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Conflictual Moralities, Ethical Torture: Revisiting the Problem of “Dirty Hands”

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Abstract The problem of “dirty hands” has become an important term, indeed one of *the* most important terms of reference, in contemporary academic scholarship on the issue of torture. The aim of this essay is to offer a better understanding of this problem. Firstly, it is argued that the problem of “dirty hands” can play neither within rule-utilitarianism nor within absolutism. Still, however, the problem of “dirty hands” represents an acute, seemingly irresolvable, conflict *within* morality, with the moral agent understood, following Nagel, as necessarily holding mixed, absolutist-consequentialist moral intuitions, pulling in opposite directions. Secondly, a distinction is drawn between real situations of “dirty hands,” and other conflictual scenarios, which are commonly, but unjustifiably placed under the metaphorical title of “dirty hands.” Finally, it is suggested - utilizing Nagel’s own ideas, as developed in his later work, and Sen’s notion of evaluator relativity—that the moral “blind alley” manifested in the problem of “dirty hands” may not be totally blind after all, at least from the situated agent’s own internal point of view (as opposed to that of an external observer trying to put herself in the agent’s position by way of moral simulation). Thus, contrary to Walzer’s approach, it is possible for a person (politician) acting in a situation of “dirty hands,” not to believe herself to be guilty, but still be a moral person.

Keywords Dirty hands · Torture · Utilitarianism · Absolutism · Conflictual moralities

1 Introduction

In his seminal essay on the moral and legal impermissibility of torture, published more than three decades ago, Henry Shue argued that “ticking bomb” scenarios were “artificial cases,”

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making “bad ethics,” and therefore did not represent “an actual choice about torture” (Shue 1978: 141–142).¹ Whether a philosopher’s example can be dismissed, as Shue suggests, merely on the basis of its being artificial, is in itself highly questionable (Ten 1987: 18–25; Bagaric and Clarke 2005: 584). However, in the world post 9/11, a significant number of scholars would disagree with Shue’s position, even on the empirical level (Allhoff 2012: 101; Dershowitz 2002: 137; Gross 2004: 1503–1504; Lukes 2005: 12. But see Luban 2005: 1440–1445; Waldron 2005: 1715).² Indeed, the debate over whether torture can be morally and/or legally justified is no longer an intellectual experiment, but a live and pressing subject, which has become part of mainstream discourse (Levinson 2003; Posner and Vermeule 2006: 672).

While the legal and moral aspects of the torture debate are deeply connected, it is important to realize that they are not one and the same (Waldron 2005). Between those who believe that torture can be both morally and legally justifiable, under certain circumstances (Bagaric and Clarke 2005; Posner and Vermeule 2006; Raviv 2004), and those who believe that torture is never morally or legally permissible (Fried and Fried 2010; Luban 2005; Waldron 2005), there are also those who concede that torture might be morally tolerable, but still support an absolute legal ban on torture, for pragmatic reasons (Gross 2004; Steinhoff 2006), and perhaps even those who find torture morally repugnant, but not necessarily legally prohibited (Dershowitz 2003; Dershowitz 2004).³ This essay’s focus shall be on the moral aspect of torture, though it is not intended to decisively determine whether torture is always morally wrong or not. I do not share the almost religious confidence that Waldron (2005) and others express in the moral wrongness of *any* form of torture under *any* circumstances; at the same time, however, I am uncomfortable with the growing tendency of writers (e.g. Steinhoff 2006; Posner and Vermeule 2006) to deny the unique moral complexity involved in the use of torture. I am inclined to stand with Elstain (2004) on this issue, rejecting both the former and the latter.

The aim of this essay, instead, is to offer a better understanding of the “dirty hands” metaphor (see generally, e.g., Thompson 1987; Walzer 1973; Williams 1978), which has become an important term of reference in contemporary academic scholarship on the issue of torture (Bellamy 2007; Elstain 2004; Lukes 2005; Nielsen 2000; Stocker 2000). I will start in part 2 by rejecting an argument put forward by Meisels, contra Walzer, according to which a rule-utilitarian “can certainly suffer from dirty hands” (Meisels 2008: 151). I will also reject, however (as Meisels does) Walzer’s own view of the problem of “dirty hands” as an exclusively “absolutist predicament” (Ibid). Neither a pure rule-utilitarian, nor a pure absolutist, I shall argue, can suffer from “dirty hands.” In fact, as I contend in part 3, the mere concept of “dirty hands” inherently assumes, and requires, the moral agent to hold mixed, absolutist-consequentialist, moral intuitions, pulling in opposite directions.⁴ This view implies my understanding of the problem of “dirty hands,” following Nagel (1972), as a dilemma within morality. It looks at the problem of “dirty hands” as a way to describe the

¹ Shue’s version of the “ticking bomb” scenario included a fanatic, perfectly willing to die rather than collaborate in the thwarting of his own scheme, who has set a hidden nuclear device to explode in the heart of Paris. There is no time to evacuate the innocent people or even the movable art treasures and the only hope of preventing tragedy is to torture the perpetrator, find the device, and deactivate it.

² As the Israeli experience demonstrates, for example, “ticking bomb” scenarios were probably not mere hypothetical cases also prior to September 11 (Dershowitz 2003: 283–285; Gur-Arye 2004; HCJ 2006). Naturally, however, America’s first encounter with terrorism on a mass scale, performed on American soil, redefined the whole academic discourse on the issue of interrogational torture.

³ It seems that this is how Dershowitz would like us to understand his suggestion to regulate the use of coercive interrogation methods, through the issuance of judicial warrants.

⁴ For an illuminating discussion of the idea of mixed moral intuitions see generally Nagel (1972).

“normative dissonance,” generated by our conflicting moral intuitions.⁵ In part 4, I will try to draw a distinction between what I shall define as real situations of “dirty hands,” and other conflictual scenarios, which are commonly, but unjustifiably, placed under the metaphorical title of “dirty hands.” At the same time, I will show that situations which should be considered as situations of “dirty hands” may be wrongly excluded from such definition. Finally, in part 5, I will suggest that the moral “blind alley” (Nagel 1972: 143), to which real situations of “dirty hands” seemingly lead, may not be totally blind after all, at least from the situated agent’s own internal perspective. This will be done by utilizing Nagel’s own ideas, as developed in his later work (Nagel 1986, 1987), and confronting them with Amartya Sen’s idea of evaluator relativity (Sen 1982). Part 6 will conclude the essay.

2 Rule-Utilitarianism and “Dirty Hands”

Walzer is highly skeptical of utilitarianism’s—whether it is act-utilitarianism or rule-utilitarianism—ability to contain the notion of “dirty hands” (1973: 168–173). Utilitarianism, says Walzer, “captures some of the reasons for moral taboos,” but “fails utterly to explain their power” (2004: 36). This is why, on his view, “dirty hands” is exclusively an “absolutist predicament” (Meisels 2008: 155). Meisels argues against this assumption, suggesting that “the ‘dirty hands’ thesis is actually more widely applicable and illuminates a greater range of moral positions on issues such as torture than Walzer himself assumes” (Ibid). She criticizes Walzer for his view of rule-utilitarianism as “merely convenient rules of thumb,” summaries of previous calculations, and asserts that rule-utilitarianism “contains rules with greater normative force, which derives from the usefulness of the rules themselves” (Ibid: 156–157).⁶ On this view, if the use of torture is generally detrimental to the greater happiness, a rule-utilitarian would be committed, perhaps as strongly as an absolutist, to refraining from it, regardless of its immediate benefits; by a rule-utilitarian’s moral standards, the use of torture would be a breach of a prohibition far weightier than simply a breach of some rule of thumb (Ibid: 156–159). In fact, says Meisels, such a rule-utilitarian could “certainly be said to have dirtied his hands considerably by doing so [using torture]” (Ibid: 156).

I believe Meisels is right in exposing Walzer’s somewhat simplistic account of rule-utilitarianism. Thus, it is true that Walzer underestimates the normative force attached by rule-utilitarianism to rules and the system of rules in themselves, a force which transcends the short-term benefits any specific rule might entail. Still, I find Meisels’ overall conclusion on the issue of rule-utilitarianism and “dirty hands” to be mistaken. For the purpose of the argument set henceforth I assume the existence of “pure” rule-utilitarians, i.e. moral agents who are totally free of deontological constraints and therefore base their moral position solely on utilitarian calculations. As implied earlier, I highly doubt that such moral agents actually exist and, as a matter of fact, Meisels’ repeated referrals to Nagel’s idea of mixed moral intuitions seem to point towards a similar position (Ibid: 154–155, 158). However, it is Meisels’ still-standing argument that the problem of “dirty hands” plays out “*within* rule-utilitarianism” (Ibid: 155), which I will now refute.

A general prohibition on torture may be justified on rule-utilitarian (rule-consequentialist) grounds.⁷ A complex, policy-oriented, calculation of the overall balance of utilities entailed by the

⁵ Use of the term “normative dissonance” refers to a situation in which a moral agent holds in common two norms that are not mutually compatible (Barnhizer 2000: 385; Ellman 1990: 120; Rhode 1985: 128).

⁶ Citing Mackie (1977, 1990).

⁷ For a discussion on the different varieties of rule-consequentialism, and their problems see, e.g., Barnes (1971); Brandt (1963); Scanlon (1988).

use, or non-use, of torture may lead the rule-utilitarian to object to torture, under circumstances in which an act-utilitarian would most probably support its use (Moore 1989: 295). Since the use of torture, even if beneficial when judged on immediate terms, has “definite detrimental effects on any society’s general happiness” (Meisels 2008: 157), a rule-utilitarian-based prohibition on the use of torture may come *close* in its force and scope to an absolute moral prohibition on torture. From that long-term-utility-based perspective, a rule-utilitarian may undoubtedly hold a very strong moral objection to torture of any kind. However, a moral prohibition on torture, which is based on rule-utilitarian grounds, can only approximate an absolutist position; it can never really be absolutist and at the same time stay totally faithful to its own consequentialist terms (Gross 2004: 1497; Moore 1989: 296). Once a rule-utilitarian has decided that despite all weighty considerations to the contrary, the use of torture in a particular, extreme, case, is nonetheless the *right* thing to do, this must be because of an exception—rare as it might be—that exits to the general utilitarian rule against torture.⁸ For if a pure rule-utilitarian, despite her powerful moral presumption against torture, allows the use of torture in a particular case, this must be because the utility of opting to torture in that particular case outweighs, all things considered, the utilities underlying the general rule, which means, from a utilitarian perspective, that using torture in that particular case is what one *ought* to do; it is the *moral* thing to do. Any other instance in which torture is used, should be considered, from a rule-utilitarian perspective as wrong, that is *immoral*.

Interestingly, Meisels herself admits, in passing, that “[i]n a totally catastrophic situation in which the utility of the torture in question clearly outweighs any advantages of adhering to the useful rules, the rule utilitarian will indeed be justified in breaking the ‘never torture’ rule” (2008: 159). In this case, she says, “rule-utilitarianism will join with act utilitarianism in wholeheartedly prescribing the action” (Ibid). Notwithstanding this point, however, she continues to argue that “it is unclear even in this situation that the rule-utilitarian politician could walk away from his decision with clean hands even if (from a utilitarian point of view) he should have a clean conscience” (Ibid). I am willing to agree that only “catastrophic cases”⁹ would lead a rule-utilitarian to prescribe the use of torture; it may also be that such prescription of torture by a rule-utilitarian would only be possible in those extreme cases where rule-utilitarianism “collapses” into act-utilitarianism. As far as the problem of “dirty hands” is concerned, however, the only relevant thing to examine is whether a rule-utilitarian who has come to the conclusion, despite all considerations to the contrary, that using torture in a particular case is the *right* thing to do, can still be said to have done a *moral wrong*. The answer, from a purely utilitarian perspective in which the ultimate moral yardstick for evaluating the rightness of an act is its consequences, must be negative. It is unclear what it is that leaves a rule-utilitarian’s hands “slightly tainted” (Ibid), even when the balance of utilities leads her to the conclusion that the general rule against torture must be modified. Certainly, the source of the remaining “dirt” cannot be the “harm to the very useful rule,” as Meisels seems to imply (Ibid), since a balancing process performed by a rule-utilitarian should take into consideration the general usefulness of the rule against torture, as well as the potential harm to it if torture is applied in a particular case. Indeed, a rule-utilitarian’s process of moral reasoning might be hard, complex, and tormenting, compared to that of the act-utilitarian, but if she finally reaches the conclusion that all things considered, torture is justified in a particular case, then her conclusion should be no less clean than that of the act-utilitarian. In fact, sticking to the general rule even

⁸ Alternatively, assuming, *arguendo*, that there can be a strict rule-utilitarian prohibition of torture, a rule-utilitarian opting to torture in a particular case could be seen as one who has modified, or at least suggested to modify such rule.

⁹ For use of this term in order to characterize those cases in which it might be justified to violate the prohibition on torture see generally Gross (2004).

under such extreme circumstances would lead to “preferring abstract conformity to a rule to the prevention of avoidable human suffering” (Smart and Williams 1973: 6), resulting in mere “rule-worship” (Ibid: 10, 44; Railton 1984). A pure rule-utilitarian, therefore (assuming her calculations are correct), simply cannot suffer from the problem of “dirty hands;” such problem can only arise if we look beyond the moral boundaries of rule-utilitarianism (or any form of utilitarianism, for that matter).

3 “Dirty Hands,” Absolutism, and Conflictual Moralities

In the previous section I have assumed the existence of pure rule-utilitarians. I shall now assume, for the purposes of the following discussion, the existence of “pure” absolutists, i.e. moral agents who believe that torture is *never* morally permissible, regardless of the consequences. On a pure absolutist view of morality, torture is intrinsically wrong and can never be justified; thus, torture should be always prohibited, even if applying it in any particular case would be deemed to be, on the whole, good (Gross 2004: 39f–41f; Moore 1989: 297–298). Moreover, it might be argued that the intrinsic wrongfulness of torture cannot be quantified in utilitarian terms, and therefore cannot be balanced against any “good consequences,” assumingly bound with applying torture in a particular case (Aleinikoff 1987: 997–998; Schauer 1994: 786).¹⁰ On this approach, the moral wrongfulness of torture should be “taken as a trump or side constraint on welfare maximization in all possible cases” (Schauer 1994: 790), and thus should override all competing values and rights, under all circumstances, no matter what the stakes are (Gewirth 1981: 5–6). As Gross correctly observes, moral absolutists must maintain their support of an absolute ban on torture even in “catastrophic cases” (2004: 1494). “The likelihood that such catastrophic cases will occur...is of little significance when discussing the moral basis for such a ban” (Ibid). Thus, assuming, *arguendo*, that such a “ruthlessly moralistic” (Lukes 2005: 5) absolutist exists,¹¹ it is not very hard to see why the problem of “dirty hands” cannot apply to her. While a pure rule-utilitarian, who despite all considerations to the contrary decides to use torture in a particular case, cannot be said to have done wrong, in utilitarian terms (assuming her calculations are correct), a pure absolutist who decides to use torture in a particular case cannot be said to have done right, in absolutist terms. As with the pure rule-utilitarian, the pure absolutist can be either morally right or morally wrong; she cannot be both morally right and wrong at the same time, a condition without which one’s hands cannot become “dirty.” It logically follows, therefore, that neither the rule-utilitarian nor the absolutist—each on her own moral terms—can have a problem of “dirty hands.” For neither of them does the problem of “dirty hands” generate a real moral dilemma; it is not a problem to begin with (Nielsen 2000: 139–141, 145–146).¹²

¹⁰ Philippa Foot takes this view further (not necessarily in relation to torture), rejecting even the basic consequentialist principle that “there *are* better and worse state of affairs in the sense that consequentialism requires” (Foot 1985: 199).

¹¹ Apart from Kant himself, it is hard to think of a pure absolutist when it comes to the issue of torture, as almost all commentators would ultimately concede that the use of torture might be justified when the stakes are high enough (see Allhoff 2012: 128). Such commentators include devoted opponents to torture, such as Bellamy (2006), Shue (1978), Sussman (2005) and Žižek (2002). Perhaps Waldron (2005) is the closest to a pure moral absolutist on the issue of torture, among contemporary writers.

¹² Nielsen argues that from a moral perspective, there is no dilemma of dirty hands, and that any such conceptualization is a mistake. While he seems to characterize his own approach, which he denominates “weak consequentialism,” as a mixed deontological-utilitarian theory, I believe it is, in fact, a textbook example of a rule-utilitarian approach. This becomes quite evident towards the end of his essay (2000: 149–153).

However, the fact that the problem of “dirty hands” plays out neither *within* rule-utilitarianism nor *within* absolutism, does not render it a façade. On the contrary—“dirty hands” is a very real dilemma *within morality* precisely because individuals are inclined to hold some version of a mixed morality (Nagel 1972: 124–125),¹³ and do not treat either type of moral intuition as if it were a closed and exclusive moral system.¹⁴ In fact, for a moral agent to be faced with the dilemma of “dirty hands,” she must have mixed moral intuitions, pulling in opposite directions. The acute situations which give rise to such a dilemma, as in the case of torture, are those in which the utilitarian and the absolutist points of view—which we hold simultaneously—each dictate a course of action that fundamentally negates the other (Nagel 1972: 125, 142–143); the very action that the utilitarian standpoint demands, the absolutist standpoint condemns, and there is, arguably, no way to decisively determine between the conflicting dictations, under the circumstances.¹⁵ The result is a seemingly irresolvable normative dissonance, a “moral blind alley” (Nagel 1972: 143). I will try to suggest a way out, or perhaps a crack out, of this “blind alley” later on in this essay. Before doing so, however, I would like to draw a distinction, which I believe has not yet been properly drawn, between real situations of “dirty hands,” and other conflictual scenarios, which are commonly, but unjustifiably, placed under the heading of “dirty hands.”

4 “Dirty Hands”—Real and False

Both Walzer and Nagel share an understanding of the problem of “dirty hands” as a conflict between utilitarianism and absolutism. While Nagel (1972; 1986; 1987) has consistently seen the dilemma as a conflict within morality, however, Walzer has not been consistent on this point. Particularly, his more recent work is not entirely in line with his earlier work on the issue of “dirty hands,” without him providing an explanation for the inconsistency. In his 1973 seminal essay, *Political Action: The Problem of “Dirty Hands”* (hereinafter: *Political Action*), which framed the debate on the subject, Walzer does not treat the problem of “dirty hands” as necessarily a dilemma within morality. In fact, he seems to treat the problem as a conflict between morality and directives outside morality, namely political requirements. The early Walzer, unlike Nagel, does not seem to include utilitarian considerations within the boundaries of morality. For him, only the absolutist side of the dilemma is part of the “moral code,” while “utilitarian” equals “political” (Walzer 1973: 179). This position—which David Duquette (2007: 52) has described as “a way of saying that sometimes practicality wins out over morality”¹⁶—becomes clearer as Walzer’s essay progresses and his examples for situations of “dirty hands” (the ticking-bomb-example and the political-deal-example which will be dealt with at length below) unfold. It is perhaps most evident in Walzer’s concluding discussion on the three broad traditions of explaining “dirty hands”—those represented in the writings of Machiavelli, Weber, and Camus (Walzer 1973: 174–180). All “three

¹³ Several attempts have been made by philosophers—with limited success—to bring together utilitarianism and absolutism into one coherent moral system. Such attempts include, among others, “threshold deontology” (Moore 1989: 327–335), “weak consequentialism” (Barry 1991: 40–77; Nielsen 2000: 144–145), “soft deontology” (Anderson Schuh 1992) and “contextualist consequentialism” (Nielsen 1992: 73).

¹⁴ For use of the term “closed moral system” in relation to the “dirty hands” metaphor see, e.g., Griffin (1995: 252).

¹⁵ Nagel (1986: 180) also describes this moral dilemma as a “collision between subjective and objective points of view,” terms which I shall return to later in this essay.

¹⁶ Finlay (2011: 422) similarly argues that according to Walzer, the absolutist side of the “dirty hands” dilemma is a matter of private moral conscience, while the utilitarian side is a matter of political necessity.

traditions” discussed by Walzer in these concluding remarks present the dilemma of “dirty hands” as a dilemma between the moral and the political realms. They differ only in the punishment they provide (if at all) to those who have broken moral rules “for reasons of the state” in cases of “dirty hands” (Ibid: 179, emphasis added).

In his more recent work, however, Walzer is more ambiguous about the nature of the utilitarian side of the dilemma (Walzer 1977: 323–327). The most detailed exposition of the changes in Walzer’s argument can be found in *Emergency Ethics*, an essay originally published in 1988 and re-published in 2004, in *Arguing about War*. “Dirty hands,” writes Walzer in *Emergency Ethics*, is the doctrine “according to which political and military leaders may sometimes find themselves in situations where they cannot avoid acting immorally” (2004: 46).¹⁷ The example used by Walzer as defining such a situation is the British decision to bombard residential areas of German cities during World War II (Ibid: 33–34). As opposed to the analysis in *Political Action*, the notion of “dirty hands” in *Emergency Ethics* is unequivocally bound with the idea of what Walzer calls “supreme emergency.” In this view, only “supreme emergencies,” i.e. situations in which “the ongoingness of the community is at stake,” or when it faces “communal death,” make “dirty hands” permissible and necessary (Ibid: 46). This is an extremely narrow construction of the utilitarian side of the dilemma, which doubtfully covers even ticking-bomb scenarios of the sort Walzer himself appeals to in *Political Action*.¹⁸ In *Emergency Ethics* Walzer also distinguishes the *political community* from the state, arguing that only the survival of the former, but not of the latter, could justify overriding moral taboos (Ibid: 49). In *Political Action*, on the other hand, the reasons given by him for breaking the moral rules on the absolutist side of the dilemma are explicitly described as “reasons of the state.” (1973: 179, emphasis added). Against this background of a reframed problem of “dirty hands” Walzer notes that “[m]oral communities make great immoralities morally possible” (2004: 50). This statement seems to suggest that not only the absolutist side of the dilemma, but also the utilitarian side, are moral. Yet, the utilitarian side becomes “moral” only under the rarest of rare circumstances (and only when an office-holder is faced with the dilemma).

Walzer does not at any point, however, explain the reasons for the evolution of his argument from *Political Action* to *Emergency Ethics*. The utilitarian side of the dilemma remains under-developed and largely intuitive; it is particularly unclear how the later Walzer’s view of “dirty hands” (which necessarily ties that concept with “supreme emergency”) relates to Walzer’s earlier analysis. Taken together, Walzer’s understanding of the problem of “dirty hands” suffers from an imbalance: his narrow conception of morality in *Political Action* leads to an overly broad, over-inclusive, conception of “dirty hands,” while his broader view of morality in *Emergency Ethics* results in an overly narrow, under-inclusive, conception of “dirty hands.”

The over-inclusiveness in *Political Action* can best be clarified by contrasting the two examples which Walzer himself uses in an attempt to concretize the dilemma of “dirty hands.” The first example, which has been largely ignored in subsequent scholarship, concerns a politician who in order to win an election must make a deal with a dishonest ward boss (Walzer 1973: 164–166); the second is the famous ticking-bomb example, some version of which has since dominated academic discourse on the issue of “dirty hands” (Ibid:

¹⁷ This definition, it should be noted, is not entirely accurate, since situations of “dirty hands” are not conceptually special to politicians or military men. See *infra* section 5.

¹⁸ In the torture-example used by Walzer in *Political Action*, the captured rebel leader is tortured in order to extract information about bombs hidden in apartment buildings around the city and set out to explode within the next 24 h (Walzer 1973: 167). I reckon this is not a threat to the ongoingness of the community and therefore not a “supreme emergency,” as defined by Walzer in *Emergency Ethics*.

166–168). For Walzer, the difference between these examples is a matter of degree. He acknowledges that the ticking-bomb-example carries more weight than the political-deal example, but contends that this is because torture is “more dramatic” than political deals, about which “we are, perhaps, a little blasé” (Ibid: 166). This is too easy an explanation, and in my mind a wrong one, for there is a substantial difference between the two examples. Put simply, the ticking-bomb-example reflects a real dilemma of “dirty hands,” while the political-deal example does not. The source of the difference lies in the distinctions that need to be made between different components of ethics, and particularly in the distinction between agent-neutral (impersonal) reasons and different types of agent-relative (personal) reasons.

As Nagel (1986: 152) explains, an extremely important respect in which reasons vary is in their relativity to the agent; “if a reason can be given a general form which does not include an essential reference to the person who has it, it is an *agent-neutral* reason...if on the other hand the general form of a reason does include an essential reference to the person who has it, it is an *agent-relative* reason” (Ibid: 152–153). Agent-neutral and agent-relative reasons, taken together, compose much of what we understand as ethics (Ibid: 166).¹⁹ The neutral component of ethics is consequentialist; it is concerned with what should happen, with the objective utility that everyone should have reason to promote. When something has neutral, or impersonal, value it means that *anyone* has reason to want it to happen. The relative component of ethics, on the other hand, is concerned with what people should or may *do*, independently of the outcome of their actions (Ibid: 164–165). When something has relative, or personal, value, it means that one is committed to believing that *someone* has a subjective reason to want it and pursue it if it is related to her in some way (Ibid: 153–154). Neutral values are typically challenged by more than one type of relative reasons. One such type is usually referred to as reasons of autonomy. Autonomous reasons stem “from the desires, projects, commitments, and personal ties of the individual agent,” giving the agent reasons to act in the pursuit of ends that are her own (as opposed to ends which are neutral, i.e. express values that are independent of the particular perspective and set of preferences of the agent) (Ibid: 165, 170). Autonomous reasons limit what we are *obliged* to do in the service of neutral, impersonal values. Another type of relative reasons is commonly collected under the heading of deontology. Deontological restrictions limit “what we are *permitted* to do in the service of either impersonal or autonomous [reasons]” (Ibid). They are reasons “which depend not on the aims or projects of the agent but on the claims of others,” and unlike autonomous reasons, they are not optional (Ibid: 175).²⁰

The tension between different components of morality “may produce serious inner conflict” (Ibid: 166). Scenarios of conflict may arise between neutral values and different types of relative reasons, as well as among relative reasons themselves. The “dirty hands” metaphor represents one specific type of inner conflict, which is exceptionally acute: a conflict between neutral reasons and deontological restrictions. The thing that makes this type of conflictual scenario unique compared to other situations of conflict is, therefore, not the mere fact that it exists, but rather the fact that it may be very difficult, if at all possible, to

¹⁹ For the sake of completeness, Nagel mentions a third type of agent-relative reasons—reasons of obligation—which “stems from the special obligations we have toward those to whom we are closely related” (1986: 165).

²⁰ Nagel clarifies that deontological reasons should not be understood “as the expression of neutral values of any kind,” for they have their full force against the particular agent doing something—not just against its happening (Ibid: 177).

resolve. Deontological restrictions are typically treated as mandatory and that is pretty much the end of the discussion. The priority of deontological reasons over autonomous ones, for example, seems almost self-evident (Ibid: 178).²¹ But in situations of “dirty hands” deontological restrictions suddenly face an unusual matching opponent from within morality in the figure of neutral reasons “of sufficient strength” (Ibid: 176). Accordingly, the potential solution to such conflict becomes more vague and elusive and the dilemma more intense.²²

Walzer’s approach in *Political Action* fails to draw these distinctions and with them the border between real situations of “dirty hands” and other situations of conflict. Let us turn back to his examples in order to explain this point. In both the political-deal example and the ticking-bomb-example, deontological reasons exist on one side of the dilemma. In both examples a political decision in the broad sense—a decision which a politician is required to make as part of her engagement in political life—exists on the other side of the dilemma. Judged at this level of abstraction both examples indeed look similar, but this is misleading, for there is no symmetry between these two “political” decisions from an ethical standpoint. The decision to torture the captured rebel is made in order to prevent people from dying in bomb-explosions. Torturing the rebel is undoubtedly a violation of a fundamental deontological restriction. At the same time, however, preventing the death of many innocent civilians is something which anyone has reason to promote; it carries a neutral value of the highest degree. Thus, the ticking-bomb-example has rightfully earned its status as the classic example of “dirty hands,” i.e. of an acute conflict between neutral, consequential reasons and deontological restrictions.

The decision to cut the deal with the dishonest ward boss, on the other hand, is made in order for a politician to win an election. Here, again, cutting the deal violates a deontological constraint, but the other side of the dilemma is much less obvious. It is hard to see how that specific politician winning the election could have an objective utility which everyone should have a reason to promote. This is not to say that a politician winning an election could not have an impersonal value under any circumstances—for example, if that specific politician’s success were the country’s last hope before falling into the hands of a vicious tyrant²³—but Walzer does not make any such proposition.²⁴ In fact, apart from the general description of the politician as a “moral man” who “wants to do good” (Walzer 1973: 164–165), we know nothing about him or the “good” that he wants to do—or is capable of doing—if elected.²⁵ Thus, unlike the torturing of the rebel, the consequential reasons for cutting the deal do not carry with them real neutral value, or it is at least questionable that they do. And there is more. In the political-deal example, as opposed to the ticking-bomb-example, the politician has a clear personal stake in the consequences; he has an autonomous reason to cut the deal, because winning the election would have clear relative value for him. Thus, the consequential side of the dilemma is “tainted”, so to speak, by the politician’s self-interest.

²¹ In most circumstances, deontological restrictions would also override neutral reasons.

²² It is interesting to note the developments in Nagel’s own position over the years: while in 1972 he defines “dirty hands” scenarios as a “moral blind alley” (Nagel 1972: 143), 14 years later he expresses the view that “deontological constraints may be overridden by neutral reasons of sufficient strength” (Nagel 1986: 176).

²³ A related example in this regard, albeit not in the context of elections, would be the attempted assassination of Adolf Hitler on 20 July 1944, in what is known as Operation Valkyrie (e.g. von Boeselager 2009).

²⁴ In fact, absent such complicating circumstances, it is highly questionable that the fact of a specific politician winning a genuinely democratic election, as opposed to another, can have impersonal value in the sense discussed herein.

²⁵ It is not clear whether Walzer believes that the consequential reasons for cutting the deal include the “good” that the politician may do in the future, after entering into office, and if so—whether such a position is theoretically plausible. Clearly, however, the political-deal example, as presented, lacks sufficient detail on even what that “good” might be, not to mention its probability to materialize.

These, I believe, are the sources of the substantive weakness of the political-deal example, a weakness which Walzer intuitively identifies (as merely aesthetic), but fails to explain.²⁶

Obviously, for the politician (and perhaps for his supporters as well), cutting the deal would be the “right” thing to do in the most basic sense of using means to an end. But this can be said virtually about any instance in which a person acts immorally in order to promote a certain goal, be it a prospective student who cheats on a test in order to get into med school, or a soccer player who intentionally strikes a goal by hand, leading her national team to win the world-cup. Moreover, it is possible that down the road, the student who cheated her way into med school would save many lives; maybe she would even find a cure for AIDS, so that in hindsight her immoral deed (without which she couldn’t have had a career in medicine) would seem totally insignificant when judged against her enormous contribution to the greater good. This, however, would not retroactively change the fact that cheating on that test was, in real time, simply immoral. The dilemma between right and wrong in real situations of “dirty hands” is inherent, not retroactively constructed; it is only of these inherently conflictual situations that we can say that an action was morally right and wrong, simultaneously.

Whereas Walzer’s position in *Political Action* suffers from over-broadness due to his failure to adequately distinguish between agent-neutral and agent-relative standpoints, in *Emergency Ethics* his position tilts to the opposite side, offering an overly-narrow construction of the problem of “dirty hands.” In *Emergency Ethics*, Walzer carves out a very specific type of agent-neutral considerations, what he denominates “supreme emergencies,” which occupy the utilitarian side of the dilemma. On this approach, a genuine situation of “dirty hands” arises only when the danger faced by the community is no less than “communal death,” that is, when the community faces an existential threat (Walzer 2004: 46). How does this position sit with Walzer’s view in *Political Action*? Well, I believe it doesn’t, and Walzer does not provide reasoning for this discrepancy. Surely, the political-deal example does not fall under Walzer’s definition of a “supreme emergency,” and neither does the ticking-bomb-example. The latter specifies the existence of a serious threat to many people’s lives but still falls short of posing a danger to the mere existence of the community. It should be emphasized that Walzer does not only state that breaking the absolutist moral code is morally impermissible in anything less than a case of “supreme emergency;” he also believes it is unnecessary (Ibid). What should we make of this appeal to necessity, which Walzer makes almost in passing? This, I believe, is the pinpoint of the evolution in Walzer’s approach. In *Political Action*, necessity and morality are seen as separate, with the absolutist side of the problem of “dirty hands” treated in moral terms and the utilitarian side treated in terms of political necessity (which leads to over-broadness); in *Emergency Ethics* moral permissibility and necessity are fused, so that only what is morally permissible is also considered necessary (and vice versa).

By doing so, Walzer rightfully narrows down the range of situations deserving inclusion under the title of “dirty hands.” The problem, however, is that he goes too far in narrowing that range. As I have shown above, in *Political Action* Walzer treats the difference between the political-deal-example and the ticking-bomb-example as a matter of degree, while in fact the difference between the two is a difference in substance. In *Emergency Ethics*, on the

²⁶ Walzer’s intuition may have led him to raise an additional argument in favor of cutting the deal, which is that the politician would otherwise be violating his commitment to his supporters “to do within rational limits whatever is necessary to win” (Walzer 1973: 165). However, this argument frames the dilemma as if it were a dilemma between conflicting deontological constraints, which is irrelevant and totally at odds with Walzer’s own understanding of situations of “dirty hands.”

other hand, he treats cases of “supreme emergency” as if they were substantively unique, though *Political Action*’s ticking-bomb-example differs from “supreme emergency” only in degree. Moreover, Walzer’s categorization of an emergency as “supreme” is based on the level of the threat to the community (i.e. whether the threat is existential or not); yet, the ticking-bomb-example includes a component of time or “present danger” (24 h until the bombs explode), which contributes to the sense of emergency, but does not reflect in Walzer’s definition of “supreme emergency.” Perhaps the British bombing of German cities in World War II can be seen, to use Walzer’s language in *Political Action*, as more “dramatic” than the ticking-bomb example (though I personally do not believe so), but both adequately fall under the title of “dirty hands.” Yet, Walzer’s position in *Emergency Ethics* implicitly—and wrongly—excludes his own ticking-bomb-example in *Political Action* (by now the prototype example given for situations of “dirty hands”) from the sphere of scenarios deserving inclusion under that metaphorical title. To use Walzer’s own words again, the great immorality in torturing the captured rebel cannot be made morally possible given the stakes presented in Walzer’s own ticking-bomb-example.

5 “Dirty Hands,” Moral Simulation and the Situated Agent

The clash between personal and impersonal standpoints, which characterizes situations of “dirty hands,” can also be described, following Nagel, as a result of the “human duality of perspectives” (Nagel 1986: 185). According to Nagel, each person evaluates a moral situation from both a subjective, internal viewpoint and an objective, external viewpoint (Ibid: 180–188). The external viewpoint, which corresponds with consequentialist ethics, takes a detached position, from which all persons can agree about what should happen; it provides a guide for choosing between different world-states, but it does not necessarily provide a decisive moral guide for action. The reason is that a person can evaluate the world from an impersonal standpoint, but she acts within it from a particular perspective—an internal point of view, which corresponds with deontological ethics. On this view, it is possible for the objective self to acknowledge that a world-state, whereby one person is tortured and many saved as a result, is better than the opposite, but difficult for the subjective self to perform the action, which would bring about the otherwise favorable world-state.

The question remains, however, whether the clash between the external and internal points of view in situations of “dirty hands” is indeed irreconcilable. Nagel offers a mitigating solution through politics. On this approach, political institutions externalize the clash of standpoints by creating a “moral division of labor between society and the individual, corresponding to the division of standpoints in each of us” (Nagel 1987: 238). In this division of labor, the responsibility for securing impersonal values is put in the hands of the impersonal institution of the state, thereby leaving people to “live a good life without doing wrong” (Nagel 1986: 174, 206). Nagel’s solution is appealing as a mechanism for preventing most people from experiencing the clash of standpoints, but if there is a substantive solution to the clash, this is not it. In fact, in many ways Nagel’s approach does not transcend a descriptive account of the role which political institutions already play in modern liberal democracies. Even as such, however, the normative-division-of-labor-approach is insufficient in at least two respects: First, the problem of “dirty hands” is not special to politics, even if there are aspects of politics which raise this problem more frequently or acutely (Coady 1993: 373–383). Interestingly, Nagel’s own examples for situations of “dirty hands” do

not necessarily stem from the political arena.²⁷ Second, while we can say that the securing of impersonal values should be put in the hands of “institutions,” ultimately “the units of moral accounting are always individuals” (Hollis 1982: 391; but see Sutherland 1995).

Much scholarly attention has been given to the problem of “role-differentiated morality,” that is whether the role occupied by professionals and/or office-holders subjects them to a different set of moral criteria than other, “ordinary” people, who do not hold the same position (Applbaum 1999; Barnhizer 2000; Ellman 1990; Goldman 1980; Kronman 1993; Luban 1988; Simon 1998; Thompson 1987; Rhode 1985; Wendel 2001). As regards the problem of “dirty hands” it has been suggested that there exists a “phenomenon of distance between private and public morality” (Postema 1980: 72) and that “our familiar moral rules are strained when extrapolated from individual to public cases” (Howard 1977: 34). I do not believe that the sources of morality, which ground the duties of office holders, are fundamentally different from those of private individuals; but even if such differentiation were true, it would not suffice in addressing the problem of “dirty hands” if only because, as noted above, this problem is not conceptually special to professionals or politicians.

I would like to argue, however, that the position in which a moral agent is situated, which may include the holding of office, does “make a difference” (Hollis 1982: 394). The difference lies not in a separate morality to which an office-holder feels obliged, but in the evaluative position in which she is, while others, who evaluate the same situation from an external viewpoint, are not. Nagel concedes that despite the “duality of perspectives” existent in each of us, a person can never develop a fully objective view of the world (Nagel 1986: 126–130). No matter how much we try to look at ourselves from an external viewpoint, this view will always be incomplete; it will have, as Nagel puts it, a “large blind spot, behind our eyes...that hides something we cannot take into account in acting, because it is what acts” (Ibid: 127). I believe that the opposite can be said as well: while a person acting within a given situation will never be capable of viewing herself from a totally external (objective) viewpoint, a person evaluating a given situation from an external viewpoint (i.e. without actually being situated in it) will never be capable of fully endorsing the internal (subjective) viewpoint of the situated agent; that person’s own internal point of view will necessarily remain external to the situation evaluated. I suggest that between holding the situated agent to the exact same moral criteria for action as the external observer, on the one hand, and saying that each of them conforms to a different set of moral criteria, on the other hand, there exists a middle-path, which acknowledges that both the situated agent and the observer can draw from the same sources of morality, but still develop different accounts of the same situation, depending on the point from which they evaluate it. Thus, it is possible that what seems an irresolvable dilemma when viewed from the outside does not seem the same from within.

How does this manifest itself in situations of “dirty hands”? A full and comprehensive answer to this question falls beyond the scope of this essay,²⁸ but I will try to broadly sketch

²⁷ Nagel’s example for a clash between consequential and deontological ethics talks of a person involved in a car accident on a deserted road, with the other passengers badly injured. He finds an isolated house and asks the woman, who is in the house with her grandson, to lend him her car in order to seek help. The terrified woman refuses and in order to persuade her to give him the car keys, the person twists the grandson’s arm (Nagel 1986: 176).

²⁸ I believe that such an answer may require some empirical research into the decision making process of actual participants in situations of “dirty hands.” Several writers have used psychological research—particularly Milgram’s Obedience Experiment and Zimbardi’s Prison Experiment—to support an argument for an absolute legal (but not necessarily moral) ban on torture (Brown 2006; Clarke 2008; de Wijze 2006; O’Rourke et al. 2005). A more comprehensive integration between psychology and ethics in the context of “dirty hands” scenarios is still lacking, however. For one interesting attempt to examine the torturer’s mental state, albeit not in the context of a “dirty hands” scenario, see Osiel (2004).

at least the beginning of a way for dealing with it. In his attempt to explain the peculiarities of deontological constraints, Nagel argues that action produces a “unique normative perspective on the world, determined by intention” (Nagel 1986: 180). On this approach, the personal, subjective perspective of the agent gives her “sufficient reason not to do something which, considered from an external standpoint, it would be better if [she] did” (Ibid). From the subjective standpoint of the agent, says Nagel, the reasons stemming from the deliberate creation of evil “overshadow reasons stemming from greater evils that are more ‘faint’ from this perspective, because they do not fall within the intensifying beam of my intentions even though they are consequences of what I do” (Ibid).

The inescapable weakness in Nagel’s account of this situation is two-fold: First, the internal perspective itself is evaluated from an external standpoint; Nagel cannot *know* that his account of the situation is indeed how the agent views it from within; he can only *theorize* on what that account would be by trying to put himself in the situated agent’s position. This, however, is not an actual internal perspective, but an externally-constructed simulation of an internal perspective. I will call this problem, *the problem of moral simulation*. Second, even if the problem of moral simulation can be overcome, Nagel would still only be able to determine how he *himself* would have evaluated the situation had he been situated in the agent’s position; this does not necessarily mean, however, that the situated agent’s evaluation would be identical. I will call this problem, following Sen, *the issue of evaluator relativity* (Sen 1982, 1983, 1993).²⁹

The problem of moral simulation lies in the simple fact that people sometimes act differently than the way they had imagined they would in a given situation. Sometimes, it means that they act immorally, although they didn’t believe (or didn’t want to believe) they would; slippery-slope-type arguments, which serve advocates of an absolute legal ban on torture, rely, to a large extent, on this proposition (Luban 2000): I suggest, however, that moral judgment itself may be influenced by the nature of the internal perspective—actual or imagined—from which judgment is made.³⁰ The lag between the internal point of view and the externally-constructed simulation of it seems to be of even greater significance when the move is attempted by someone who is very unlikely to ever hold the actual internal perspective (Hollis 1982: 394). Nagel’s notion of a division of moral labor between individuals and institutions suggests that the political structure works to create and promote such lag.

When I try to think of myself in a ticking-bomb scenario, it is very difficult for me to imagine myself even considering the torturing of another human-being. But it is also very difficult for me to imagine the lives of hundreds or thousands of people being dependent on my action. I do not *know* what it is like to be in that position.³¹ Take a flight simulator as an example. Modern flight simulators can provide a very realistic experience, but at the end of

²⁹ According to Sen, the idea of evaluator relativity explains how consequentialism can actually incorporate what are usually perceived as deontological constraints. I do not mean to advocate for a similar position, but rather draw on this idea more loosely, focusing on the notion that “the same states of affairs can be very good-relative-to-x whilst less good-relative-to-y” (Suikkanen 2009: 1).

³⁰ I use the term “moral judgment” in the present discussion to refer to the outcome of the process of moral reasoning, as opposed to “moral intuition,” which refers to the beginning of that process. Admittedly, intuition may itself be the basis for moral judgment and there is controversy over whether (and if so to what extent) conscious reasoning actually affects our moral judgment or whether it only serves as a post-factum strategic method to justify our actions (Cushman et al. 2006; Haidt 2012: 3–94; Pizarro and Bloom 2003). I do not, however, need to go into that discussion in the present context.

³¹ My attempt to put myself in this kind of situation is “hypothetical” in the sense that my presence in the situation is only by thought. This is totally different from arguing that ticking-bomb scenarios are artificial in themselves, as suggested, for example, by Shue (1978).

the day, they have limits, one of which is that users know that the risk they are facing is not real (which may influence their judgments and actions) (Burian et al. 2005; Dahlstrom et al. 2009).³² Similarly, and perhaps even more so, moral simulations (or “thought experiments,” as they are more commonly referred to) have their own epistemic limitations (Cooper 2005; Dancy 1985; Davis 2012; Gendler 1998; Machery 2011). This is not meant to deny the importance of moral simulations in ethics (Scott 2009), but only to point out the possibility that an externally-constructed simulation of the internal point of view is not a fully reliable replica of an actual internal perspective (Machery 2011: 204). Thus, Nagel’s moral simulation of a “dirty hands” scenario can perhaps accurately capture the point of view of an *imagined* insider, but there may still be some epistemological (and psychological) distance between that point of view and the point of view of a *real* insider.

The issue of evaluator relativity goes beyond the epistemic limitations of moral simulation, to suggest that the “nature of ethical reasoning and rationality” is, in itself, positional, as regards the “objective elements in ethical judgments” (Sen 1993: 143). Evaluator relativity, says Sen, “makes the goodness of a state of affairs depend intrinsically and at the highest level on the *position* of the evaluator in relation to the state” (Sen 1982: 114, text in parenthesis omitted). This contrasts with the utilitarian formula of reasoning, which rests on the notion that evaluations must be independent of the evaluator (Sen 2000: 485). Evaluator relativity holds that such independence is impossible because evaluations are always situated in the life of the person doing the evaluation and making the choices (Ibid). “What we can see is not independent of where we stand in relation to what we are trying to see. And this in turn can influence our beliefs, understanding and decisions” (Sen 2009: 155–156).³³ While an uninvolved observer may take a detached view of the consequences brought about by the choice evaluated, an agent situated in the actual position cannot ignore her own place in the events as well as her responsibility for what may happen as a result of what she does or doesn’t do. Moral simulation does not totally bridge the gap between the uninvolved observer and the situated agent since the simulated perspective is itself a distinct position, whereby the agent cannot ignore that, eventually, her simulated decisions will not have a real effect on what may happen. If the situated agent opts to torture (to take the ticking-bomb-example) the tortured will *really* suffer from her own hands; but if she doesn’t, many people may *really* die as a result of her choice. None of these will really happen, whatever the agent “decides” from the simulated perspective. Evaluator relativity therefore suggests the existence of a gap, guided by ethics itself, between Nagel’s externally-constructed internal perspective and the actual internal perspective of the situated agent, which may lead to different moral evaluations of the otherwise same state of affairs, depending on the agents’ respective actions and responsibilities (Ibid: 220).

The problem of moral simulation and the issue of evaluator relativity suggest that the fact that one is situated in a position which requires making a choice (as opposed to hypothetically being there) can make a difference, both epistemologically and ethically. As Sen has observed “if the roles of different persons in the development of a state of affairs are totally different, it would be rather absurd to make the odd demand that the two must value that state of affairs in exactly the same way. This would make a nonsense of taking note of agencies that are integral parts of social realizations” (Ibid). Particularly, the situated agent cannot escape - neither physically nor mentally—from the choice that needs to be made; for

³² For a similar view in the field of business simulators see, e.g., Gröbler (2004: 269).

³³ For clarity, evaluator relativity (or positional objectivity) is about the objectivity of what can be observed from a specified position by any normal person occupying that position. What is relative in this regard is the position of observation, not the subjective working of a person’s mind (Sen 2009: 158).

her, the objective-consequentialist side of the conflict is not one of merely choosing between world-states, because it is she whose actions can determine—really and not hypothetically—which state it will be. The subjective and objective points of view, which in the externally-constructed moral simulation of the internal perspective correspond with different sides of the dilemma, may thus merge, at least partly, in the eyes of the situated agent, and the “intensifying beam,” in Nagel’s language, may loom not (only) on the agent’s immediate intentions, but (also) on the consequences of her actions.³⁴

Nagel himself admits that while people feel the force of both absolutism and consequentialism, “in some people, either naturally or for doctrinal reasons, one type will be dominant and the other suppressed or weak” (Nagel 1972: 124–125). I suggest that the saliency and weight given for one type of moral considerations over another may also be position-dependent; if a difference exists between the externally-constructed internal perspective and the actual internal perspective in situations of “dirty hands,” it is because the consequential side of the moral conflict is given extra weight by the situated agent when the stakes are real, compared to the weight it receives by the non-situated agent in theory. Arguably, the situated agent in such extreme situations feels the force of “consequential constraints” (Suikkanen 2009: 6–8), in a way that a non-situated agent doesn’t (necessarily) feel.

If the moral gap between perspectives to which I refer exists, then it is possible that what seems an irresolvable moral dilemma when viewed from the simulated internal perspective is not a dilemma at all when viewed from the actual internal perspective of the situated agent. This does not mean that the situated agent is unaware of the existence of a moral conflict, but the solution for that conflict, from her perspective, is quite clear; for her, the moral alley might be narrow, but not blind. Walzer has argued that a politician’s own feelings of guilt in situations of “dirty hands” determine whether she is a moral person or not (Walzer 1973: 166). I do not share this view; for the reasons set out above, I believe it may be possible for a person (politician) acting in such situations not to believe herself to be guilty, and still be a moral person. A more relevant criterion for judgment is, I think, whether such person is capable of understanding why in the eyes of other people—or society as a whole—she may still be considered to have done a moral wrong.³⁵

6 Conclusion

I have argued that the moral dilemma manifested in the “dirty hands” metaphor can play neither within utilitarianism, nor within absolutism. Still, the dilemma is a dilemma within morality, being the result of a seemingly irresolvable conflict between moral intuitions pulling in opposite directions. I have also suggested a differentiation between real and false situations of “dirty hands”, arguing that situations which are commonly understood as examples of “dirty hands” do not deserve inclusion under that metaphorical title. At the same, as I have shown, some situations may be wrongly excluded from bearing that title. In the last part of the essay, I have tried to explain why the point of view of the situated agent in

³⁴ It can also be argued that from an office holder’s point of view, she has a special, agent-relative, obligation towards her nation, which a person not in that position doesn’t have and which it is also very difficult to grasp from an external perspective. For simplicity, however, I will not pursue this line of argument in this essay.

³⁵ For clarity, nothing in my analysis excludes the possibility of finding a person legally culpable for ordering the torturing of a person in a ticking-bomb scenario. While I believe that the insights offered in this essay should be taken into account when determining if, how, and to what extent, such person should be punished, morality and legality do not fully overlap, and as discussed at the outset, there may very well be reasons to believe an act to be moral, but to legally ban it nonetheless.

situations of “dirty hands” may be different from the point of view of a person trying to put herself in the same situation, by way of moral simulation. What is viewed from the outside as an irresolvable moral dilemma, I have suggested, may not seem the same from an internal perspective. This may have bearing on our understanding of agents’ moral culpability in situations of “dirty hands,” as well as more generally, on our judgment of their moral character.

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References

- Aleinikoff TA (1987) Constitutional law in the age of balancing. *Yale Law J* 96:943–1005
- Allhoff F (2012) Terrorism, ticking time-bombs, and torture: A philosophical analysis. The University of Chicago Press, Chicago
- Anderson Schuh S (1992) Hard and soft deontology. *J Value Inq* 26:281–285
- Appelbaum AI (1999) Ethics for adversaries: The morality of roles in public and professional life. Princeton University Press, Princeton
- Bagaric M, Clarke J (2005) Not enough official torture in the world? The circumstances in which torture is morally justifiable. *Univ San Franc Law Rev* 39(3):581–616
- Barnes G (1971) Utilitarianisms. *Ethics* 82(1):56–64
- Barnhizer D (2000) Princes of darkness and angels of light: the soul of the American lawyer. *Notre-Dame J Law Ethics* 14(1):371–477
- Barry B (1991) *Liberty and Justice: Essays in political theory* 2. Clarendon, Oxford
- Bellamy AJ (2006) No pain, no gain? Torture and ethics in the war on terror. *Int Aff* 82:121–148
- Bellamy AJ (2007) Dirty hands and lesser evils in the war on terror. *Br J Polit Int Relat* 9:509–526
- Brandt RB (1963) Toward a credible form of utilitarianism. In: Castaneda HN, Nakhnikian G (eds) *Morality and the language of conduct*. Wayne State University Press, Detroit, pp 107–143
- Brown RS (2006) Torture, terrorism, and the ticking bomb: a principled response. *J Intl Law Policy* 4:1–33
- Burian BK, Barshi I, Dismukes K (2005) The challenge of aviation emergency and abnormal situations. NASA Technical Memorandum 213462, http://hsi.arc.nasa.gov/flightcognition/Publications/BurianTM_final.pdf
- Clarke A (2008) Creating a torture culture. *Suffolk Transnatl Law Rev* 32(1):1–50
- Coady CAJ (1993) Politics and the problem of dirty hands. In: Singer P (ed) *A Companion to ethics*. Blackwell Publishers, Oxford
- Cooper R (2005) Thought experiments. *Metaphilos* 36:328–347
- Cushman F, Young L, Hauser M (2006) The role of conscious reasoning and intuition in moral judgment: testing three principles of harm. *Psychol Sci* 17:1082–1089
- Dahlstrom N, Dekker S, van Winsen R, Nyce J (2009) Fidelity and validity of simulator training. *Theor Issues Ergon Sci* 10(4):305–314
- Dancy J (1985) The role of imaginary cases in ethics. *Pac Philos Q* 66:141–153
- Davis M (2012) Imaginary cases in ethics: a critique. *Int J App Philos* 26(1):1–17
- de Wijze S (2006) Torture and liberalism. *Democratiza* 7:1–22
- Dershowitz AM (2002) Why terrorism works: Understanding the threat, responding to the challenge. Yale University Press, New Haven
- Dershowitz AM (2003) The torture warrant: a response to professor Strauss. *NY Law Sch Law Rev* 48(1):275–294
- Dershowitz AM (2004) Tortured reasoning. In: Levinson S (ed) *Torture—A collection*. Oxford University Press, New York, pp 257–280
- Duquette D (2007) From rights to realism: Incoherence in Walzer’s conception of *Jus In Bello*. In: Lee SP (ed) *Intervention, terrorism, and torture: Contemporary challenges to just war theory*. Springer, Dordrecht, pp 41–58
- Ellman S (1990) Review: lawyering for justice in a flawed democracy. *Columbia Law Rev* 90:116–190
- Elshtain JB (2004) Reflection on the problem of “dirty hands”. In: Levinson S (ed) *Torture—A collection*. Oxford University Press, New York, pp 77–92
- Finlay CJ (2011) Dirty hands and the romance of the ticking bomb terrorist: a Humean account. *Crit Rev Int Soc Polit Philos* 14(4):421–442
- Foot P (1985) Utilitarianism and the virtues. *Mind* 94:196–209

- Fried C, Fried G (2010) Because it is wrong: Torture, privacy, and presidential power in the age of terror. W. Norton & Company, New York
- Gendler TS (1998) Exceptional persons: on the limits of imaginary cases. *J Conscious Stud* 5:592–610
- Gewirth A (1981) Are there any absolute rights? *Philos Q* 31:1–16
- Goldman AH (1980) The moral foundations of professional ethics. Rowman and Littlefield, Totowa
- Gur-Arye M (2004) Can the war against terror justify the use of force in interrogations? Reflections in light of the Israeli experience. In: Levinson S (ed) *Torture—A collection*. Oxford University Press, New York, pp 183–198
- Griffin LC (1995) The lawyer’s dirty hands. *Georget J Leg Ethics* 8:219–281
- Gross O (2004) Are torture warrants warranted? Pragmatic absolutism and official disobedience. *Minn Law Rev* 88(6):1481–1555
- Gröbler A (2004) Don’t let history repeat itself—methodological issues concerning the use of simulators in teaching and experimentation. *Syst Dyn Rev* 20:263–274
- Haidt J (2012) *The righteous mind: Why good people are divided by politics and religion*. Pantheon Books, New York
- HCIJ 5100/94 Public Comm. against Torture v. Israel, PD 53(4) 817 (2006), English translation available at http://elyon1.court.gov.il/Files_ENG/02/690/007/A34/02007690.A34.pdf
- Hollis M (1982) Dirty hands. *Br J Polit Sci* 12(4):385–398
- Howard WK (1977) Must public hands be dirty? *J Value Inq* 11:29–40
- Kronman AT (1993) *The lost lawyer: Failing ideals of the legal profession*. Harvard University Press, Cambridge
- Levinson S (2003) “Precommitment” and “Postcommitment”: the ban on torture in the wake of September 11. *Tex Law Rev* 81(7):2013–2053
- Luban D (1988) *Lawyers and justice: An ethical study*. Princeton University Press, Princeton
- Luban D (2000) The ethics of wrongful obedience. In: Rhode DL (ed) *Ethics in practice: Lawyers’ roles, responsibilities and regulation*. Oxford University Press, New York, pp 94–122
- Luban D (2005) Liberalism, torture, and the ticking bomb. *Va Law Rev* 91:1425–1461
- Lukes D (2005) Liberal democratic torture. *Br J Polit Sci* 36:1–16
- Machery E (2011) Thought experiments and philosophical knowledge. *Metaphilos* 42(3):191–214
- Mackie JL (1977, 1990) *Ethics—inventing right and wrong*. Penguin Books, London
- Meisels T (2008) Torture and the problem of dirty hands. *Can J Law Jurisprud* 21:149–174
- Moore MS (1989) Torture and the balance of evils. *Isr Law Rev* 23:280–344
- Nagel T (1972) War and massacre. *Philos Public Aff* 1:123–144
- Nagel T (1986) *The view from nowhere*. Oxford University Press, New York
- Nagel T (1987) Moral Conflict and political legitimacy. *Philos Public Aff* 16:215–240
- Nielsen K (1992) Rights and consequences: it all depends. *Can J Law Soc* 7:63–92
- Nielsen K (2000) There is no dilemma of dirty hands. In: Rynard P, Shugarman DP (eds) *Cruelty & deception—the controversy over dirty hands in politics*. Broadview Press, Peterborough, pp 139–156
- O’Rourke A, Chaudhri V, Nyland C (2005) Torture, slippery Slopes, intellectual apologists and ticking bombs: an Australian response to Bagaric and Clarke. *Univ San Franc Law Rev* 40(1):85–108
- Osiel M (2004) The mental State of torturers: Argentina’s dirty war. In: Levinson S (ed) *Torture—A collection*. Oxford University Press, New York, pp 129–144
- Pizarro DA, Bloom P (2003) The intelligence of the moral intuitions: comment on Haidt (2001). *Psychol Rev* 110:193–196
- Posner EA, Vermeule A (2006) Should coercive interrogation be legal? *Mich Law Rev* 104:671–707
- Postema GJ (1980) Moral responsibility in professional ethics. *NY Univ Law Rev* 55:63–89
- Railton P (1984) Alienation, consequentialism, and the demands of morality. *Philos Public Aff* 13(2):134–171
- Raviv A (2004) Torture and justification: defending the indefensible. *George Mason Law Rev* 13(1):135–181
- Rhode DL (1985) Ethical perspectives on legal justice. *Stanf Law Rev* 37:589–659
- Sen A (1982) Rights and agency. *Philos Public Aff* 11:3–39
- Sen A (1983) Evaluator relativity and consequential evaluation. *Philos Public Aff* 12:113–132
- Sen A (1993) Positional objectivity. *Philos Public Aff* 22:126–145
- Sen A (2000) Consequential evaluation and practical reason. *J Philos* 97:477–502
- Sen A (2009) *The idea of justice*. Penguin, London
- Scanlon TM (1988) Rights, goals, and fairness. In: Scheffler S (ed) *Consequentialism and its critics*. Oxford University Press, Oxford, pp 74–92
- Schauer F (1994) Commensurability and its constitutional consequences. *Hastings Law J* 45(4):785–812
- Scott TJ (2009) *The evolution of moral cognition*. Dissertation, Victoria University of Wellington
- Shue H (1978) Torture. *Philos Public Aff* 7(2):124–143
- Simon WH (1998) *The practice of justice: A theory of lawyers’ ethics*. Harvard University Press, Cambridge
- Smart JJC, Williams B (1973) *Utilitarianism: For and against*. Cambridge University Press, Cambridge

- Steinhoff U (2006) Torture—the case for dirty hands and against Alan Dershowitz. *J Appl Philos* 23:337–353
- Stocker M (2000) Dirty hands and ordinary life. In: Rynard P, Shugarman DP (eds) *Cruelty & deception—the controversy over dirty hands in politics*. Broadview Press, Peterborough, pp 27–42
- Suikkanen J (2009) Consequentialism, constraints and the good-relative-to: a reply to Mark Schroeder. *J Ethics Soc Phil*, <http://www.jesp.org/articles/download/Consequentialism.pdf>.
- Sussman D (2005) What's wrong with torture? *Philos Public Aff* 33(1):1–33
- Sutherland SL (1995) The problem of dirty hands in politics: peace in the vegetable trade. *Can J Polit Sci* 28:479–507
- Ten CL (1987) *Crime, guilt and punishment: A philosophical introduction*. Clarendon, Oxford
- Thompson DF (1987) *Political ethics and public office*. Harvard University Press, Cambridge
- Von Boeselager PF (2009) *Valkyrie: The story of the plot to kill Hitler, by its last member*. Rendall S (trans), Alfred A. Knopf, New York
- Waldron J (2005) Torture and positive law: jurisprudence for the white house. *Columbia Law Rev* 105:1681–1750
- Walzer M (1973) Political action: the problem of “dirty hands”. *Philos Public Aff* 2(2):160–180
- Walzer M (1977) *Just and unjust wars: A moral argument with historical illustrations*. Basic Books, New York
- Walzer M (1988, 2004) *Emergency ethics*. In: Walzer M (ed) *Arguing about war*. Yale University Press, New Haven & London, pp. 33–50
- Wendel WB (2001) Book review: professional roles and moral agency. *Georget Law J* 89:667–718
- Williams B (1978) Politics & moral character. In: Hampshire S (ed) *Public and private morality*. Cambridge University Press, Cambridge, pp 55–74
- Žižek S (2002) *Welcome to the desert of the real: Five essays on September 11 and similar dates*. Verso, London