it is wrong. In *Utilitarianism*, Mill argues that "ultimately, our notions of justice and moral rightness are grounded in social utility alone. It is the criterion of utility that gives us our only touchstone for deciding which of several considerations has priority in an instance of apparent conflict" (Parish 2007, 5). Thus, for a utilitarian, though a situation may sometimes feel like a moral dilemma, there cannot be such a thing as a moral dilemma properly understood. Because good consequences constitute the sum and substance of the moral universe, there simply cannot, if the consequences are good enough, be any moral residue left to clean up (ibid).

§ 2.3 Where does the problem occur?

It has become clear that neither a pure utilitarian, nor a pure deontologist can suffer from dirty hands. After all, they cannot be both morally right and morally wrong at the same time, a condition that is necessary for hands to become dirty (Yemini 2014, 167). Thus, as Nielsen (2007) and Yemini (2014) argued, for neither pure utilitarians nor pure deontologists does the problem of dirty hands constitute a real moral dilemma; in fact, it is not even a real problem to begin with. However, neither response seems satisfying; "neither response seems fully capable of accounting for powerful intuitive claims invoked by the rival point of view" (Parish 2007, 9). In fact, van Erp argues that by giving these solutions, both theories do not take the problem of dirty hands seriously enough (2013, 112). Therefore, the next paragraph will challenge both deontology and utilitarianism in relation to their answers to the problem of dirty hands.

2.3.1. Towards value pluralism

Critics have rejected both deontology and utilitarianism as theories that provide final and universally persuasive answers to these kind of moral questions (Parish 2007, 9-10). Instead, they argue that there are various value spheres in the world and that these stand in irreconcilable tension to one another (Weber 1946, 147). Moreover, according to Weber, "values bear some relation to one another but they cannot be cashed out into a single common currency of evaluation, as Mill had believed was true of utility, nor can any such standard be given comprehensive priority over rival claims, as Kant had thought true of the superior standard of duty" (Parish 2007, 10).

This perspective has direct consequences for the tension between deontology and utilitarianism on the one hand and the problem of dirty hands on the other hand. As seen before, the dirty hands thesis assumes the existence of a paradox of action whereby an innocent course of action is unachievable (Tillyris 2015, 62). This assumption poses na

obvious challenge to the vision shared by both deontology and utilitarianism: "the belief that, at least in theory, values form a harmonious whole and moral conflicts are perfectly resolvable" (Tillyris 2015, 62). Thus, "the dirty hands thesis suggests that the Kantian and Utilitarian vision of harmony and innocence is unsatisfactorily idealistic: its value monism misrepresents our fragmented morality and, in particular, the messy realities of politics" (Tillyris 2015, 62; Walzer 1980, 229). Or, to use the words of Stephen de Wijze (2009), "a dirty hands analysis provides, at least in political philosophy, a more plausible characterization of our moral reality". Not only does he argue that there do exist genuine moral dilemmas, he also states that conflicting personal and role-based moral claims give rise to moral conflicts in which "those who strive to act morally unavoidably get dirty hands" (de Wijze 2009, 309). In short, it can be argued that "the general insight of the dirty hands thesis better captures the fragmented nature of morality and the complexity of politics than the Kantian and Utilitarian vision of harmony and innocence" (Tillyris 2015, 63). Or, as van Erp puts it, "the ambiguity that politics is confronted with is in its sharpest form formulated in the notion of a duty to act immorally" (van Erp 2013, 112).

When accepting that politics and morality are difficult to harmonize (Tillyris 2015, 61), and that this can lead to dilemmas of dirty hands, there is still one question remaining: where do these dilemmas occur? By challenging both deontology and utilitarianism, it has been showed that the dilemma of dirty hands can occur within morality, as some scholars believe it does. Others believe that the dilemma occurs outside morality, when morality clashes with some form of rational necessity that correctly overrules it. Here, a distinction is made between operating *above* morality and operating with a *different* morality.

2.3.2. Outside morality

As said before, Machiavelli first and most clearly recognized that politics and morality are difficult to harmonize (Tillyris 2015, 63). Or, as Hampshire (1989) and van Erp (2013) put it: there is an evident incompatibility between strict attention to justice and fairness on the one side and effectiveness in the exercise of political power on the other side. In line with the first interpretation, Machiavelli as a 'teacher of evil', it is argued that "a successful political leader is always rather loose in his thinking, flexible, not bound by principles or by theories" (Hampshire 1989, 163). His famous lesson 'learning how not to be good' suggests that 'reasons of state' can be regarded as more important than morality (Hampshire 1989, 162). Or, in other words, "in times of political necessity, means must be adapted to circumstances" (Ramsay 2012, 2). Thus, if we allow that non-moral 'oughts' can sometimes trump moral ones, then the problem of dirty hands may be re-formulated as holding that, in certain specific circumstances, practicality wins out over morality (Duquette 2007, 52). So, this view holds that morality is not the only legitimate determinant of right action. Rather, it is argued that at times and in certain situations, morality is successfully challenged by what can be called necessity. This is similar to the way political realists challenge morality within politics. They argue that "political necessity is a form of external coercion or urgency and, therefore, different from moral necessity" (van Erp 2013, 110).

This realist interpretation of the dilemma of dirty hands stresses the amoral, instead of immoral, character of the doctrine. "It locates political activity in an autonomous realm, free from the constraints and limitations of moral judgments" (Ramsay 2012, 3). This way, political decisions are made based on rational thoughts regarding the interest of the state. In short, it implies that moral considerations, impulses and principles have

no place in politics (ibid). Thus, in this case, the dilemma of dirty hands constitutes a clash between rational practicality on the one hand and morality on the other hand.

2.3.3. Within morality

However, the second interpretation of Machiavelli (that stresses the pluralist character of the tension between politics and morality) indicates that he believed that "the incongruence between politics and morality involves an incompatibility of values and character" (Tillyris 2015, 71). Or, as Yemini (2014) puts it, the fact that the problem of dirty hands does not exist within both utilitarianism and deontology does not make it non-existent. On the contrary, he argues that the problem of dirty hands is "a very real dilemma within morality" based on Nagel's statement that individuals are inclined "to hold some version of a mixed morality", that is, views from different theories; and "do not treat a moral intuition as if it were a closed and exclusive moral system", that is, without any flexibility (Yemini 2014, 168; Nagel 1972, 124-125). This means that, within this view, it is generally assumed that people hold simultaneously utilitarian and deontologist points of view: "the mere concept of dirty hands inherently assumes, and requires, the moral agent to hold mixed absolutist-consequentialist moral intuitions pulling in opposite directions" (Yemini 2014, 164). The situations that give rise to such a dilemma, as torture does, are those in which the utilitarian and the absolutist perspectives demand contradicting courses of action (Nagel 1972, 142-143; Yemini 2014, 164).

In 'Arguing about War' Walzer links this idea to a more specific situation of emergency: "the doctrine of supreme emergency is a way of maneuvering between two very different and characteristically opposed understandings of morality… Both these moral understandings have claims upon us, and yet they pull us in different directions… Neither is strong enough to defeat the other; neither is so weak that we can disregard it. At the risk of philosophical muddle: we must negotiate the middle ground" (Walzer 2004, 35-36). In this essay, Walzer understands the problem of dirty hands as a conflict between utilitarianism and absolutism (Yemini 2014, 166).

2.3.4. Towards an answer

In this research, the problem of dirty hands is believed to occur within morality. The basic assumption that underlies this believe is formulated by Walzer: "there are no moments in human history that are not governed by moral rules; the human world is a world of limitation, and moral limits are never suspended… But there are moments when the rules can be and perhaps have to be overridden. They have to be overridden precisely because they have been suspended. And overriding the rules leaves guilt behind, as a recognition of the enormity of what we have done" (Walzer 2004, 34).

In addition, de Wijze (2009) and Matthews (2006) argue that the dilemma of dirty hands is difficult specifically for the moral person, not for the immoral or amoral person. "Dirty hands will arise only when a good person, through unfortunate circumstances, is compelled to deliberately and knowingly choosing to act in an evil manner for the sake of some greater good". Thus, a public official facing such a dilemma has to make a conscientious decision. It seems logical to question the possibility of making such a decision when assuming all the characteristics of the dilemma are amoral because it occurs outside morality. As van Erp puts it: "one must doubt whether a politician who does not feel the tragic and considers himself only the

legitimized public servant of the *raison d'état* could have come to a conscientious decision (van Erp 2013, 116).

Moreover, van Erp emphasizes the above by arguing that "if political leaders, for reasons of political necessity, must commit actions that would be criminal under normal circumstances, then such actions must also be acceptable for the moral judgments of others" (van Erp 2013, 111). Indeed, "the fact that many people avoid becoming responsible for such actions does not mean that these actions are exempt from moral evaluation on the basis of universal principles" (ibid). Moreover, according to Hollis (1982), the fact that there is a special code of conduct for state officials, which is based on their duties of office, does not lead to a complete lack of morality. In fact, even though the theory of utilitarianism (with its focus on consequences) is intuitively a better match with those duties of office, the fact that politicians are inclined to be concerned about consequences does not imply anything about a lack of principle (Hollis 1982, 388).

Finally, van Erp (2013) argues that the concept of political necessity (which is central in the amoral perspective of the dilemma) is itself often "used within the strategy of the political power game". When political necessity allows for the making of an exception, and in doing so for the transgression of both legal and moral rules, this decision must be based on a moral judgment (van Erp 2013, 117). "Things become very unclear", and possibly subjective, "when this judgment is not considered to be based on moral principles but on political values" (ibid).

In short, one of the basic characteristics of the dilemma of dirty hands (a moral person is forced to make a difficult, conscientious decision) seems to rule out a completely amoral structure of the problem. After all, advocates of the amoral perspective argue that moral considerations, impulses and principles have no place in political decision-making. Moreover, the realist argument that political necessity is (or should be) a sufficient reason to evaluate the doctrine as amoral is not convincing. Rather, it is argued that political necessity can, in some circumstances, override moral rules. When this happens, politicians use a *different* morality, which gives the problem of dirty hands a pluralistic character instead of an amoral one.

Chapter 3: What circumstances or conditions can justify getting dirty hands?

Now that the nature of the problem and the context in which it occurs have been determined, this chapter will focus on what circumstances or conditions, if any, provide a justification for politicians to get dirty hands. In doing so, this chapter will provide a framework for what constitutes a genuine dilemma of dirty hands. After all, a politician can only justify getting his hands dirty when the dilemma he faces can be seen as a real dilemma of dirty hands, instead of any other situation of conflict. It will become clear that even when scholars agree that the dilemma occurs within morality, they can have a significant different opinion on what situations constitute genuine dilemmas of dirty hands. Since an amoral structure of the problem has been ruled out, the first question that will be briefly addressed is what can reasonably be demanded of those who incur the responsibility of political power?

According to Hampshire, politicians should: 1) "recognize the weight of their peculiar responsibility in disposing of the lives of others; 2) be clear-headed, and not divided in mind, about their obligations to protect the reasonable interests of their innocent fellow citizens; and 3) at all times be prepared for the occurrence of an uncontrolled conflict of duties in situations which seem to exclude the possibility of a decent outcome, and in which all lines of action seem dishonorable or blameworthy" (Hampshire 1989, 170). Particularly the last point refers most obviously to the problem of dirty hands or, as Hampshire formulates it, the contrast between innocence and experience. According to Walzer, citizens expect their leaders to be goal-oriented; they are judged more on the basis of the goals they reach than by the rules they uphold (Walzer 2004, 38). It was already clear that it is possible, indeed very likely, for a politician to face a dilemma of dirty hands. But, citizens can also reasonably expect them to be able to deal with such a dilemma. Now, there is one important questions remaining: when is a situation a true dilemma of dirty hands?

§ 3.1 Dirty hands versus other situations of conflict

Even though there is no real consensus on this question, it is clear that not all motives for overriding moral rules seem to be valid. In the following section, the main contradicting perspectives that provide a framework for determining whether a situation constitutes a real dilemma of dirty hands will be set out. The focus will be on the conditions provided by Yemini (2014), Nagel (1986) and Walzer (2004).

3.1.1. Reasons

Yemini (2014) has, based on Nagel's (1986) argument, formulated an approach to determine whether a situation is a genuine conflict of dirty hands. Both Yemini and Nagel argue that the ticking time-bomb scenario is an example of a real dilemma of dirty hands. Central in their reasoning is the premise that "the moral worth of an action is primarily determined by the intentions of its agent" (van Erp 2013, 110). Nagel (1986) relates this premise to the concept of reasons, which illustrates the source of the difference between a genuine dilemma of dirty hands and other situations of conflict (Yemini 2014, 170). More specifically, Nagel makes an important distinction between different types of reasons. He argues that reasons can differ in an important way by their relativity to the agent, the person for whom they are reasons (Nagel 1986, 153). This results in two main types of reasons 1) agent-neutral reasons and 2) agent-relative reasons (Nagel 1986, 152-153). If a reason does not include an essential reference to the

person who has it, it is an agent neutral reason, while if a reason does include an essential reference to the person who has it, it is an agent-relative reason (ibid). While the neutral element is utilitarian in nature because it is concerned with what should happen, with some degree of objective utility that everyone has reason to promote; the relative element is concerned with what people should or may do, which is independent of the outcome of their actions (Nagel 1986, 165; Yemini 2014, 168). Thus, when the reason is agent-neutral, anyone has reason (or interest) to want it to happen. When a reason is relative, we tend to think that someone has more specific (individual) reasons or interest to want it to happen (ibid).

Another assumption of their argument is that ethics is concerned with a) what should happen and b) with what people should or may do (Yemini 2014, 170). As shown above, neutral reasons underlie the former, while relative reasons can affect the latter (Nagel 1986, 165). In philosophical discussion, the predominant neutral component can be challenged by two different types of reasons that are relative in form: 1) reasons of autonomy and 2) reasons of deontology (ibid). Autonomous reasons (not to be confused with autonomy of the free will) stem from "the desires, projects, commitments, and personal ties of the individual agent, all of which give him reasons to act in the pursuit of ends that are his own", as opposed to ends that are neutral (Nagel 1986, 165; Yemini 2014, 170). With deontological reasons Nagel does not mean "neutral reasons for everyone to bring it about that no one is maltreated" but rather "relative reasons for each individual not to maltreat others himself in his dealings with them" (ibid). In practice, these reasons often interact with each other. Intuitively, we all should live our own life (autonomy), have some concern for the general good (neutral values) and treat the people we deal with decently (deontology) (Nagel 1986, 166). But, sometimes, these different components of morality clash by demanding different courses of action, resulting in serious inner conflict (ibid).

According to Yemini (2014), one specific type of inner conflict, one between neutral reasons and deontological reasons, causes a dilemma of dirty hands. To be clear, the difference between those is that "deontological reasons have their full force against you doing something – not just against its happening" (Nagel 1986, 177). Moreover, deontological principles are usually treated as mandatory, without exceptions (Nagel 1986, 178). When weighing deontological reasons over autonomous ones (Yemini 2014, 169), for example, this feels intuitively right. But in the situation of dirty hands, "deontological principles suddenly face an unusual matching opponent from within morality in the figure of neutral reasons of sufficient strength" (Yemini 2014, 171; Nagel 1986, 176). Thus, such a conflict is between what is, in general and for everyone, desirable to happen and what you as an individual should or may do. Or, in other words, it is a conflict between "reasons rooted in concerns for what we are doing to people and reasons rooted in concerns for what will happen" (Lund 2011, 676). If one chooses for the general good, it means overriding a moral rule (and thus hurting someone at the expense of one's own moral conscious), whereas if one chooses to not hurt someone and as a result he gets to keep his individual moral status intact it goes at the expense of the general good. This can be regarded as a unique kind of conflict because it is likely to be much more difficult, if at all possible, to resolve (Yemini 2014, 170-171).

Thus, according to Yemini (2014), only a conflict between neutral and deontological reasons can cause a dilemma of dirty hands. Thus, the question whether to torture someone in the case of a real threat can be regarded as a true dilemma of dirty hands: an acute conflict between neutral, utilitarian reasons (preventing the death of many innocent civilians) and deontological restrictions (the torturing of the rebel/terrorist).

Without these distinctions between reasons, it is problematic to separate a problem of dirty hands from other situations of conflict (Yemini 2014, 171).

3.1.2. Supreme emergency

However, another very influential approach to what circumstances or conditions constitute a true dilemma of dirty hands excludes precisely this situation from the possibilities. With his supreme-emergency argument, Walzer attempts to "provide an account of when it is permissible (or necessary) to get our hands dirty" (Walzer 2004, 46). According to Walzer (2004), dirty hands are "not permissible (or necessary) when anything less than the ongoingness of the community is at stake, or when the danger we face is anything less than communal death" (ibid). This way, Walzer offers a very clear but also a quite narrow construction of the problem.

According to Walzer, a supreme emergency exists when "our deepest values and our collective survival are in imminent danger", when a threat is both close and serious (Walzer 2004, 33). Here, the question whether we can afford morality in the face of an existential threat, as posed in the introduction of this research, is perhaps most clearly illustrated. Shue argues that because of what is at stake or, in other words, what is going to be lost if certain action is not taken, one "ought to take a kind of action that one would not ordinarily take: one ought to make an exception because this is, in effect, an emergency" (Shue 2009, 310). In the case of torture, the exception would be to a prohibition: one ought to do what is normally prohibited (ibid). Walzer argues that there is no great precision required in calculating whether something is such an emergency: "we can only be overwhelmed by supreme emergency" (Walzer 2004, 40).

So what exactly is the difference between a supreme emergency and a 'daily' (military) emergency? Walzer shows that as far as individuals are concerned, supreme emergency does not justify a radical exception to rights normality (Walzer 2004, 41). In fact, a true moral person will accept risk (and sometimes even death) rather than kill the innocent (ibid). But a moral political leader of a country will not accept the risk, let alone the fact of communal death; why not? The answer to this question relies on two theories that need each other to be persuasive: the theory of representation and the value of community. In short, the theory of representation argues that "one can, morally and psychologically, accept risks for himself, but not for others" (Walzer 2004, 41). In fact, Walzer argues that the first major task of political leaders is risk avoidance or risk reduction, "that is what governments are for" (Walzer 2004, 42). Thus, "no government can put the life of the community itself and of all its members at risk, so long as there are actions available to it, even immoral actions, that would avoid or reduce that risk" (ibid). In doing so, the government does not only represent individuals but also a collective entity (religious, political, or cultural) from which individuals derive some portion of their identity (Walzer 2004, 43). Here, Walzer distinguishes the community from the state (Yemini 2014, 161). Only when the community is threatened, by facing moral as well as physical extinction or the end of a way of life, it may be allowed to override the moral rules that are normally to be respected (Walzer 2004, 44).

To summarize: there are different ways to determine what situations constitute true dilemmas of dirty hands. According to both Yemini and Nagel, a distinction between reasons, relative to the agent, is needed to separate a problem of dirty hands from other situations of conflict. Walzer argues that only a supreme emergency, when a community faces such a threat that the 'ongoingness' of a certain way of life is at risk, can justify getting dirty hands.

3.1.3. Towards an answer

It has become clear that examples of emergencies and exceptions dominate the literature, suggesting that dirty hands have no place in more ordinary cases. While Walzer's supreme emergency doctrine and the 'reasons' argument as formulated by Yemini and Nagel share a certain basic starting point – they both accept that "politics is conflicted and morally messy" (Lund 2011, 676) and they both believe that the problem of dirty hands is a conflict between utilitarianism and absolutism (Yemini 2014, 168) – they fundamentally disagree on the framework that determines whether a situation is a true dilemma of dirty hands. Walzer believes that actions of terrorists cannot be an urgent threat to the survival of a community and, more specifically, he supports the claim that "current terrorism is far from constituting a supreme emergency for Western democracies" (van Erp 2013, 118; Lund 2011, 677). Thus, according to Walzer, the ticking time-bomb scenario cannot be seen as a true dilemma of dirty hands. Yemini, on the other hand, does believe that this hypothetical example is a real dilemma of dirty hands based on the argument that it is an illustration of a conflict between neutral and deontological reasons. This section will show why Yemini and Nagel provided a better framework to determine whether a situation is a genuine dilemma of dirty hands.

Most importantly, it can be argued that Yemini and Nagel have succeeded better in capturing the general paradox that is central to the problem of dirty hands. To freshen our memory, the dilemma occurs within morality, has a pluralistic character and both absolutist and utilitarian moral intuitions are pulling in opposite directions. Important characteristics include the fact that any possible course of action is both right and wrong and that the politician faced with the dilemma is forced to make a choice. As the next paragraphs will show, it is possible to interpret Walzer's supreme emergency doctrine (hereafter SED) in ways that do not do justice to the way the problem of dirty hands should be understood.

First, the moral paradox (or arguably lack thereof) that underlies Walzer's SED, similar to the way it underlies the problem of dirty hands in general, is critically analyzed. Walzer seems to suggest that SED provides a moral 'loop-hole' for states to override moral rules for the sake of the greater good, i.e. the survival of a community (Walzer 2004, 44). Brian Orend notices that this makes SED strikingly similar to one form of rule-utilitarianism: "during ordinary conditions of war, we are to adhere absolutely to the rules of *jus in bello*. However, when confronted with the hardest case, we are to set aside these rules and do what we must to prevail" (Orend 2001, 25). Moreover, by focusing on the community (instead of focusing on individuals), SED seems to suggest that "individual human rights are not as fundamental for Walzer as shared ways of life are" (Orend 2001, 26). Essentially, Orend argues that the way Walzer refers to (or the extent to which he uses) utilitarianism within SED does not fit with his reference to the general paradox of dirty hands. After all, utilitarianism is designed to avoid precisely this kind of dilemma by offering a coherent ranking of all the options based on the concept of (social) utility (Orend 2001, 28).

Second, Walzer suggests that a public official does not really have a choice when a threat is both imminent and close. Walzer implies that a political leader would have to choose for the survival of his own community (Walzer 2004, 42-45; Orend 2001, 28-29). He would have to get his hands dirty by 'killing the innocent'. This means that in the rare case of a genuine supreme emergency, the public official is not truly confronted with a choice. Rather, he is confronted with the need to act immorally. I argue that while this acknowledges one aspect of the paradox (all options are immoral), it neglects another: key is the fact that a politician is forced to make a *choice* and this choice is

based on mixed absolutist-consequentialist moral intuitions pulling in opposite directions (Yemini 2014, 164) .

Moreover, van Erp (2013) argues that "the idea that we could be obliged to commit a crime contradicts the conception of moral necessity". Therefore, the focus should be on the question how necessary an action can be (van Erp 2013, 116). A political necessity is truly necessary only when it is a result of coercive reasons for action. And even then, it is a kind of necessity that leaves room for "practical freedom and decisions, for the possibility not to act or to do something else" (van Erp 116-117).

Finally, van Erp argues that when assuming that the conscientious politician must accept that necessity can sometimes override moral rules, there is no moral (or legal) law that explains (in detail) when a situation is one of extreme emergency (van Erp 2013, 118). For example, questions of imminence cannot be precisely quantified or decided on with complete certainty (Lund 2011, 657) and Walzer himself states that "there is no great precision required in calculating whether something is such an emergency: we can only be overwhelmed by supreme emergency" (Walzer 2004, 40). Therefore, Lund (2011) argues that SED needs further clarification in order to reduce the likelihood that it will be manipulated.

While this focus on the dilemma could be explained by the fact that Walzer, with his formulation of SED, attempts to provide a way out, SED is too narrow for determining all possible dirty hands scenarios. SED may very well be *a* problem of dirty hands, but there are more genuine situations of dirty hands imaginable. To illustrate, Walzer treats a situation of supreme emergency as if it is substantively unique (Yemini 2014, 172-173). I would like to argue that the difference between SED and the ticking time-bomb example is a matter of degree (Yemini 2014, 171), not of kind. While the risk of hundreds of civilians dying because of a bomb explosion is obviously a less severe threat than the risk of losing the 'ongoingness' of an entire community, the core of the dilemma is the exact same. It is a conflict between agent neutral considerations and deontological restrictions; it is about the choice to either prevent something horrible that is about to happen by overriding a moral rule, or to comply with the moral rules and therefore be unable to prevent the horrible thing that is about to happen. Even supporters of Walzer's SED recognize that the core of the problem is a conflict between "reasons rooted in concerns for what we are doing to people and reasons rooted in concerns for what will happen" (Lund 2011, 676). This is literally how Yemini (based on Nagel) defined the framework for determining whether situations are true dilemmas of dirty hands. Walzer has, with SED, formulated a very specific type of neutral considerations (Yemini 2014, 172) which is on its own too narrow to capture all possible scenarios of the conflict.

In short, the framework based on reasons as formulated by Yemini and Nagel better captures all the characteristics central to the paradox of dirty hands. In doing so, it provides the most convincing way to determine whether a situation is a true dilemma of dirty hands. Moreover, the difference between Walzer's doctrine of supreme emergency and the ticking time-bomb example is a matter of degree (Yemini 2014, 171), not of kind. This means that, while the doctrine of supreme emergency is *a* dilemma of dirty hands, it is on its own too narrow to account for all possible scenarios of the conflict.

§ 3.2 Conditions and guidelines: permitted immorality

Now that it is determined when a situation is a true dilemma of dirty hands, it is possible to develop more practical conditions that identify when it is justified for politicians to get their hands dirty. Stephen de Wijze (2009) provides a concise list of conditions under which moral violations can be permissible. "All conditions must be met, or the action moves from being a justified moral violation to one that exceeds the boundaries of 'permitted immorality'; that is, the conditions are jointly sufficient and severally necessary" (de Wijze 2009, 310). According to de Wijze, it is justified for politicians to get their hands dirty when:

1. The chosen action is the result of an unavoidable moral dilemma and when it concerns the overriding of an important value or principle;
2. The public official is motivated by moral considerations when committing the moral violation;
3. The action is chosen in order to bring about the lesser evil and when this action was made necessary by either immoral or evil (external) individuals or organizations;
4. It can be reasonably expected that the chosen action succeeds in bringing about the lesser evil and when this same action is proportional to the harm it will either reduce or prevent (de Wijze 2009, 310).

These conditions are clearly linked to both the general characteristics of the dilemma of dirty hands and the framework provided by Yemini and Nagel. Particularly the first and second conditions illustrate one of the key arguments in favor of the dilemma occurring within morality, and of the pluralistic character of the dilemma, by emphasizing that there are moral costs involved and by implying that dirty hands cannot be justified when purely pragmatic reasons for actions are given. Instead, public officials are forced to act within a "complex of immorality" (de Wijze 2009, 310). Conditions three and four, that stress the need for the lesser evil (which would intuitively be overriding the deontological side of the dilemma), are also obviously linked to the problem of dirty hands and its characteristics but are arguably slightly more difficult to live up to. After all, an important aspect of the dilemma is the fact that the moral agent has "mixed absolutist-consequentialist moral intuitions that pull in opposite directions" (Yemini 2014, 164). In addition, as argued before, while utilitarianism might be a better match with the duties of office, the fact that politicians are inclined to be concerned about consequences does not imply anything about a lack of principle (Hollis 1982, 388).

Chapter 4: Conclusion

In this research, I have argued that the problem of dirty hands cannot play within either utilitarianism or deontology. Still, it is a very real dilemma that occurs within morality by confronting a politician with the seemingly unresolvable conflict between moral intuitions pulling in opposite directions (Yemini 2014, 177). I have also shown what situations are real dilemmas of dirty hands. While obviously not every situation of conflict can be regarded as such a dilemma, it has been argued that some may be wrongly excluded from this category. Surprisingly, the very influential framework of supreme emergency formulated by Walzer (2004) does not always do justice to the way the problem should be understood. Instead, the perspective that is based on reasons, as formulated by Yemini and Nagel, captures the paradox and its characteristics best. This does not mean that a public official is not faced with a dilemma of dirty hands in the rare case of a supreme emergency. Rather, it is argued that supreme emergency is *a* dilemma of dirty hands, but that it is too narrow to account for all possible scenarios of such a conflict. This reasoning is supported by the claim that the difference between supreme emergency on the one hand and the ticking time-bomb scenario on the other hand is a matter of degree, not of kind.

It is possible, indeed very likely, for a politician to acquire dirty hands in his career. But, he can only justify getting his hands dirty when he faces an acute conflict between neutral, utilitarian reasons and deontological restrictions. Such a dilemma is between what is, in general and for everyone, desirable to happen and what you as an individual should or may do. It is a conflict between "reasons rooted in concerns for what we are doing to people and reasons rooted in concerns for what will happen" (Lund 2011, 676).

This perspective leads to a framework with more practical conditions. A politician can justifiably get his hands dirty when: 1) the chosen action is the result of an unavoidable moral dilemma, 2) he is motivated by moral considerations, 3) the action is chosen to bring about the lesser evil, and 4) it can be reasonably expected that the chosen action succeeds in bringing about the lesser evil (de Wijze 2009, 310).

Recommendations

This research has made some important claims about the controversy of the notion of dirty hands. Since 9/11 both the philosophical and societal debate about torture has changed, which makes a renewed and up-to-date understanding of the paradox very desirable. Therefore, the main goal was to offer a better and encompassing understanding of the dilemma. While I think I have been able to do so, some discussed aspects have raised new topics. Unfortunately, I have not been able to incorporate all of these in this thesis. For this section, I chose the ones that I think are most relevant for contemporary (Western) societies.

Shue (2009) points out that one cannot morally evaluate a particular action without knowing exactly what it is and what it entails (Shue 2009, 314). In the case of torture, this is illustrated by the argument made in the beginning of this research that effective torture needs social institutionalization. "To think that one can make wise moral assessments of practices without knowing how the practices work – indeed, without really knowing what the practices are, is intellectually and morally irresponsible" (ibid). Instead of writing about the notion of dirty hands in relation to hypothetical dilemmas (as most scholars do), Shue calls for a better link between theoretical considerations and actual dilemmas of dirty hands in reality. When accepting a framework less extreme than Walzer's supreme emergency (as this thesis does), it could be interesting to analyze the paradox of dirty hands in more detail in relation to a specific case.

Also, because this thesis has shown that the dilemma of dirty hands occurs within morality, it has focused on the conditions that can justify getting dirty hands within this perspective. However, it could prove very useful to compare these conditions with the conditions that supporters of the amoral perspective have formulated. The question whether, and to what extent, these would be different creates probably an even better understanding of the different perspectives.

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