

The Problem of Dirty Hands in Democracies

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The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.

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Abstract

This thesis explores the concept of dirty hands in democracies. It argues that dirty hands are instances of moral conflicts in which some of our core moral values and commitments clash. Accepting the existence of such a clash, contrary to what some critics have argued, does not have to be irrational and we can make sense of this phenomenon irrespective of the wider beliefs about the nature of rational moral judgement that we hold. The thesis goes on to defend the view that getting one's hands dirty results in a moral remainder that can best be described as "tragic-remorse". Experiencing this emotional response, it is argued, fulfils important functions because it helps the agent understand what is morally required in the situation, ensures that they deliberate in the right way, and makes their behaviour intelligible to others. The thesis then goes on to argue that being confronted with a dirty hands conflict is particularly pernicious because, once faced with such a situation, it is impossible to keep our hands clean. Dirty hands therefore point us towards morality's tragic nature. The thesis then questions what this means for democratic politics. It rejects criticisms that dirty hands can, neither in theory nor in practice, be compatible with democratic politics. If dirty-handed measures can indeed be a part of democratic politics, we should then ask who gets their hands dirty and can share the moral responsibility for the dirty-handed outcome. The thesis emphasises that political leaders do not share this burden alone. They act in a complicated web of relations with other politicians and public officials and many of them will get their hands dirty as well. Additionally, it is argued, to the extent that citizens voluntarily participate in or contribute to a given dirty-handed decision or the wider democratic process, they will also share some of the dirt and moral responsibility for what their politicians do for them and in their name. The thesis concludes by arguing that dirty hands in democratic politics are not borne by a single political leader acting alone, but are shared by many in the polity.

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1. Introduction

1.1. Democratic Dirty Hands

Imagine a politician who is committed to being morally good. She wants to act in the best interest of her citizens and adhere to her deep-rooted moral convictions. Immediately she is confronted with the following situation: the leader of one of the violent factions in the capital has been arrested and is thought to know the location of various bombs hidden in the city and set to explode by the end of the day. If the suspicions prove to be true, hundreds of innocent people will die in the explosions. Questioning has had no success, so our politician is now asked to authorise a more drastic measure. Should she order for the prisoner to be tortured in order to extract the information? Michael Walzer famously introduced this ticking bomb scenario¹ and concluded that “no one succeeds in politics without getting his hands dirty” (1973, p. 164). No matter how good a politician’s intentions are, politics will confront her with situations in which she will be forced to get her hands dirty.

While the literature on the issue of dirty hands has been steadily growing since the publication of Walzer’s article, writers have not given enough thought to how the democratic context of such political action ought to influence our understanding of dirty hands and those who engage in them. Much of the dirty hands literature focusses on the political realm but surprisingly little has been said about the way in which dirty hands interact with a form of government that claims to be both for and by individuals, but where these individuals do not make or execute the actual dirty-handed decision themselves. It is the purpose of this thesis to make a start at closing this gap and to examine the concept of democratic dirty hands.

The first aim of the thesis will be to defend and define the notion of dirty hands more generally. There is broad agreement that dirty hands situations are instances in which an agent has to commit an action that is the overall right thing to do and yet leaves the agent having done something wrong (Walzer, 1973; Stocker, 1990; Cunningham, 1992; Dovi, 2005; de Wijze, 2007; Archard, 2013; Tigard, 2019). This formulation, however, has led some critics to argue that dirty hands are nothing but irrational. How, after all, could one and the same action be simultaneously right and wrong (Yeo, 2000, pp. 159-161; Nielsen, 2007, pp. 20-22; Coady, 2009, pp. 79-84)? Before going into any detail of the nature of democratic dirty hands, it will therefore be crucial to defend the coherence of the notion of dirty hands itself. After having done so, though, we will be faced with yet another problem in the dirty hands

¹ While I will make use of the ticking bomb scenario throughout this thesis because of its prevalence in the literature, the use of it as an example of dirty hands has been criticised. For further details see Steven Lukes (2006) and Henry Shue (2006).

literature. There is widespread disagreement on how best to define the notion of dirty hands. Some argue, following Michael Stocker (1990), that dirty hands are caused by a clash of plural and conflicting values. Others, following Walzer (1973), think that the conflict is best conceived as a clash between our deontological and consequentialist commitments. Yet another camp argues, following Thomas Nagel (1993), that what gives rise to dirty hands problems is a clash between our role obligations qua private and qua public individual. Hence, there does not appear to be an agreement about the nature of the conflict inherent in dirty hands. The disagreement does not stop here: there are also a variety of views on what distinguishes dirty hands situations from other kinds of moral conflict. Some argue that there is a difference in kind between dirty hands and other moral conflicts because dirty hands are characterised by the fact that the agent is forced to further the evil plans and projects of a third party (Stocker, 1990; de Wijze, 2007). Others think that the difference is that dirty hands are grievous instances of moral conflicts so that the difference between the two is quantitative in nature (Cunningham, 1992; Walzer, 2004) so that the relevant distinction is not one of kind, but rather of magnitude. Yet another position argues that dirty hands are different to other moral conflicts in that they involve some form of evil conduct, where evil is different both in kind and in magnitude from mere wrongdoing (Kramer, 2018). What exactly differentiates dirty hands from other moral conflicts has not been settled in the debate so far. What there does appear to be agreement on is that dirty hands are associated with certain negative emotional responses that agents are said to experience in the wake of getting their hands dirty. The fact that we can observe these emotional responses is said to give credence to the existence of dirty hands (Stocker, 1990, p. 125; Gowans, 1994, pp. 88-116; de Wijze, 2004, p. 458), while at the same time, a lack of such an emotional response gives us good reason to judge that the agent in question has not fully understood the moral features of the choice situation they were faced with. There is, however, considerable disagreement about the kind of emotion that is appropriate in dirty hands scenarios. Carla Bagnoli (2000, p. 178) has advocated Bernard Williams's notion of "agent-regret" (1976, pp. 123-126), Marcia Baron has argued for an emotional response in which "remorse and agent-regret mutually temper one another" (1988, p. 274), and Steve de Wijze advocates a notion he calls "tragic-remorse" (2004). Given the varied disagreements in the dirty hands literature about how to define the very notion in question, the first aim of my thesis is to take a principled stance on these debates and make clear how I understand the nature of dirty hands.

The second aim of my thesis is to clarify the relationship between dirty hands problems and democratic politics and to understand what it means for the former to arise in the latter. This is necessary because the notion of democratic dirty hands, i.e. the idea that it can be

permissible to get one's hands dirty in democratic politics, has been challenged on several fronts. The first criticism argues that dirty hands reasoning has no place in politics because it is erroneously concerned with a lone political actor that makes decisions all by herself, which is far removed from the actual workings of democratic politics. David Shugarman thinks that "the picture painted of the dirty-hands leader is a composite of wily negotiator, clever manipulator, no-nonsense general, and 'father-knows-best' moral actor. It is a highly romanticized view of leadership and a dangerous one" (2000, pp. 242-243). Such an understanding of dirty hands is not surprising, given that much of the dirty hands literature is solely concerned with the actions of a political leader without much thought to how actual democratic decision-making works. Take for example Richard Bellamy who repeatedly calls the politician a "democratic prince" (2010, p. 424;427). When we look at actual democratic decision-making, however, this notion does not make any sense. Politicians act with others in a complicated web of relations and we will have to acknowledge that dirty hands are not a problem that a solitary politician has to solve. Once we accept this it becomes a lot more difficult to determine, however, who exactly is getting their hands dirty. Dennis Thompson argues that, "because many different officials contribute in many different ways to decisions and policies of government, it is difficult even in principle to identify who is morally responsible for political outcomes" (1987, p. 40). This problem is sometimes described as "the problem of many/no hands". The question of which political actors actually get their hands dirty for a given decision in a democratic setting has not been sufficiently taken up in the literature so far.

Once we start thinking about the involvement of various political actors in the democratic decision-making process, we ultimately will also have to take into account the involvement of citizens in democratic politics. There is a very specific relationship between citizens and politicians in a democratic society in which the latter are the elected representatives of the former. In the case of dirty hands it has been argued that, as Thompson puts it, "the bad that the official does, he does not only for us, but with our consent – not only in our name but on our principles" (1987, p. 18). Similarly Elizabeth Wolgast argues that, "a political representative acts for his constituents and in their name. [...] Except for him they lack a political voice. His voice is theirs, he acts as them" (1991, p. 276). On a similar note David Archard asserts that, "the democratic public authorizes its politicians to act on their behalf. [...] The public is the true author of the actions performed by others" (2013, p. 781). The existing arguments on the responsibility of citizens for the dirty hands of their leaders have several shortcomings, though. Firstly, they do not consider the complicated nature of representation. It is unclear what politicians ought to represent (e.g. the express wishes, or

the best interest of citizens) and to what extent they act independently from or are constrained by citizens. Secondly, there appears to be broad agreement that citizens will be morally responsible, but when we take a look at the extensive moral responsibility literature and look at the conditions that an agent has to fulfil in order to be morally responsible, we can see that ascribing moral responsibility to citizens is far from straightforward and uncontroversial. It is particularly noteworthy that dirty hands theorists tend to claim that the entire public, irrespective of their standing in, or contribution to, democratic politics, will be responsible (Archard, 2013, p. 781; de Wijze, 2018, p. 142). I will show that this does not sufficiently differentiate between citizens and does not account for the varying degrees of responsibility that they will hold. The way in which the responsibility and dirt falls back on citizens in a democracy therefore needs further elucidation.

One issue regarding the dirty hands of citizens that has caught the attention of writers is the secrecy, lies, and deception likely involved in dirty hands decisions in politics. Such means can result in a violation of the democratic process and a secondary dirty hands problem. Take the following example: in 1993 it was leaked that Prime Minister John Major had secretly been in contact with the IRA over the ongoing conflicts in Northern Ireland. At the time these negotiations were part of a wider attempt to end the continuing violent struggles in the country and bring peace. We can assume that, in the first instance, Major had to make a decision between the conflicting values of not negotiating with terrorists on the one hand, and doing everything in his power to facilitate the peace process on the other. What was so interesting about the leak at that point in time was that this revelation came only weeks after Major had declared to parliament that talking to those terrorists “would turn my stomach” (Bevins, et al., 1993). In addition to the primary conflict he faced, Major also had to make the following choice: either he was to publicise these negotiations and risk upsetting the delicate balance that had been struck, or he was to keep them a secret while at the same time putting on the mask of someone who wholeheartedly opposed negotiating with terrorists. The initial justifiability of the dirty hands in the primary problem (i.e. having to negotiate with terrorists in order to facilitate the peace process) therefore already has to take into account the additional cost of violating the democratic process in the resulting secondary dirty hands problem (i.e. having to keep these negotiations a secret from the public to whom the politician ought to be accountable). This is a complication that seems to be unique to dirty hands in democracies that rely on a reciprocal relationship between politicians and the public in which the latter give certain decision-making powers to the former, but where the former are simultaneously accountable to the latter. The secondary dirty hands problem then arises from violating the ability of citizens to hold politicians accountable. Politicians in

democratic settings therefore may have to get their hands doubly dirty, first through the initial dirty hands problem, and then a second time by keeping their dirty hands a secret from citizens.

This feature of dirty hands in democracies has, however, lead to another criticism. S.L. Sutherland argues that dirty hands theories depict the public as a “passive collection of individuals” and as excluding “the prospect of the reciprocity between citizens and leaders” (1995, pp. 483,486). This critique is also brought forward by David Shugarman who describes dirty hands as drawing on a picture of democracy that is “highly elitist requiring a very restrictive understanding of both the nature of citizenship and the relationship between citizens and leaders” (2000, p. 232). Maureen Ramsay urges us to consider the way in which secrecy and lies go against the key democratic principles of “accountability”, “participation”, “consent” and “representation” (2000a, p. 35). When politicians do not reveal certain actions or policies, it shields them from being held accountable. Furthermore, the withholding of information prevents citizens from participating in free and open discussion about the issue at hand. It also implies that the government does not need to respond to the public’s demands, and sees itself as being allowed to make decisions without its consent. Finally, when using secrecy or lies, politicians fail to take seriously those that they are said to represent and take away their opportunity to make their wishes and opinions heard. This leads Ramsay to argue that the damage done to the democratic process by secondary dirty hands dilemmas gives us a very weighty reason to refrain from using secrecy and lies in those situations. David Archard, while slightly more open to the idea of dishonesty in politics than Ramsay, still voices the concern that “a public that delegates to its politicians the discretion to act on its behalf may increasingly fail to recognise the proper limits of such delegation. Politicians may be more disposed to see it as unnecessary to disclose what it is that they are doing in the public’s name; the public for its part may be increasingly unwilling to demand an account of what it being done” (2013, p. 788). As a result one might wish to argue that “if citizens cannot know what officials have done, they cannot, in any substantial sense, approve or disapprove of their actions” (Thompson, 1987, p. 22).

On the other hand, though, Lukes argues in his paper on torture in liberal democracies that there will always continue to be people that will “take on the burden of making decisions that we would prefer not to know about. Perhaps in these cases we democratically endorse being non-democratic” (2006, p. 15). If we in fact prefer not to know of certain morally questionable means being used by the politicians we elect and who are said to act in our name and for us, this would call into question whether the fact that we do not explicitly know about these acts implies that we are not morally responsible for them. Richard Bellamy gives

the example of secret services: it is clear to most citizens that the operation of secret services can only ever be public to a limited extent, “so we tolerate wire tapping of terrorists and spying on unfriendly powers, but prefer not to be told” (2010, p. 426). Similar considerations lead David Archard to ascribe a form of “collective bad faith” to the public in these cases, “both knowing and affecting not to know that something bad has been done in its name” (2013, p. 784). If this is an accurate depiction of the democratic public, then maybe the fact that citizens do not know about some, or even many, dirty hands decisions does not necessarily undermine their responsibility and dirty hands. In order to answer this question, however, we will first have to understand the underlying relationship between citizens and their representatives. As mentioned above, this has not been sufficiently examined in the dirty hands literature so far. The second aim of my thesis is therefore to understand how the dirt and moral responsibility for dirty-handed actions is dispersed among political actors and citizens in democratic politics.

1.2. Thesis Outline

My project is divided into two parts. Given the large differences in accounts of dirty hands, the first part will develop my understanding of the conflict more generally. In the second part, I will then move on to respond to the issues raised regarding the issue of democratic dirty hands.

Chapter two aims to provide an analysis of dirty hands as a particular type of moral conflict. It begins by giving an account of conflicts as instances of clashing values. It then considers how dirty hands conflicts have been standardly considered as a clash between absolute moral values and how this has led some thinkers to criticise dirty hands theorists as being irrational. The standard view of dirty hands is based on a picture of moral reasoning that does not equate rationality with coherence. Our moral judgements can sometimes rightfully be messy, contradictory, and not uniquely action-guiding (i.e. not providing us with an unequivocally right course of action). This position is opposed to one that conceives of rational moral judgement as having to be coherent and action-guiding, and according to which conflicts of absolute moral values would be impossible. I offer a solution to make the concept of dirty hands intelligible not only on the messy view of moral judgement, but also on the coherence view. In doing so I draw an alternative picture of dirty hands in which it is not absolute reasons, but *pro tanto* reasons that conflict and cause the need to get one’s hands dirty. The idea is that, as a result, no matter what one’s conception of rational moral judgement, we should be able to make sense of the phenomenon of dirty hands. Finally, the chapter establishes what distinguishes dirty hands situations from mere moral conflicts. Dirty hands

involve the violation of a core moral commitment and results in a weighty moral remainder that attaches to the agent.

In the next chapter I raise a difficulty in the conceptualisation of dirty hands that has received little to no thorough attention in the literature so far: once an agent is faced with a dirty hands situation, could she keep her hands clean, or does she have to get her hands dirty no matter what she does? Positions arguing in favour of the former I will call “asymmetry views” while I call positions arguing the latter “symmetry views”. I survey the different, often implicit, stances that writers on dirty hands have taken on this issue. Ultimately, I argue, the division comes down to different understandings of what makes an action dirty. According to asymmetrical views the violation of an important moral requirement does not necessarily equate to that action being a dirty one. Dirtiness requires something in addition (e.g. violating one’s integrity or innocence). I show that such a view is undesirable because it requires the agent to engage in a form of moral compartmentalisation, cannot account for the appropriate emotional response to a dirty hands situation, and provides us with unpromising understandings of the notions that are supposed to make an action dirty. When an agent is faced with a dirty hands situation, it will be too late to keep her hands clean. Ultimately this means that accepting the reality of dirty hands must lead to an acknowledgement of the tragic nature of our moral lives.

I then turn to the emotional response appropriate to such conflicts. Chapter four begins by arguing that emotions have rational standards of fittingness as responses to our perceptions of certain features of a situation. If emotions can be rational in this way, and if agents fittingly experience a certain negative emotional response to dirty hands scenarios, then this gives credence to the position that dirty hands scenarios involve a genuine moral conflict in which choosing the lesser evil cannot do away with the fact that an important moral value has been overridden. I then turn to the question of what the appropriate emotional response in dirty hands situations looks like. Various versions of regret and remorse have been suggested in the literature, but I will defend the notion of “tragic-remorse” (de Wijze, 2004) as the most fitting one. Finally, this chapter considers how emotions help ethical decision-making in dirty hands situations. I argue that having the right emotional response in such scenarios exhibits a commitment to the forgone value, aids in the agent’s deliberation, and can make her behaviour intelligible to others. Experiencing the appropriate moral emotion during and in the wake of a dirty hands conflict is both inherent and instrumental to being a good moral agent.

Having supplied this analysis of the notion of dirty hands itself, the thesis then moves on to consider issues regarding its application to democratic politics. Chapter five deals with

criticisms of the notion of democratic dirty hands. To have democratic dirty hands can be understood as shorthand for getting one's hands dirty in a way that is permissible in a democracy. While chapters six and seven will provide answers to the worries that dirty hands reasoning cannot account for actual democratic decision-making and cannot make sense of the role of citizens in democratic politics, I want to argue that these criticisms actually stem from some even more fundamental objections to the problem of dirty hands and it is to these that chapter five will respond. The first is that getting one's hands dirty is contradictory in principle because we cannot use dirty-handed means to pursue democratic ends. The second argues that it is contradictory in practice to use dirty-handed means because they will always undermine democracy more than they will promote it. Lastly, the final criticism argues that the notion of democratic dirty hands makes no sense because the use of dirty hands signals that democracy has at that point failed. I analyse the underlying conception of both democracy and dirty hands that has led these critics to renounce the idea of dirty hands, to show why their assumptions are wrong, and why this means that their objections to democratic dirty hands ultimately fail.

Having defended the idea that it can be permissible to dirty one's hands in democratic politics, I can then move on to analyse who actually gets their hands dirty. Chapter six concentrates on the moral responsibility for dirty hands of different political actors. The purpose of this chapter is both to dispel the myth of the single-handed political leader in the dirty hands literature and to emphasise that political leaders in a democracy are unlikely to bear the sole responsibility for dirty-handed decisions. I begin by giving a brief account of what it means for an agent to be responsible. She will have to fulfil certain cognitive, epistemic, voluntary, and causal criteria in order to be an appropriate target for ascriptions of moral responsibility. While most political leaders will at first glance fulfil these conditions most clearly with regards to a dirty hands decision, I will take into consideration the way in which their status as a representative could potentially affect this. Ultimately I argue that because leaders represent the wishes and interests of their citizens with a considerable amount of autonomy, this status cannot be used to undermine their responsibility significantly. I then turn to other political actors and political advisers and consider the different excuses and justifications that may be able to undermine the epistemic, voluntary, and causal criteria respectively in their case. While some of these can in fact be successful and therefore limit the agent's responsibility for dirty hands, many of them cannot. Having established the ways in which responsibility falls on different agents in a dirty-handed decision-making process, I then consider whether we ought to praise or blame them, ultimately suggesting that both will be an appropriate response, highlighting different

features of the agent's dirty hands. The chapter concludes by applying the above analysis to a real life example: the Claudy Bombing in Northern Ireland.

The final chapter then considers the way in which citizens are implicated in the dirty-handed decisions of their politicians. It goes through the four individually necessary and jointly sufficient conditions for moral responsibility established in the previous chapter and shows how, and to what extent, many citizens can, and in fact do, satisfy all of them. Many citizens are causally implicated in the dirty-handed actions of their leaders in virtue of their participation in or contribution to that particular action or the wider democratic process more generally. In a democratic society many acts of participation or contribution can be said to be voluntary. Even for those citizens who only marginally contribute to politics simply in virtue of happening to live within the confines of the state, this contribution can be understood as voluntary in as far as citizens have voluntarily endorsed a picture of themselves as members of their political community and where their actions are constitutive of that membership. While the citizens who voluntarily participated in or contributed to a given political action might not have known, and were not even able to know, about the dirty-handed decision in question, this is not enough to show that they cannot share in the dirt and moral responsibility. When citizens have set up or sustained a system in which they enable politicians to take decisions for them and in their name without being able to know about it, they can be said to have contrived their own ignorance and can thus be appropriate targets for ascriptions of moral responsibility. Finally, of these citizens most will have the required cognitive capabilities. The only exceptions are adults with certain mental disabilities or illnesses and children and younger teenagers who are unlikely to have the necessary abilities to understand complex political decision-making and their role in the political community. Overall, politicians do not shoulder the dirt and responsibility in a democratic society alone, the dirt and responsibility are shared amongst many in the polity, even though to varying degrees.

The thesis will conclude by summing up the various findings of the previous chapters that, combined, will give us an understanding of what the concept of dirty hands in democracies looks like, how we can best apply dirty hands reasoning to the democratic context, and the results this has for the various actors involved in dirty-handed decision making. Additionally I will give a brief overview of the positions that could be taken when we ask who should and can be held accountable for dirty hands in practice and how. On the one hand there are those who argue that politicians ought to reveal their dirty hands to the public and in this way stand accountable to them. Within this position there is disagreement about whether it would be appropriate to subject the politician to punishment for their dirty hands (Thompson, 1987;

Sutherland, 1995; Ramsay, 2000a; Levy, 2007; Meisels, 2008; de Wijze, 2013). On the other hand, however, there are those who argue that politicians do not have a responsibility to reveal their dirty hands to the public and instead should be wearing “clean gloves” (Bellamy, 2010; Tillyris, 2016). The work done in this thesis should enable us to work out a more principled stance on this issue in the future.

PART I: The Problem of Dirty Hands

2. Defining Dirty Hands

2.1. Introduction

In this chapter I will be introducing the problem of dirty hands. I will begin by giving a brief introduction to the issue of moral conflicts in general. Dirty hands, I argue, are a kind of moral conflict. I will then turn to the standard way in which dirty hands have been defined in the literature, according to which the values that clash are absolute in nature. This position relies on an understanding of rational moral judgement as sometimes rightfully being messy, contradictory, and not uniquely action-guiding. This will lead me to consider a potential objection to such a definition that argues that clashes of absolute values are irrational. This position relies on a view of rational moral judgement as having to be coherent. On this view our moral judgements have to be consistent, complete, and action-guiding. Subscribing to such an understanding of morality does not mean, however, that such individuals will have to deny the existence of the problem of dirty hands altogether. To show this, I will then offer a second way of defining the problem of dirty hands; one that captures the essential conflict it describes while avoiding any problems with the background assumptions of the coherence view of rational moral judgement. On this view the values clashing in dirty hands problems are of a *pro tanto* nature. Thus, I argue, no matter which wider view of rational moral judgement we take, we can make sense of the existence of dirty hands problems. I conclude by outlining what sets dirty hands conflicts apart from mere moral conflicts. Dirty hands, I argue, are grievous instances of conflict because they are situations in which some of our core moral commitments clash.

2.2. Moral Conflict

Before going into a detailed discussion of the best way to characterise dirty hands, I will first give a definition of moral conflict (dirty hands being a special kind of moral conflict) in general. I will be referring to the concept of moral conflict at various points in this thesis, so it will be useful to be clear about what I mean by it. Firstly, what I am concerned with in this thesis are certain kinds of, what I will call, ontological conflicts; i.e. the facts about morality are such that the agent is faced with conflicting moral requirements. There are two types of ontological conflict. In the first, while acts A and B are in conflict, there is an overall winner; i.e. we can discern the better option or at least the lesser evil. In the second type we are faced with a tie, such that no better option or lesser evil is discernible. What I do not mean when talking about moral conflict is an agent's uncertainty about what to do; people might think that they face a conflict of one type (winner/tie), while actually they are facing another, or

they might not be sure which one they are facing, or they might be uncertain whether they are facing one at all, or they might be uncertain which option to choose. When referring to moral conflict in this thesis I will be concerned with ontological and not such epistemic notions of conflict.

In the following I will develop my definition of moral conflict from Thomas Hurka's discussion on value theory and conflict. He argues that to see what is at stake in moral conflicts, we need to understand what it means for two values to be "distinct" from one another; "in a weaker sense, X is a distinct good from Y if X is both an instance of some generic good and in some way [intrinsically]² distinct from Y. In a stronger sense, X is a distinct good from Y if it is an instance of a distinct generic good from Y" (1996, p. 563). Whenever two options are distinct, Hurka argues, we will face a conflict because in doing one act we will be losing out on the value the other act had to offer. Let us consider three cases to make sense of this.

In the first case I can choose between giving my friend five units of happiness or ten units of happiness. This is, according to Hurka, an example of an "inclusion case" in which, "the better instance includes the less good as a proper part" (p. 563). Five units of happiness are a proper part of ten units of the same kind of happiness. In these kinds of choice scenarios the less-good option is not distinct from the better option in either the strong or weak sense of the word. The options are neither instances of distinct generic goods, nor instances of the same generic good but in some way intrinsically distinct. Because of this, there are no grounds for this being a moral conflict. We can fulfil the demands of both options because the lesser option is included in the better one; this means we should simply choose to provide our friend with ten units of happiness.

In our second example, a government has to choose between two policies: one that promotes greater equality, and one that pushes for more liberty. These two options are plural and distinct in the strong sense of the word and therefore are grounds for moral conflict. Equality and liberty are distinct generic goods. That means that the option that we do not choose has a value, the loss of which the all-things-considered better option cannot fully make up for.

² He adds the word "intrinsically" later on in the paper (1996, pp. 569-570) to account for choices between options that have the same value attached to them but are only externally different. An example of this would be a choice between two cream cheese bagels that have the exact same quality, texture, size, dough to cheese ratio etc.; while the two bagels are surely distinct in the sense that they are two separate objects, there is no difference in their intrinsic make up. The distinction is merely an external one. Therefore there are no grounds for this being a conflict.

Whichever policy I choose under the circumstances, I will lose out on something of moral importance and this makes our situation one of moral conflict.

In our third example I have to choose between five units of happiness for my sister, and ten units of happiness for my brother. Let us assume that the latter option is the all-things-considered better course of action. I think that there are two ways to attempt to conceptualise what exactly is causing the moral conflict in this case. One approach has been offered by Michael Stocker, who defends the claim that conflicts require plural values that are distinct in the strong sense of the word; i.e. options that are instances of distinct generic goods. He argues that what might initially look like two instantiations of the same value (i.e. in this case happiness), actually turns out to be two different values; he describes this as “indexical individuation” (1990, p. 247). Most moral theories, Stocker says, will tell us a story about how to treat friends and strangers respectively; sometimes this will lead us to favour our friend, sometimes the stranger, and sometimes it might not make a difference at all to a given theory. Either way, most of these moral theories will allow for indexical individuation to make an evaluative difference (e.g. by ascribing special importance to personal relationships, or to impartiality). Given this evaluative difference he suggests that it does not seem far-fetched to say that we are actually dealing with two distinct values in our case of choosing between different amounts of happiness for a sister and a brother; as Stocker puts it: “this-person’s-happiness and that-person’s happiness involve plural values” (1990, p. 248).

Hurka, however, wants to argue against this explanation because he thinks that indexical individuation could lead to our understanding of value becoming empty and useless, since if every single person’s happiness was a distinct and plural good, it would become exceedingly difficult to engage in comparing values. According to Hurka, it is therefore better to argue that my siblings’ happinesses are distinct in the weak sense of the word; while the same value of happiness is at stake, my sister and my brother are intrinsically different human beings. The situation can therefore ground a moral conflict about producing ten units of happiness for my brother, but none for my sister; “although the happinesses of different people are different individual goods, what makes them good is in each case the same, namely, just their involving happiness” (Hurka, 1996, p. 564). A similar claim can be made about a case in which I have to choose whether to give someone the same units of happiness, but at different points in time; a temporal difference results in the two options being distinct from one another in the weak sense. Hurka considers the objection that happiness experienced by distinct individuals or happiness experienced at different points of time by the same individual is not an intrinsic feature of happiness and therefore does not satisfy the definition of weak distinctiveness. As a response he reminds us that values such as happiness are not

free floating but can only be considered as being situated within a given individual at a given point in time. Particular individuals and times are therefore intrinsic aspects of happiness. We can now turn Hurka's discussion about the distinctness of value into a definition of what we mean when we say that we face a moral conflict. Moral conflicts arise whenever (1) an act A has value x, (2) another act B has either (i) value y, or (ii) has value x but is in some way intrinsically distinct from A, and (3) it is possible to perform act A and act B separately but not jointly.

After having briefly defined the idea of moral conflict, I want to take a closer look at the problem of dirty hands itself in the next section.

2.3. Value Conflict and Dirty Hands

There are broadly three ways of explaining the nature of dirty hands problems. I will argue that the one that captures dirty hands most accurately understands the nature of the conflict inherent to it as a clash of plural moral values. I will explain in section 2.6. what I think sets apart dirty hands scenarios from other kinds of conflict that results from the clash of plural moral values.

There exist a variety of moral values that we reasonably think to be important but that cannot always be aligned or easily traded off with one another without a significant remainder. For Stocker, dirty hands conflicts arise when we face situations in which people will be "wronged, they and their trust, integrity, and status as ends [...] violated, dishonoured, and betrayed" (1990, p. 17). Additionally they can also involve the destruction of items of great worth (e.g. art or a holy place) or "the violation of an important principle rather than a person" (1990, p. 18) (e.g. circumventing justice). Choosing the lesser evil does not mean that the competing value or principle not acted upon is therefore annulled or cancelled. While it may have been outweighed in this case, its normative force is still intact. This then results in a moral remainder that attaches to us. Not every choice between conflicting values that results in a remainder is a dirty hands situation, though. Stocker argues that what sets dirty hands apart from ordinary moral conflicts is that the former involve the agent being coerced into implementing the evil or immoral plans of a third-party. Dirty hands situations are clashes of plural and conflicting values that result in a particular remainder because they require the agent to violate or betray a person, or important value or principle. This view opposes two potentially more common understandings of the problem.

In Walzer's article "Political Action: The Problem of Dirty Hands" he sums up the issue in the question of "how can we get our hands dirty by doing what we ought to do" (1973, p. 164). Walzer illustrates this through the before-mentioned ticking bomb scenario in which a

political leader is asked to authorise the torture of a suspect in custody who is said to know the location of bombs in several buildings across the capital set to go off soon (1973, p. 167). Walzer argues that the reason this choice is so difficult is that we are torn between our deontological and consequentialist commitments. On the one hand, we have the obligation not to torture, but on the other, we are faced with the potentially disastrous consequences of not doing so. Torturing “may be exactly the right thing to do in utilitarian terms and yet leave the man who does it guilty of a moral wrong” (1973, p. 161). According to Walzer, the politician’s consequent guilt is a sign that she takes her deontological commitments seriously and will only override them when absolutely necessary. The problem with this conception is that it unduly limits the kinds of situation that could be called dirty hands. Imagine a political leader who is faced with a situation in which she has to curtail the liberty of some people in order to promote equality. She might come to the reasonable judgement that her foremost duty is to protect her citizens’ equality and that doing so would also maximise overall happiness or well-being, and yet, she would still rightfully feel guilty about having to violate some people’s liberty to do so. In such a situation our deontological commitments and utilitarian reasons point toward the same course of action, and yet we would rightly experience a moral remainder. The underlying conflict in dirty hands should therefore not be understood as a clash between deontological and consequentialist reasoning.

There is yet another common conception of dirty hands. Nagel conceives of the issue less in terms of conflicting moral theories and more in terms of an agent’s obligations qua private individual and qua public office holder. Even if both moral codes should be ultimately derived from the same source, he argues, the principles emphasised in private and public morality are different and can therefore result in a clash leading to dirty hands. Public action involves both “a heightened concern for results and a stricter requirement of impartiality. It warrants methods usually excluded for private individuals, and sometimes it licenses ruthlessness” (1993, p. 82). Dirty hands conflicts then result from a clash between our private principles and commitments, and public standards of impartiality and a focus on the consequences of our actions. If an agent wants to fulfil the requirements of her public role, she is required to choose the latter and forgo the former. We ought to reject this understanding because it does not capture cases that strike us as instances of dirty hands. Imagine the following example suggested by Coady (2009, p. 85): a group of concentration camp prisoners have managed to escape and are hiding. One of the group is a mother with a young child. The officers pursuing them are coming closer and the child will not stop crying. The only way to prevent all of them from being found and, most likely, being shot immediately will be to smother the child. While there might be good reasons to think that

dirty hands are particularly prevalent in the public sphere because of the heightened concern for impartiality and the consequences of one's actions, there is no reason to limit dirty hands cases to this realm. De Wijze and Goodwin note that "it is important not to slip into a commonly held error that simply because cases of [dirty hands] occur more frequently and dramatically in politics (and, more generally, in public life) this means that this clash between public and private values is the defining feature of the DHs problem" (2009, p. 531). Another counterexample given in the literature is Jim and the Indians (de Wijze & Goodwin, 2009, p. 531). These are conflicts that have, in essence, the same characteristics as the ticking bomb scenario and it is therefore hard to see why these should be separated from the class of dirty hands problems. The conflict inherent in dirty hands should therefore not be understood as a clash between the requirements of an agent qua private individual and qua public official.

Even if dirty hands are not necessarily due to the divide between public and private duties, there is a reason why much of the literature centres on political cases. Walzer supplies us with two reasons for why the political sphere is particularly susceptible to dirty hands cases arising. Firstly, politics is a realm that brings power and glory to leaders and people are willing to go to great lengths to claim these benefits. Many will be ready to use morally dubious means in the process and once they have achieved a position of political leadership the power they have over the lives of others can further corrupt them and their actions. Once some agents start behaving in these ways this will likely force others into situations in which they will have to employ similar means. Even a politician who wants to be morally good will therefore be forced to engage in the morally dubious behaviour of these others and get her hands dirty in order to make it in politics. Secondly, Walzer argues, dirty hands problems in politics are particularly pressing because politicians are able to use "violence and the threat of violence" (1973, p. 163). In the pursuit of the interests of her citizens a political leader will sometimes be forced to put the lives of people at risk. Trying to protect and further the interests of her citizens will therefore make the politician face additional, and particularly violent, dirty hands problems. The result is that any political leader, no matter how good their character or intentions, will have to get their hands dirty throughout their career. He therefore agrees with the Machiavellian credo that politicians will have "to learn how not to be good" (Walzer, 1973, p. 168). While I think that there are good reasons then to subscribe to an understanding of dirty hands as a clash of plural and conflicting values, this does not preclude an acknowledgement that dirty hands cases will be particularly frequent and pressing in politics.

So far I have given a brief indication of how we ought to understand the nature of moral conflicts, i.e. as a clash of plural and conflicting values, and argued that dirty hands are best

understood as an instance of such conflicts. In the next section I will introduce the standard view of dirty hands, which argues that the moral values involved in dirty-handed moral conflicts are absolute in nature. This view relies on a conception of rational moral judgement as sometimes being messy, contradictory, and not uniquely action-guiding. This has led some critics to argue that the notion of dirty hands is irrational, which stems from their view that the standard for rationality in moral judgement is one of coherence. Moral judgement ought to be coherent, should always yield action-guiding results and ought to exclude the possibility of conflicts between absolute moral values. Even on this conception, though, we could make sense of dirty hands conflicts. To show this I will introduce an alternative reading of the nature of the values involved in dirty-handed moral conflicts, namely that they are *pro tanto* rather than absolute. What this chapter is then intended to show is that, independent of one's wider conception of rational moral judgement, one can make sense of the notion of dirty hands.

2.4. The Standard View of Dirty Hands

The standard view of dirty hands first laid out by Walzer describes, as mentioned before, the problem of how we can “get our hands dirty by doing what we ought to do” (1973, p. 164). His solution is that in these scenarios where a moral rule is overridden because it is “the best thing to do on the whole in the circumstances” (1973, p. 171), this rule is not therefore cancelled or annulled; on the contrary it still stands and adds a degree of wrongness – a remainder of what we had to forgo - to the otherwise rightness of the act. In a similar vein, Stuart Hampshire argues that dirty hands are the kinds of situations in which we face a conflict “between moral claims which, considered *a priori*, seem absolute and without exception and which in fact are irreconcilable in the situation. Such situations of conflict between absolute moral claims will occasionally occur and are not to be avoided” (1978, pp. 40-41). Both of them start from a conception of morality in which absolute requirements can clash.³

To illustrate what is at stake in these conflicts and what I mean by saying that in these situations there is an added degree of wrongness and a remainder, I first want to introduce in more detail the conceptual framework argued for by Stocker which I briefly sketched out

³ While Hampshire makes this position very explicit, Walzer's stance on this issue is not entirely clear. He explicitly rejects the view that deontological commitments ought to be conceived as mere “guidelines” (1973, p. 170) but also argues that dirty hands arise “from an effort to refuse absolutism” (1973, p. 162). I think that this leaves us with a view in which Walzer acknowledges the absolute force of deontological commitments while at the same allowing that these can clash with the equally absolute requirements of consequentialist reasoning in emergency situations and as such refusing the idea of a form of Kantian absolutism in which absolute requirements can never come into conflict with one another. This does not, however, imply that these values are not absolute.

in the previous section. He identifies what he thinks is a major oversight of most moral theories; by concentrating exclusively on action-guiding considerations when assessing the rightness or wrongness of an act, they overlook what in those cases are ultimately non-action-guiding reasons and how they affect both the agent and the moral description of the act taken, even if they do not affect the overall course of action that is chosen. To illustrate this line of thought, let us briefly return to our ticking bomb case in which a politician is asked to authorise the torture of a captured suspect to save the lives of hundreds of innocent citizens. It is wrong to torture people and it is also wrong to let hundreds of innocent people die when one could prevent it. In this hypothetical scenario, however, these two requirements are mutually exclusive; what we are faced with, according to Stocker, are “impossible oughts” (1990, p. 13). There are two moral requirements that the politician ought to follow, but she can, in this instance, only do one or the other but not both. Let us assume that she now decides, after careful deliberation, that it would be the lesser evil to torture the suspect. The wrongness of letting innocent people die if she could prevent it then turns into the “action-guiding” (1990, p. 11) consideration, while the wrongness of torturing people in this case becomes the “non-action-guiding” (1990, p. 13) reason. The former is the reason that pushes her to take a certain course of action, while the other one, even though accepted as a good moral reason, is not acted upon. How does this help us to explain the source of the added wrongness and remainder of this action? It is at this point, Stocker argues, where most moral theories stop their reasoning. One course of action has been identified as the lesser evil and is therefore the right thing to do; end of story. As long as the politician has chosen the lesser of two evils she should wholeheartedly commit to it and embrace her action as the morally right one. This, however, overlooks what now happens with the non-action-guiding feature; because she sees the wrongness of torturing people as a genuine moral demand she “double-count[s]” it. “The dirty feature is taken into account once in determining the overall value of the act and again on its own.” (1990, p. 12) While she has identified the lesser evil in the situation, she in this way gives due weight to something she takes to be a genuine moral requirement; she is taking the wrongness of torture seriously and it becomes a remainder that attaches to her evaluation of the course of action taken. This remainder is then the source of a strong negative emotional response; she feels the weight of having to act against a moral reason in order to act in accordance with another. Such an approach emphasises that she ought to react with due consideration to every feature of the situation, whether she acted upon it or not. This focus on the non-action-guiding side, for Stocker, better reflects the complexity of our moral experience than a theory that concentrates simply on “action-guidingness”.

Situations in which it can be wrong to do what is right and in which we can dirty our hands by doing what we ought to do are described by writers such as Walzer, Stocker, and Hampshire⁴ as situations in which we are faced with a clash between absolute requirements. What would an understanding of moral judgement that allows for this to be rational have to look like? How could it allow for something to be right and wrong at the same time? As an example of a theory that allows for this let us turn to Stuart Hampshire.⁵ He identifies a prevalent tradition which “associates rationality in moral judgement with coherence, which in turn implies an absence of irresolvable conflicts between moral claims” (1978, p. 34). Once we have come up with a complete and consistent system of moral thought, this supports the validity of our moral claims within that system. This in turn helps us to clear up borderline cases in which our intuitions diverge. As such, this understanding of rational moral judgement can explain why morally conflicting claims might arise but also gives us the tools to resolve them. Under this view, a clash of absolute requirements would be irrational.⁶ Instead, Hampshire proposes that our moral judgement

Cannot be rounded off and made complete and tidy; partly because so much of that is of value in a human life depends on uncontrollable accident, partly because we still know so little about the determinates of behaviour and about human nature generally, partly because individuals vary so greatly in their dispositions and interests, partly because new ways of life should always be expected to arise in association with new knowledge and with new social forms. There is one further reason, we expect also leaps of imagination, moments of insight, very rarely, and in unusual men, which will lead to transformations of experience and to new moral ambitions and to new enjoyments of living. (1978, p. 53)

A view of rational moral judgement defined as coherence would not be able to allow for this because such a system will necessarily have to place “a prepared grid upon conduct and upon a person [...] and thereafter one only tends to see the pieces of his conduct and life as they are divided by lines on the grid” (1978, p. 40). When the features affecting our moral deliberation are so varied, we cannot approach them looking only for what we are already expecting and only attending to those features that fit our preconceived ideas and the system of moral rules that we have established. Hampshire recalls lecturing on moral theory and introducing a true story about a difficult decision that occurred during wartime regarding the interrogation of a spy.

⁴ Additional writers who describe the nature of dirty hands like this include, for example, de Wijze (2007), Christopher Gowans (1994), Bernard Williams (1978), and Martin Hollis (1982).

⁵ Note that Hampshire makes the following claims about rationality as appropriate for practical reasoning, while allowing that rationality for other kinds of reasoning may legitimately have different standards (1978, p. 23).

⁶ I will explain the reason for this in the next section.

The theoretical interest in the story-telling was always in the selection of the circumstances surrounding the interrogation which ought to be included in the story if the complexity of the original moral problem was to be fully reproduced. I noticed that on different occasions, and without any clear intention, I tended to stress different features in the situation as relevant to the problem, and that I did not always even include the same elements of the situation, as belonging to the story. [...] I described the episode in different words on different occasions, always under the necessity of omitting some of the circumstances which another person might reasonably consider relevant to the decision. (1978, pp. 39-40)

The problem with any view of morality that places a strong emphasis on rational moral judgement defined as coherence is that it will not be able to provide a grid refined enough to account sufficiently for the inexhaustible features of a given situation. The coherence of our moral judgements therefore does not necessarily support their validity because we have most likely bought such coherence at the price of missing out on some of the potentially morally relevant features of the situation.

Under Hampshire's conception of morality, clashes of absolute moral requirements do not necessarily have to be cases of irrationality. Dirty hands, as they seem to be described by Walzer, Stocker, and Hampshire therefore rely on a picture of rational moral judgement that depicts it as messy, sometimes contradictory, and not always uniquely action-guiding. Under such a conception of rational moral judgement – let us call this from now on the “messy view” – there is no obvious problem in the claim that it can be wrong to do what is right and that we can dirty our hands by doing what we ought to do; these are simply situations in which our moral system is justifiably contradictory. The idea of dirty hands is a lot more problematic, however, for people who do not subscribe to this view of rational moral judgement but instead argue that rational moral judgement has to be coherent and uniquely action-guiding – let us call this from now on the “coherence view”. In the following I want to lay out why thinkers from this camp have questioned the rationality of dirty hands. With their objections made clear, I then want to proceed to offer a solution that will make sense of dirty hands under their conception of rational moral judgement as well.

The existence of genuine dirty hands conflicts has been questioned because of the way in which it is conceptualised by the standard view. How, after all, could absolute moral values conflict in a coherent ethical system? It might be difficult, if not impossible, for us to see what is the right and wrong thing to do in a given situation, but that does not mean that there is not always a uniquely right and wrong option available to the agent. If we had a comprehensive understanding of morality and full knowledge of all of the morally relevant features of the situation we could not end up with any unresolved conflicts in our moral

thinking. There are then no genuine moral conflicts or dirty hands problems, and talk of such unhelpfully makes moral judgement appear irrational in such situations (Coady, 2009, pp. 79-84; Nielsen, 2007, pp. 20-22; Yeo, 2000, pp. 159-161).

The problem of dirty hands, Stocker claims, is a form of moral conflict in which the agent, through no fault of hers, has to do something “justified, even obligatory, but nonetheless wrong” (1990, p. 9). In a similar vein de Wijze argues that the essence of the problem is that “in all dirty hands scenarios the agent knows that by acting as she did [i.e. bringing about the lesser of two evils], she did wrong, violating a moral principle, leaving her feeling remorse or ‘agent-regret’” (2007, p. 11). Leaving the issue of emotions aside for the moment, under the consistency view this way of looking at the problem portrays dirty hands as being irrational and is therefore a ground for doubting the feasibility of dirty hands on such an account. To understand why this is the case, we need to take a closer look at what exactly could be meant by the terms “right” and “wrong” that are used without being further defined. My project here is not to re-phrase “right” and “wrong” in terms that are exactly synonymous; rather, I will try to capture the essence of what is being implied by these notions in the context of dirty hands. Note that I will be looking at the word “right” rather than the term “justified” used in Stocker’s definition, because I think that for the purpose of this kind of conflict, whatever is morally right can be justified. Right, however, seems to be a more general notion that will apply to many more definitions of dirty hands beside Stocker’s.

Let us begin with the word “wrong”. When we commonly refer to something as being wrong, what we seem to imply is the notion of impermissibility.⁷ When I, for instance, tell you that it is wrong to rob a bank, the message I am in effect trying to give you, is that you should not rob a bank. You cannot act in such a way because it is morally (and legally in this case) impermissible. While this does not appear to me to be a very controversial point, the issue of what “right” commonly designates is slightly more complicated. Take the following two examples that might be uttered in everyday speech: 1) Saving a drowning child at the minor cost of getting my clothes wet is right; and 2) Giving some of my money to charity is right. In the first example, “right” could be seen to imply the notion of “obligatory”. When it is in your power to save a child at little or no cost to yourself you have to do so. Giving money to charity, however, does not seem to be straightforwardly obligatory. I might think that there are far better ways to exercise any form of duty that I owe to others by, for example, spending my time working for local community projects. What seems to be meant by saying that giving to charity is “right” is the fact that doing so is “at least permissible”, but it does

⁷ For a more in-depth analysis of (im-)permissibility see (Lawlor, 2009).

not necessarily have to imply the stronger claim of having an obligation to do so. As “rightness” is ambiguous in this sense I will, in the following, refer to rightness as meaning “at least permissible”, without making the stronger claim of having an obligation.⁸ This meaning will suffice to bring out the irrational nature of the above claims about dirty hands on the coherence view of rational moral judgement. Let us now go back to the initial definition given by Stocker that dirty hands are “justified, even obligatory, but nonetheless wrong”.⁹

Using rightness to denote an act being “at least permissible” and wrongness to denote an act being “impermissible”, Michael Stocker’s definition then reads: dirty hands are at least permissible, even obligatory, but nonetheless impermissible. Stephen de Wijze’s description similarly implies that doing the lesser evil, which is an at least permissible act, is at the same time also an impermissible act. While these definitions are short and snappy they make the problem unnecessarily irrational on the coherence view of rational moral judgement. What is therefore required for adherents of the consistency view is a re-phrased definition of dirty hands that captures Stocker’s intuition that, “even though dirty hands are morally problematic, they are conceptually unproblematic” (1990, p. 13).

2.5. An Alternative View of Dirty Hands

What does it mean for something to be right, i.e. at least permissible, or wrong, i.e. impermissible? There appear to be two main possibilities, either the two terms refer to an all-things-considered permissibility or impermissibility, or they designate a pro tanto permissibility or impermissibility respectively. As seen above, the all-things-considered or absolute understanding has irrational results on the coherence view of rational moral judgement. However, I will argue that we can still make sense of dirty hands on this view if we understand the clashing values involved as pro tanto rather than absolute in nature. In the case of a pro tanto (im-)permissible action its permissibility or impermissibility can be outweighed depending on other factors that are part of the situation in which it is considered.

⁸ Rob Lawlor suggests that “right” and “wrong” are often used in ordinary language to denote “good” and “bad”. While this might be true of its common sense use, I want to resist this move on a conceptual level. Lawlor seems to think that a reading of wrongness as badness is the clue to understanding what someone is trying to express when uttering the words “whatever I do will be wrong”; which, if wrong was to be understood in terms of impermissibility, would lead to the irrationality I will shortly be describing. Instead, he argues, it makes perfect sense to describe people as saying “Whatever I will do will be bad” (2009, pp. 208-213). This, I think, does not get to the root of the problem and the aim of this chapter is to show that with a careful interpretation of what we actually mean when uttering these words, we can keep up the distinction between right and good, and wrong and bad, while at the same time being able to account for moral conflict on the consistency view.

⁹ The fact that he described them as “justified, even obligatory” seems to resonate with my reading of rightness defined as “at-least permissibility”. Dirtying one’s hands is at least permissible and can therefore be justified; it can also be obligatory, but does not necessarily have to be.

Let us briefly return to our ticking-bomb case. According to the revised understanding of value it is generally thought to be *pro tanto* impermissible to torture people; it is also generally thought to be *pro tanto* impermissible to let hundreds of innocent people die when one could prevent it. In this hypothetical scenario, however, these two requirements are mutually exclusive. Let us assume that I now decide after careful deliberation that it will be the lesser evil to torture the suspect. The *pro tanto* impermissibility of letting innocent people die if I could prevent it then turns into the “action-guiding” consideration, while the *pro tanto* impermissibility of torturing people in this case becomes the “non-action-guiding” reason. Torture is a *pro tanto*, but in this scenario not the all-things-considered, wrong. The former is the reason that pushes me to take a certain course of action, while the other one, even though accepted as a good moral reason, is not acted upon.

Bearing this framework in mind, we can now have a closer look at the way in which *pro tanto* reasons work. Frank Jackson, in his discussion of Susan Hurley’s (1989) account of *pro tanto* reasons and moral conflict, claims that “*pro tanto* reasons are like forces”. He writes that:

A force F_1 acting on a particle can be such that by itself it would accelerate the particle towards North. At the same time there may be another force F_2 which by itself would accelerate the particle towards South. Perhaps F_1 is greater than F_2 so that there is a resultant force towards North. Nevertheless, F_2 still exists; it explains why the particle does not accelerate more briskly towards North. The overwhelmed force is still there. Similarly, when *pro tanto* reasons clash, the overwhelmed reason survives. [It] survives as a morally relevant feature of the situation [...]. (1992, p. 478)

When we take the source of the requirement to be a genuine moral reason, it does not vanish when not acted upon; instead we should imagine it to exert a pull, similar to that of a physical force, towards the course of action not taken. This pull is then the remainder that attaches to our action and that is the base for us feeling a negative emotional response. When we forgo something of importance in a moral conflict we expect to feel, in one form or another, bad about violating something that is still dear to us. David Ross seems to agree with this picture when he lays out his deontological theory based on *prima facie*¹⁰ moral reasons; “when we think ourselves justified in breaking [...] a promise in order to relieve someone’s distress, we do not for a moment cease to recognize a [*pro tanto*] duty to keep our promise, and this leads us to feel [...] compunction for behaving as we do” (2009, p. 28). When we

¹⁰ The use of “*prima facie*” would suggest that what Ross is describing are moral obligations that only appear to be good moral reasons at first sight; his description of moral obligations, however, suggests that “*pro tanto*” would have been a more suitable label to give to the kinds of moral reasons he is interested in. This reading is supported by Shelly Kagan who notes that “in distinguishing between *pro tanto* and *prima facie* reasons I depart from the unfortunate terminology proposed by Ross, which has invited confusion and misunderstanding. I take it that – despite his misleading label – it is actually *pro tanto* reasons that Ross has in mind in his discussion of what he calls *prima facie* duties” (1991, p. 17). As such Ross’s quote should extend to my argument without problems.

take seriously Stocker's argument for the influence exerted on us by non-action-guiding considerations¹¹, on this revised view of value we can create a picture of pro tanto reasons that allows us to account for genuine moral conflict under the coherence view of rational moral judgement.

We are now able to draw some conclusions about dirty hands in accordance with this understanding of moral conflict under the coherence view of rational moral judgement. The reason why dirty hands are conceptually unproblematic but morally problematic is because, like other kinds of moral conflict, one and the same evaluation includes two reasons that pull in opposite directions. In the specific case of dirty hands we start the evaluation with choosing the all-things-considered lesser of two evils which makes the overall action at least permissible. At the same time, however, we engage with the reason that has not been acted on but that nonetheless pulls us in the opposing direction. The option not chosen represents what the agent takes to be a strong moral reason even though it was overridden in this particular scenario. It is this second part of the evaluation that throws a shadow over what is an otherwise overall at least permissible action. This is the source of a remainder that makes the agent rationally experience a strong negative emotional response. There is no logical incoherence in holding that one and the same act can be analysed and evaluated along different dimensions; yet it shows why we think that situations of dirty hands are morally very challenging in the sense that they result in the agent experiencing strong negative emotions even though she did the lesser of two evils.

What I have hoped to show is that regardless of the conception of rational moral judgement one might have, whether it is one in which moral judgement is messy, contradictory, and not always uniquely action-guiding; or one in which moral judgement has to be on the whole a coherent and complete system, we can make sense of moral conflicts, the problem of dirty hands being an example of one such conflict. What we will have to engage with now are different kinds of moral conflict and what sets dirty hands apart from these other sorts of conflicts, regardless of the conception of the problem one subscribes to.

2.6. What Makes a Moral Conflict a Case of Dirty Hands?

So far I have defined moral conflicts in section 2.2. as arising whenever (1) an act A has value x, (2) another act B has either (i) value y, or (ii) has value x but is in some way intrinsically

¹¹ One might wonder now whether, given the way in which I have described pro tanto reasons as forces, representing our decision as having an action-guiding and a non-action-guiding component is the best use of language. For those sceptical of these notions, I think they could be easily exchanged for something like a "primary" as opposed to a "secondary" consideration, where the former pulls us more strongly in its direction while the other pushes us slightly away.

distinct from A, and (3) it is possible to perform act A and act B separately but not jointly. In the following I want to take a closer look at the kinds of remainder and rational emotional responses that different moral conflicts create. This will be crucial in trying to understand what makes some moral conflicts, but not others, cases of dirty hands. I use the term “rational emotional response” here to ensure that we exclude any excessive or exaggerated feelings; for instance, you might experience slight regret for having chosen chocolate instead of vanilla ice cream for dessert, but it does not seem rational to have a strong feeling of remorse for the following week because of that choice.

Imagine you are on the way to meet a friend for coffee. The day has been set for a long time, you have both been looking forward to seeing each other, and you promised that you would not miss it under any circumstances. On the way to the café you witness a traffic accident. You rush over because both parties involved seem to have been seriously injured. You call an ambulance and you decide to stay around to ensure that everyone is going to be okay. This, unfortunately means that you will not make it to the café to meet your friend; you will have to break the promise that you gave to her. This scenario clearly fits the account of moral conflict above. It also seems reasonable to think that having to break your promise will act as a moral remainder so that you will experience some form of negative emotional response to your decision. Even though staying at the scene of the accident is clearly the lesser of two evils, you still feel, most likely, regret¹² for having to break your promise and for wasting your friend’s time. I propose regret as an emotional response because you will probably think along the lines of: “I wish things would have been otherwise. If only I did not have to choose between staying at the scene of the accident and seeing my friend”. What this scenario is supposed to show is that all forms of moral conflict will elicit some form of remainder and negative emotional response. Given this, dirty hands are not unique in the sense that they are those cases that give grounds for moral remainders; instead it is the kind of moral remainder that they cause that makes them unique.

To see this, compare the scenario of the accident and the promise with our ticking bomb case of choosing between torturing a suspect and risking the lives of hundreds of innocent citizens. Again, it clearly fits the schema of moral conflict that we have developed so far. Imagine that our politician in question has weighed up all the relevant factors and decides that torturing is the lesser evil. Like in the case above this generates a moral remainder and some form of negative emotional response. The response appropriate to the underlying conflict, however, is not mere regret, but what I will call, following de Wijze (2004), tragic-

¹² I will go into more detail about this in chapter four.

remorse. While I will define this emotion in more detail in section 4.3., at this point it is sufficient to note that the crucial element of this emotion is a form of anguish and moral pollution on the side of the agent. Even though the politician chose the all-things-considered lesser evil, she feels anguished about having to injure another human being seriously and that she chose to do so sticks with her; it pollutes her in a sense. What, then, is the difference between these two cases because of which the remainder and appropriate emotional response to the underlying conflict vary? The answer to this lies in the strength of the commitment that an agent has, or better should have, to the values that she is violating in a given moral conflict. I say “or better should have” because there are two kinds of difference to consider here; one is subjective and the other objective. The agent might be able to assess subjectively that for her there is a quantitative difference in her commitment to the values of keeping a promise to go for coffee, and not torturing a fellow human being. It is another thing entirely for us to assess objectively from the outside whether the agent ought to have a quantitative difference in her commitments to these values. I think that it is this objective assessment that will tell us whether we are faced with a mere moral conflict or a dirty hands situation. For instance, a promise to meet up with a friend for coffee is something that we should value, but not something that we should be committed to so deeply that, in case we have to break it, it ought to anguish us and make us feel as if we had abandoned one of our most fundamental moral commitments. Torturing another human being, however, ought to have exactly this effect on us. What sets dirty hands apart from other forms of moral conflicts is that they force us to abandon some of what ought to be our most deeply held moral commitments. This is why I think that the accident and promise conflict should not be described as a case of dirty hands, while the ticking-bomb scenario should be. While all conflicts have remainders, not all of them have the kind of significant remainder that signals a case of dirty hands. This account leaves us with a considerable grey area in which there will be disagreement on whether we are faced with a mere moral conflict or with dirty hands. People will inevitably disagree what exactly those values are that should make up our most deeply held moral commitments. I think that this is, far from being a disadvantage, an advantage of my account because this seems to be able to make sense of the way we talk about moral conflict in everyday life. We might call a certain action pure or clean when it has no moral residue attached to it, but just because a decision is not entirely pure or clean does not imply that we would want to call it outright dirty. The same then goes for assessing moral conflicts: some of them might be exhibiting a small amount of the “dirt” in dirty hands, while others will do so to a greater extent. The fact that my account can make sense of these differences should count in its favour.

Having described how dirty hands are set apart from ordinary moral conflicts because they involve the violation of some of our core moral commitments, I can now turn to a different feature that I think has been wrongly claimed to distinguish dirty hands. This view is concerned with the circumstances which give rise to the situation in which the agent finds herself. Stocker claims that dirty hands, “are violations of moral autonomy and selfhood – and this in a particular vicious way. The agent is immorally coerced to take part in, perhaps even to help implement, an immoral project” (1990, p. 20). The agent is made part of or implicated in the immoral plans and behaviours of others and it is this knowledge of being used as a mere means that can make dirty hands choices all the more tragic and agonising. This way of looking at the problem seems to be confused, however. Imagine that you own two large dogs who have been your companions for several years and to whom you feel a strong obligation. During a thunderstorm lightning strikes your house causing it to catch fire. Both of the dogs are scared and confused and are refusing to follow you out of the house. Because of their size you can only carry one of them at a time. By the time you have rescued one of them, however, the fire will have spread so much that you will not be able to go back and rescue the second. Would it make a difference for you whether the fire was caused by lightning that was no one’s fault or by an evil arsonist? Would this change your decision on which dog to save? Would you feel a more significant remainder? The answer to all of these questions, I think, will be no. While I do not want to argue that there can never be a connection between the significance of the remainder and the circumstances that lead to the agent being faced with a moral conflict, such a connection is neither necessary nor sufficient to make something a case of dirty hands. For this reason, I think we should reject Stocker’s view and refrain from adding the feature of being part of another’s immoral projects to the definition of dirty hands. I do not think that the origin of the circumstances that led to the moral conflict necessarily make a difference to what we call a regular moral conflict and what we call a case of dirty hands.

Now that we have clarified what is, and what is not, at stake when trying to set dirty hands apart from other kinds of moral conflict, it will be helpful to consider some cases and to stipulate whether these fall under the heading of dirty hands as I have defined it so far. This is not to say that the criteria that I have drawn up will always provide us with a clear-cut distinction. There might be a considerable grey area and borderline cases because I have defined dirty hands as being quantitatively different from other moral conflicts; they are a pernicious form of moral conflict and I do not think that there will be a specific cut-off point along a scale of gravity at which moral conflicts turn into dirty hands. For pragmatic reasons about the nature of my project here I will not have to worry too much about this, though. I

will be exclusively concerned with the kind of tragic choices that politicians have to make, and the vast majority of cases will violate values that we can assume ought to be at the core of the moral commitments for any agent.

Bearing this in mind, let us turn to some examples offered by de Wijze (2007, p. 16)¹³:

(1) A captain of a ship has to jettison goods in a storm to rescue the ship and its crew.

While this might be a moral conflict if the captain had an obligation to her vendors to transport the goods safely, this should probably not be one of her most fundamental moral commitments. So this is probably not best described as a case of dirty hands.

(2) University authorities prevent a speaker from holding a meeting on campus as they fear that the presence of this person would seriously undermine the peace and security of the campus.

I think that this could be considered a case of dirty hands, given that values such as freedom of speech and peace and security are most likely among the more fundamental moral values that people ought to hold.

(3) Sophie has to choose which of her two young children has to die. If she does not choose, both will be killed for certain.

This is a clear example of dirty hands, though it might be interesting to note that one could reasonably think that there might be no such thing as a lesser evil in this situation. As such it is a potential example of moral conflict in which the two requirements tie and no winner is discernible; there is no lesser evil in killing one of your children instead of the other, as long as you choose one child and do not refuse to comply so that both will be killed.

(4) You know that your best friend is cheating on his wife, but to save their marriage you decide not to tell her.

Remember that I allowed for there to be a considerable grey area between ordinary moral conflicts and dirty hands. I think that this case might be an example of this. Whether this is a situation of dirty hands for the agent will crucially depend on the value that she objectively ought to put on honesty and friendship. For my purposes I will not have to commit on whether I think that this is a case of dirty hands, and I would not want to do so because I think that this will rely on a deeper analysis of the values at stake.

¹³ My examination of the second and fourth case are different to de Wijze's though, as he argues that the main difference between regular moral conflicts and dirty hands is the immorality of the circumstances that created the conflict in the first place. I have rejected this criterion earlier.

2.7. Conclusion

I started the chapter by providing an account of the nature of moral conflict. Moral conflicts arise whenever (1) an act A has value x, (2) another act B has either (i) value y, or (ii) has value x but is in some way intrinsically distinct from A, and (3) it is possible to perform act A and act B separately but not jointly. Following from this I argued that we ought to understand dirty hands problems as a kind of moral conflict in which plural and competing values clash. Standard accounts of dirty hands conceive of the values involved in this conflict as absolute, which does not constitute a problem for them because they do not see rational moral judgement as having to be coherent and always uniquely action-guiding. This picture of rational moral judgement is not shared by all, though, and proponents of the coherence view argue that rational moral judgement necessarily has to be coherent and always uniquely action-guiding, so that the idea of clashes of absolute values becomes simply irrational. I have argued that this does not mean that for adherents of this view it will be impossible to make sense of the problem of dirty hands, though. Alternatively, we can make sense of the problem if the conflict is not between absolute but pro tanto values. While I am more sympathetic to the standard and messy view of rational moral judgement, the idea is that independent of one's preconceptions of moral judgement, one can make sense of the rationality of dirty hands. Finally, I discussed how we ought to distinguish dirty hands from ordinary moral conflicts. Dirty hands are cases in which the agent has to violate one of her core moral commitments and as a result it is appropriate for her to experience a particularly grave moral remainder and corresponding negative emotional response. Before moving on to discuss what exactly the role of the remainder and emotional response in dirty hands is, in the next chapter I want to clarify an issue that has been overlooked by the dirty hands literature so far. The question any account of dirty hands should provide an answer to is whether, once we are faced with a dirty hands scenario, it would be possible for us to keep our hands clean in some way.

3. Can Our Hands Stay Clean?

3.1. Introduction

Dirty hands problems are situations where an agent is confronted by a conflict in which they have to violate one of their core moral commitments. Should you torture a terrorist to find out the location of hidden bombs? Should you agree to free criminals in order to save hostages? Should you silence a journalist in order to prevent a riot? The dirty hands literature is largely in agreement that politicians who choose to torture, circumvent justice, or violate someone's civil liberties get their hands dirty. It is interesting to note, though, that very little has been said in the dirty hands literature about what happens should they choose not to kill, torture, or deceive. Do they still get their hands dirty or can they escape from the situation unstained? On this question, there are then two possible stances that could be taken. I will call a view claiming that we can emerge with our hands clean when confronted with a dirty hands situation the "asymmetry view". It is asymmetrical because it holds that choosing one side leads to dirty hands, while by choosing the other we can keep our hands clean. A position that argues that, in such a scenario, we will inevitably get our hands dirty I will call the "symmetry view".

I begin by arguing that the dirty hands literature has overlooked a crucial issue in not discussing this. Many writers seem to have taken an inexplicit or unjustified stance on this issue. Others have expressly bracketed the question and excluded it from their analysis. Others inadvertently make contradictory claims on the matter. This oversight is of great significance, because it contributes to existing confusions about how best to define dirty hands. Additionally, it prevents the concept of dirty hands being properly applied to other issues, such as the responsibility and accountability of politicians. The first part of this chapter will survey these different claims. I will then argue that we ought to prefer a symmetrical understanding because it gives a more convincing account of what constitutes the dirt in dirty hands and more accurately captures our complex moral decision-making when faced with dirty hands scenarios.

Clearing up the confusion regarding symmetry and asymmetry is a crucial step toward an improved understanding of the phenomenon of dirty hands. The conclusion will have a direct effect on our evaluation of both what it means to have dirty hands and the agent who is responsible for them. Finally, I will consider the implications of my discussion for other questions relating to the wider dirty hands debate.

3.2. Symmetry and Asymmetry in the Dirty Hands Literature

This section will survey the different, often implicit, positions various authors have taken on the symmetry of dirty hands problems: whether we can emerge from such situations with clean hands, or whether our hands will be dirty no matter what we do. Let us start with those seemingly endorsing the asymmetrical reading. Walzer repeatedly claims that when a political actor is faced with a ticking bomb scenario he could “refuse to dirty his hands” (1973, p. 165) and “[remain] innocent” (1973, p. 161). Additionally, Walzer states that “here is the moral politician: it is by his dirty hands that we know him. If he were a moral man and nothing else, his hands would not be dirty; if he were a politician and nothing else, he would pretend that they were clean” (1973, p. 168). Someone who acts like a morally good private person would choose the option that was not dirty. A non-dirty option must therefore be available, even if, according to Walzer, a good politician would not choose it. Demetris Tillyris appears to adopt a similar stance when he states that “the costs of refusing to get dirty are likely to increase with time” (2015, p. 67) (i.e. the cost of losing office). If we can refuse to get dirty, this clearly leaves open the possibility of emerging untarnished when faced with a dirty hands problem. Bellamy also seemingly embraces the asymmetry view when he notes that politicians could “keep their own hands clean but at the expense of leaving the rest of us in a dirty situation” (2010, p. 417). He argues that when one person refuses to dirty their hands, it is likely that this will force someone else into a dirty hands situation. He objects to this because, given that politicians are supposed to act in accordance with the public good, “preserving the moral integrity of a saint in public life seems not just irresponsible but even immoral” (2010, p. 417). While he argues that keeping one’s moral integrity would be irresponsible and immoral, he does not state that it would be impossible. Jeremy Waldron also appears to allow for the option that an agent could keep her hands clean. When he discusses the case of the Clay Cross Eleven, a group of Labour councillors who refused to adhere to a Conservative government’s policy they thought unjust, he says that “they refused to dirty their hands” (2018, p. 225). Finally, Suzanne Dovi talks about political actors who “refuse to compromise their moral integrity” (2005, p. 129), “live according to moral principles, refusing to compromise them even in the face of great hardships” (2005, p. 133), and so “make vivid what political actors with dirty hands should feel guilty about” (2005, p. 134). She implies that the agent, when faced with a dirty hands problem, can and sometimes should choose to remain with her hands clean by adhering to her moral principles.

On the opposing side, various writers embrace a symmetrical view of dirty hands. Karl Klockars states that in a Dirty Harry scenario¹⁴ “the choice must always be between at least two wrongs and in choosing to do either wrong, the policeman inevitably taints or tarnishes himself” (1980, p. 37). Similarly, Martin Hollis argues that “once a dilemma has been posed for a person in office [...] it is too late for clean hands, whatever he does” (1982, p. 394). He later reiterates this stating the following about a political leader: “his dilemma was that of inescapable responsibility under partial constraint and his hands were dirty before he even began to resolve it” (1982, p. 397). As soon as an agent is faced with such a situation his hands will be dirty no matter how he tries to resolve it, because he is constrained to choose between two morally objectionable courses of action. Stuart Hampshire also appears to support this view. He states that politicians “should at all times be prepared for the occurrence of an uncontrollable conflict of duties in situations which seem to exclude the possibility of a decent outcome, and in which all lines of action seem dishonourable or blameworthy” (1991, p. 170). On a similar note, Christopher Gowans defends the claim that in life, “moral innocence would be virtually impossible to attain, regardless of how pure of heart we may be” because whenever we encounter a dirty hands situation “we will do something morally wrong no matter what” (1994, p. 220). De Wijze also appears to hold a symmetrical understanding when he claims that if an agent “chooses to act in accordance with the obligation and duties required of office-bearers (or indeed refuses to act), then she will get her hands dirty” (2007, p. 4). Michael Yeo, similarly, states that “no matter what choice the agent makes – including not choosing – someone will be seriously harmed or wronged, or some principle held dear will be otherwise negated. The agent’s hands will be dirty whichever course is taken” (2000, p. 157). Lastly, Kai Nielsen likewise argues that

to try to wash one’s hands, Pontius Pilate-like, of a dirty hands situation – to say ‘it is none of my business my hands are clean’, where some choice on our part might make a difference – is impossible. We do not escape responsibility by so acting. Failing to act in such a circumstance is in itself an action. By so refraining, we dirty our hands just as much as, and perhaps more than, a person who acts resolutely to achieve the lesser evil, though in doing so he does horrible things (2007, p. 21).

Nielsen even goes as far as saying that the person who refuses to intervene, e.g. by ordering the torture, may in some circumstances have dirtier hands.

There are also writers whom we earlier placed on the asymmetrical side of the debate who, later on in the same papers, use the language of symmetry. Bellamy claims that “whatever

¹⁴ Dirty Harry scenarios, as described by Klockars, are cases of dirty hands experienced by the police. This term simply signals that certain kinds of dirty hands choices are more likely to arise in a policing context than elsewhere.

the choice, [the agent] cannot wash his hands or keep them clean” (2010, p. 419). This appears to contradict his earlier claims on the options available to an agent facing a dirty hands situation. The same problem can be found in the paper by Tillyris. Earlier he implied that agents could, even if they should not, choose to keep their hands clean. While he initially uses language that suggests asymmetry, later in his paper he endorses the above quote from Hollis: “once a dilemma has been posed for a person in office, integrity does not demand that he keep his hands clean by stepping aside. It is too late for clean hands, whatever he does” (Hollis, 1982, p. 394). This would seem to favour the symmetry view. A closer look at their papers suggests that both authors inadvertently make asymmetrical claims when bringing forward their criticism of the views of others (Bellamy, 2010, p. 417; Tillyris, 2015, p. 67) and use the language of symmetry when putting forward their own accounts (Bellamy, 2010, p. 419; Tillyris, 2015, p. 68).

Finally, there is a small category of authors who recognise the distinction between symmetry and asymmetry. Stocker, discussing Walzer’s ticking bomb scenario, explicitly states that he declines to tackle the following questions: “is the non-doing of an act of dirty hands the doing of another act of dirty hands?”, “what are the relations between dirty hands and the doctrine of double effect?”, and “what are the relations between dirty hands and the distinction between doing and not doing?” (1990, p. 12). Similarly, Neil Levy hints at the reasons we might have for embracing a symmetrical or asymmetrical understanding of dirty hands but does not engage in any in-depth argument on this matter. Discussing an agent facing a dirty hands scenario, he writes, “unless we are impressed by the doctrine of double-effect, or some act/omission distinction, we can clearly see that she can no longer avoid an action that is wrong, categorically wrong” (2007, p. 45). Both Stocker and Levy have identified that there are two potential views of dirty hands that we could take. They then make the further claim that these different conceptions rest on our understanding of the action/omission, doing/allowing, and intending/foreseeing distinctions. While they note the distinction and its potential importance, they do not engage in any in-depth debate about it. The only sustained discussion of the issue of symmetry can be found in Christopher J. Finlay’s Humean account of dirty hands (2011, pp. 436-439). He argues that we can make two claims about dirty hands scenarios. Firstly, “that where we imagine the politician choosing to uphold the law [i.e. to uphold the ban on torture], it gives rise to a case of ‘dirty hands’” and secondly, “that if we imagine the politician authorizing torture [...], then his decision may be seen as an attempt to keep his hands clean” (2011, p. 436). This is a flipped version of the asymmetry view which holds that we keep our hands clean when we order the

torture and dirty them when we refuse to do so. In the following section I will examine the different grounds we might have for supporting either the symmetry or asymmetry view.

3.3. The “Dirt” in Dirty Hands

The distinction between symmetry and asymmetry hinges on different understandings of what constitutes the “dirt” in dirty hands. I want to suggest that a symmetrical view is based on a more plausible conception of what it means for an action to be dirty. When an agent is faced with a dirty hands problem, both actions will carry a particular kind of remainder. Following from what I have argued in the previous chapter, this is best understood as the result of a violation of one of our core moral commitments. Whatever option the agent chooses, she will betray or violate something of great importance, and this will inevitably taint her. This is not to say, however, that the symmetry view could not be spelled out in terms suitable to other understandings of dirty hands. If they are understood as a clash between deontology and consequentialism or a clash between private and public ethics, then whichever moral code or source of obligation we forgo, we will inevitably get our hands dirty according to the symmetry view. In the ticking bomb scenario the politician is torn between violating her commitment not to torture and violating her commitment to protect the citizens she represents. Both options create remainders of varying strength, so constitute more or less dirt, but both result in the agent dirtying her hands.¹⁵ It would then be impossible for the agent to avoid getting her hands dirty whichever option she chooses.

Before getting into more detail about how best to characterise the asymmetry view, it will be helpful to clear up two potential sources of confusion. Firstly, one might object to my characterisation of the above accounts as asymmetrical. If an asymmetrical account holds that there is a possibility of keeping one’s hands clean, would that not deny the inherent conflictual nature of dirty hands situations? In fact, all of the accounts that I have characterised as asymmetrical do acknowledge this conflict at the heart of the dirty hands problem. Take the case of Walzer for example: if one acts like a good politician one forgoes what a good person would do, and if one acts like a good person one forgoes what a good politician would do. So there is clearly a conflict here. Therefore, these accounts could not be asymmetrical and my characterisation of them would be wrong. This objection, however,

¹⁵ This point suggests a further possible discussion concerning symmetry and asymmetry: Currently, symmetry is defined as the claim that an agent will dirty her hands either way. Within this view, dirty hands could be symmetrical if the agent’s hands would be equally dirty whichever option she chooses and asymmetrical if her hands would be dirtier from one option than from the other. If one took the latter view on this second-order question, then positions of first-order symmetry and asymmetry could be closer than first thought. While this is an interesting consideration, I will concentrate on bringing clarity to the first-order question for the purposes of this thesis. The role that gradability might have to play in dirty hands was helpfully suggested to me by Rob Lawlor.

misunderstands what is at stake in the symmetry debate. Saying that an account is asymmetrical is not supposed to show that it denies the existence of the conflictual nature of dirty hands situations. Instead, what I am arguing is that the asymmetrical position differs in that it holds that the agent gets her hands dirty only on one horn of the conflict (e.g. choosing to act like a good politician) but keeps them clean on the other (e.g. choosing to act like a good man). Choosing one horn of the conflict therefore does not automatically equate to getting one's hands dirty. The aim here is to assess critically why different authors think that, despite the conflictual nature of dirty hands situations, one horn of the conflict could be said to leave the agent with her hands clean. The existence of a conflict at the root of dirty hands situations is not what is in question, instead it is the correct conceptualisation of both horns of the conflict that is at stake.

Secondly one might wish to object to this view from the outset for the reason that it cannot make sense of cases such as *Sophie's Choice*, which I briefly mentioned at the end of the previous chapter. Sophie arrives with her two children at a Nazi concentration camp where an evil doctor presents her with the following choice: she must choose one of her children to be killed in order for the other one to be spared. Should she refuse to choose, both will be killed immediately. In such a situation there may simply be no better or worse option and clean hands would be impossible. Assuming that one of Sophie's core moral commitments is to ensure the welfare of both of her children, there is no way in which this choice will leave her unstained. The asymmetrical view of dirty hands therefore cannot hold that we can always emerge with our hands clean from dirty hands situations. Instead, the argument has to be the weaker claim that sometimes, but not always, clean hands are possible. While this criticism changes the claim the asymmetrical view makes, it does not provide a reason to reject it outright. According to a symmetrical understanding there are no cases of dirty hands in which the agent could keep her hands clean, whereas on an asymmetrical understanding the agent can keep her hands clean in some, even if not in all, dirty hands situations.

So what can the asymmetry view tell us about the dirt in dirty hands? Stocker and Levy think that the different understandings of dirt rely on a distinction between acting and omitting, doing and allowing, or intending and foreseeing. On the asymmetrical reading, once you are faced with a situation in which you are forced to choose, giving the order to torture results in dirty hands and not ordering it leaves one's hands clean, so the thought might go that this difference must be the result of a distinction between what we do and what we omit (or something similar); if we act we dirty our hands, but if we do not act we can keep our hands clean. We might think that such an understanding would make sense in light of how Walzer sets up the ticking bomb scenario. Walzer says that, given the circumstances, ordering the

torture might be the lesser of two evils. This means that he implicitly stipulates not ordering the torture to be the greater evil. After all, the politician has a duty to protect her citizens and not doing everything in her power to prevent the death of innocents that it was in her ability to prevent would be a serious moral failure. For Walzer the politician would be responsible whether she orders the tortures or refrains from doing so, and yet, the politician will keep her hands clean should she choose the latter. This leaves us with a situation in which the not-doing of an action is the greater evil and the politician can be responsible for it and yet will not be dirtying her hands through it. One understanding of the asymmetry view is therefore that we can only get our hands dirty through our actions and what we do, but not our omissions and what we merely allow.

From Walzer's description of dirty hands as a clash between deontology and consequentialism we could find a second version of what constitutes the dirt in dirty hands situations, namely a violation of a deontological constraint such as, for example, the violation of a person's rights. Some actions violate people's rights while others do not and only the former create the right kind of remainder for an action to be called dirty. Torture involves the violation of a person's rights. Letting people die, however, when the only way to save them would involve the torture of someone else, it might be said, does not involve the violation of people's rights. Imagine, for example, a doctor who has five patients who all need different organ transplants in order to live, and a sixth who happens to have healthy and matching organs for all of them. Clearly the five do not have a right to be saved if that involves killing the sixth. Another plausible version of the asymmetry view might therefore be that the dirt in dirty hands is the violation of people's rights of non-interference; but it is not a rights violation to fail to rescue or benefit people when doing so would violate the rights of a third party. In the ticking bomb scenario, not ordering the torture may be the greater evil, but as it cannot be said to violate the rights of citizens, the politician's hands remain clean.

In the language used by both Walzer and Tillyris, we can find yet another version of what constitutes the dirt in dirty hands on the asymmetry view. This conception relies on two premises; firstly, what makes dirty hands dirty is that they constitute an attack on the agent's innocence. Secondly, by not acting in accordance with the demands of – in Hampshire's words – experience, our innocence can stay intact and our hands remain clean. A good starting point to understand what is meant by the agent's innocence is to examine Hampshire's discussion of that term¹⁶, to which Tillyris makes explicit reference. Hampshire

¹⁶ It is worthwhile stressing that Hampshire himself does not draw these conclusions and in fact appears to hold the symmetry view.

examines the notion of innocence in a political context by discussing Machiavelli's account of politics and morality. He acknowledges that in political life emergency situations will inevitably arise in which a leader has to use means usually thought to be morally reprehensible. Machiavelli opposes the demands on a good political leader to the demands on individuals wishing to pursue a morally admirable private life, where both ways of life are mutually exclusive. The virtues of the latter, such as loyalty, friendship, and fairness stand in contrast to political virtú such as courage, prowess, and the single-minded pursuit of power that lead to glory for oneself and one's city (Machiavelli, 2003a, pp. 23-28;35;50-51). Someone acting in line with the virtues leads, according to Hampshire, a life of innocence, while one who acts in line with Machiavellian virtú leads a life of experience. Political leaders, in order to be successful and effective, need to be able to leave innocence behind and turn to a life of experience. Hampshire goes on to describe innocence by comparing it to the life of early Quakers; "their conception of the good was a vision of simplicity, whiteness, straightness, uprightness, cleanness, of sweeping away anything contaminated or corrupted or squalid" (1991, p. 173). From this we could construct a version of the asymmetry view on which our hands become dirty when we abandon the virtues constituting innocence and turn toward the virtú of experience. Should we, however, choose to prioritise the former over the latter, our hands can remain clean. While Tillyris and Hampshire focus on political innocence, we can see in Walzer a way to construct innocence more generally. He writes that, should the politician choose the utilitarian side of the conflict, "the innocent man, afterwards, is no longer innocent" while, on the other side, "he remains innocent" if he were to choose "the absolutist side" (1973, p. 161). Innocence for him is a resolute adherence to absolutist moral principles (not unlike Hampshire's vision of the early Quakers), whereas innocence is abandoned and our hands dirtied when we act according to consequentialist reasoning (not unlike Hampshire's or Machiavelli's vision of the moral importance of political effectiveness). On this account, dirty hands would therefore be asymmetrical, because agents can choose innocence and an adherence to absolutism over experience and reasoning in consequentialist terms.

While Walzer and Tillyris talk about the agent's innocence, Bellamy and Dovi use the language of integrity. Waldron does not actively use the word integrity, but his view seems to fall into this camp as well.¹⁷ There is therefore yet another version of what constitutes dirt on the asymmetry view. Similar to the innocence version, it can be constructed as the

¹⁷ To dirty one's hands, according to Waldron, is to commit a wrong action that violates one's own moral standards. In the case of the Clay Cross Eleven, for example, adhering to what they perceived as unjust legislation would have involved getting their hands dirty. By refusing to uphold the law and standing up for their moral convictions, however, the Clay Cross Eleven kept their hands clean.

following two premises; firstly, what makes dirty hands dirty is that they constitute an attack on the agent's personal integrity. Secondly, by not acting in accordance with the demands of impartial morality, our integrity can stay intact and our hands remain clean. We can find this view in Dovi's description of dirty hands as a clash between the agent's moral integrity and some overriding moral end. Bellamy also alludes to such a clash between integrity and morality, and traces this view to Susan Mendus. It will be helpful to take a closer look at Mendus's discussion on integrity in order to understand this version of the asymmetry view. Integrity for her "is a matter of acting on those commitments which are very important to me and which serve, in part, to define who I am" (2009, pp. 31-32). This is a distinctly personal notion of integrity that does not require that the commitments one chooses adhere with social or conventional morality. On such a view, an individual can possess integrity and yet be morally bad (e.g. Heinrich Himmler could be an exemplar of someone with personal integrity). The result of defining personal integrity in this way, argues Mendus, is that it can come into conflict with morality. She considers the following example by Bernard Williams: George who just finished a PhD in Chemistry is desperately looking for a job to support his family. A friend of his knows of his problems and offers him a job in a lab that does research into biological and chemical weapons. George is deeply opposed to using such measures in warfare and is now torn about whether to accept the position or not. When he tells his friend about his qualms, his friend says that the reason he wants George to take the job is because otherwise it will be given to another person about whose excessive zeal he feels rather worried (Williams, 1973, pp. 97-98).

Mendus argues that in such a case there exists a tension between integrity "understood as a matter of sticking by what one believes to be ethically necessary" and morality "understood as acting impartially towards all who are affected by one's actions" (2009, p. 29). According to her understanding, if George wants to preserve his integrity he will have to refuse to engage in what he perceives to be an evil and immoral pursuit. Morality, conversely, would favour him accepting the job because it would benefit both his family through the financial support this would offer, and society at large because he would approach the job more cautiously than the over-zealous candidate. She argues that a similar analysis can be made in response to Walzer's ticking bomb example. She says that "here then is a case in which politics undermines, or at least threatens to undermine integrity" (2009, p. 39). To keep her integrity she would have to refuse to order the torture and to engage in what she perceives to be evil. Morality, on the other hand, would urge her to consider the fates of the hundreds of innocent people who could be killed unless she orders the torture. For Mendus, we have a choice between acting in accordance with impartial morality and thus dirtying our hands,

and keeping our integrity intact and our hands clean but allowing the greater evil to occur. Here, the “dirt” in dirty hands is a stain on one’s integrity, which occurs when we violate our commitments to valued principles such as never to kill, torture, or deceive. The conclusion then is that, if there is an option for personal integrity to stay intact, the agent can emerge from a dirty hands situation with her hands clean.

Finally, as mentioned briefly in the previous section, we can also construct a flipped version of the asymmetry view in which one’s hands stay clean by ordering the torture and get dirtied by refusing to order it. Finlay starts from the Humean assumption that, when confronted with a scenario such as the ticking bomb, we start by experiencing certain moral sentiments and try to arrive at a general moral judgement or rule based on those sentiments. Finlay suggests that on such a theory, “natural moral sensibilities dictate approval for stronger feelings of benevolent concern and a correspondingly intensified sense of duty of care” for potential victims and conversely, “our moral sympathies are diminished for those we see engaged in acts of cruelty or violence” (2011, p. 425). The result is that we would have heightened compassion for the innocent citizens threatened by the bomb and diminished compassion for the terrorist. We would therefore approve of the agent who orders the torture. For Finlay, “a properly balanced measure of compassion as a motive tending towards the safety of the innocent should outweigh in quantitative valency any sympathetic concern that might remain for a terrorist determined to let the bomb detonate” (2011, p. 427). Through her actions the terrorist has forgone her right to our compassion or benevolence. Within the confines of the ticking bomb scenario, Finlay concludes, torture could be seen as a distinctively moral course of action. He goes on to argue that there are good prudential and institutional reasons to uphold a universal ban on torture, though. He is worried that allowing exceptions to this ban would turn into a slippery slope and weaken the overall integrity of democratic values and institutions. Returning to Hume, Finlay goes on to argue that in ticking bomb scenarios the agent is confronted with a choice between natural and artificial virtues. The former represent our moral concern and compassion for the innocent victims while the latter represent the institutional ban on torture. The final step in his argument is to say that we get our hands dirty by violating a natural virtue but can keep them clean if all that we are violating is an artificial virtue. If the politician decides not to torture, “then we may say that he allows artificial virtue to override natural virtue. In doing so, he has to betray the innocent civilians targeted by the terrorist’s bomb, suppressing the natural urges of compassion and the moral duties these generate. This is how he dirties his hands” (2011, p. 437). If the politician refuses to torture and upholds the legal ban she will get her hands dirty, but if she chooses to torture she can keep her hands clean. For Finlay, the latter situation is more akin

to a case of civil disobedience in which a law is violated for moral reasons so that “a Humean view would interpret the choice as being between an action involving dirty hands and one resembling civil disobedience” (2011, p. 439).

On the symmetry view the dirt in dirty hands is the violation of a moral value. On the asymmetry view, however, something can be dirty in virtue of being an action, doing, or intending, or the result of violating a deontological constraint such as committing a rights violation, the result of choosing the demands of impartial morality or a life of experience over integrity or innocence or, on the flipped view, the result of choosing artificial over natural virtue.

3.4. Defending Symmetry

So should we adopt a symmetrical or asymmetrical understanding of dirty hands? I will argue that we should choose the former because of the costliness of adopting the latter.

Remember that on the asymmetry view, if the agent decides to order the torture she will get her hands dirty, but should she decide not to do so, she will keep her hands clean (or vice versa on the flipped version). Holding any version of the asymmetry view, however, appears to stand in stark contrast to one of the core insights resulting from discussions of the problem of dirty hands. In the previous chapter I introduced Stocker’s account of dirty hands which highlighted that many moral theories are exclusively concerned with action-guidance at the expense of making sense of our complex experience of moral decision-making. If, for example, the agent decides not to order the torture, then her regard for the ban on torture is the action-guiding principle, while any value attached to protecting the lives of innocent citizens would be the non-action-guiding principle. The only way to think that by not ordering the torture keeping one’s hands clean were possible, is to focus entirely on the action-guiding considerations present in the case. Only if I think that, for example under the integrity view, upholding my core commitments exhausts the morally relevant features of my decision can I think that my hands could be clean. This, however, overlooks what should happen with the non-action-guiding moral considerations, in this case the value of saving innocent lives. We see the value we have not acted upon as a genuine moral demand and so we “double-count” (Stocker, 1990, p. 12) it. We weigh up the ban on torture against the potential of innocent lives being lost and decide to act in accordance with the former. The latter value is not thereby cancelled or annulled and should still be given weight, even if it was not acted upon. While we have identified the lesser evil in the situation we, in this way, give due weight to something we take to be a genuine moral requirement; we are taking the wrongness of our action seriously and it becomes a remainder that attaches to our evaluation

of the action taken. As soon as the agent takes the non-action-guiding features of the situation to be morally relevant she will be forced to acknowledge that holding onto her core commitments came at a considerable moral price. This moral cost will inevitably leave a moral residue and get her hands dirty.

For the agent to think that her hands could remain clean when faced with a dirty hands scenario would require some act of moral compartmentalisation in which she detaches her conscious decision to choose one course of action over another (e.g. not torturing) from the consequences of that decision (e.g. the death of innocents). Such views draw a sharp divide between the agent's actions and adherence to principles, and the outcomes of those actions. Such a divide is both unlikely and undesirable. Take for instance the innocence version of the asymmetry view. While it is true that your choice meant you did not order the torture of anyone, this decision also critically endangered the lives of hundreds of citizens or even failed to prevent their deaths. The knowledge that external circumstances have forced you into a position where you have to make such choices should be enough to attack your innocence. It does not matter how good your intentions are and whatever option you choose will inevitably have grievous consequences. This knowledge is incompatible with innocence as described by Hampshire of "a vision of simplicity, whiteness, straightness, uprightness, cleanness, of sweeping away anything contaminated or corrupted or squalid" (1991, p. 173). If the agent is unable to keep her innocence she would also no longer be able to keep her hands clean on this understanding of the asymmetry view.

A similar issue can be found on the integrity version of the asymmetry view when we consider the ticking bomb scenario. While your action certainly adheres to your personal deontological principles, it does so at the cost of ignoring the commitments and obligations you have as a politician, thus drawing an artificial line between you as a private and as a public person. You have many different roles that constantly overlap in your life and it is unclear how you could abstract from that and construct a notion of integrity concerned only with a single subset of these. The idea behind this must be something like the thought that somehow the private individual behind the politician can keep her hands clean. As Bellamy argues, this "position turns on abstracting to a universal moral code behind any special circumstances, and to a universal moral individual behind any social role" (2010, p. 418). However, it is not obvious that either abstraction is possible. Imagine a situation in which an agent's roles of being a good politician and being a good friend clash; for example, the agent's work commitments keep interfering with his ability to spend time with his close ones. Bellamy argues that "there is no point beyond the two roles to which he could retreat to ask what is universally required" (2010, p. 418). In such a situation it simply makes no sense to ask what a good person would

do. We should therefore abandon the idea that integrity can be defined as adherence to the moral commitments of some private or universal individual and instead acknowledge that the constraints of integrity will emerge from the interplay of the social roles we occupy. Integrity, on this broader conception, could not stay intact by adhering to some deontological constraint when this results in the violation of another moral value and therefore our hands could not stay clean on such a version of the asymmetry view.

What about notions of asymmetry that rely on the action/omission distinction or the like? In cases of dirty hands, I think that these distinctions do not accurately capture the way in which the agent becomes implicated in the harmful consequences of a dirty hands scenario, even if they choose not to actively harm anyone themselves. While it was not your action that caused these negative consequences, your conscious decision not to act meant that you failed to prevent them, even though you were capable of doing so. This makes you complicit in the negative consequences and it is not clear why this should not be enough to get your hands dirty. The rights version of the asymmetry view especially might reply that there still is an important distinction because you did not actually violate anyone's rights in this situation and as such you can keep your hands clean after all. To argue that no one's rights were violated by not ordering the torture implies a view on which negative rights of non-interference always trump positive rights of assistance. It is unclear, however, why this ought to be the case. Imagine that, on a walk through the countryside, you come across someone injured and in desperate need of food and water. The only way to help them is by breaking into a nearby cabin and stealing supplies. In such a case, arguably, an infraction of one person's rights could be morally justified by the way it would assist someone else. If we concede that negative rights should not always trump positive rights then rights could have been violated by not ordering the torture and the agent could therefore no longer keep her hands clean on this version of the asymmetry view.

Finally, let us consider the flipped version in which we can keep our hands clean by ordering the torture and dirty them by upholding the ban against torture. The former option, according to this view, is an act of civil disobedience in which we violate a law for moral reasons, whereas the latter is an instance of dirty hands in which we violate morality for legal reasons. Finlay's interpretation of Hume implied that only the violation of natural virtues (e.g. benevolence, compassion), as opposed to artificial virtues (e.g. justice, conformity to law), can generate dirty hands. This, however, seems to be an odd conception. Hume distinguishes between natural and artificial virtues to demarcate a difference between those virtues that arise simply in virtue of human nature and those that arise as a result of people living together in society. Every act based on natural virtue will be beneficial, whereas only

the overall tendency of actions based on artificial virtue will be beneficial; particular instances of acting based on artificial virtues may actually be harmful. This, however, does not mean that artificial virtues do not place genuine moral demands on us. There are very weighty reasons for us to respect justice and uphold our legal system. They ensure that we can live together in a society and fairly adjudicate conflicts amongst people. We care about bringing justice to people and upholding the rule of law in our country, and when either of these are broken we generally think that something of moral importance has been violated. Finlay himself describes dirty hands, following de Wijze, as a violation of a cherished value. Only by saying that upholding justice or the rule of law does not involve such an important moral value could he, by his own standards, argue that violating them would not be an instance of dirty hands. We do not, however, only care about justice and the law for prudential reasons; we care about them as important moral values. His view therefore would have to rely on an unappealing understanding of why we care about artificial virtues.

The problem overall is not that these different understandings of the asymmetry view are not possible to hold in principle, but rather that they come at a significant cost. If we take into consideration not only the action-guiding value, but also the important moral value that we have forgone in a dirty hands situation, the asymmetry view results in rather unpromising understandings of innocence, integrity, conscious action, rights, and artificial virtues. The onus here is on the defenders of the asymmetry view to show why we should hold any of these conceptions and how they more accurately reflect on the nature of dirty hands situations. Even if any of the asymmetry views could give us a satisfying answer to this, there is yet another problem for these accounts. If we need to take into account the full moral weight of the non-action-guiding principle, what emotional response should an agent experience after having chosen, for example in the ticking bomb scenario, not to order the torture?

According to the asymmetry view she might reasonably feel proud for having adhered to her moral principles. She stood by her commitments when doing so was extremely difficult and she deserves praise for this. She did something laudable in making that choice because she preserved something of distinct and important value. This, however, seems an odd assessment of the situation and her decision. In a situation in which the lives of hundreds of people are at stake that it is her job to protect, her character and her personal convictions do not seem important. In fact, she has misunderstood the situation if she failed to save them. This conflict is reflected by Max Weber's distinction between the "ethic of principled conviction" and the "ethic of responsibility" (2010, p. 359). The former is an absolutist approach to moral action in which, as long as the agent strictly adheres to her moral rules,

she cannot be responsible for any negative consequences that may flow from her actions. The latter ethic, on the other hand, is based on an acknowledgement that “the achievement of ‘good’ ends is in many cases tied to the necessity of employing morally suspect or at least morally dangerous means” (2010, p. 360). On this view the agent is fully responsible for the negative consequences of her actions, even if she adhered to the moral rules she holds dear. A result of the asymmetry view is that, because there is an option in which the agent would not get her hands dirty, this option would be in some sense praiseworthy because the agent would have kept her hands clean even if to do so she chose the greater evil. On the symmetry view, on the other hand, the agent simply ought to choose the lesser evil. What counts is that the agent has assessed what ought to be done all things considered based on the obligations she has to others and the consequences of her actions, and not based on a concern for the cleanliness of her own hands. An asymmetrical view would encourage a self-centredness incompatible with grasping what is morally at stake in dirty hands situations. We should therefore prefer a symmetrical understanding that captures more accurately the appropriate emotional response and our assessment of the agent’s actions in a dirty hands situation based on the moral weight attaching to the non-action-guiding principles present.¹⁸

None of the arguments in this section are intended to constitute a decisive win for the symmetry view. Instead they are supposed to show some of the costs involved in adopting an asymmetrical understanding. Defenders would have to show why their view can make sense of our complex moral decision-making process and the emotions and reactive attitudes that are fitting as a response to a dirty hands situation. They also would have to show that the criteria for cleanliness they use align with how we would normally employ these concepts. I think that these costs are rather unappealing and that we should therefore side with a symmetrical understanding of dirty hands. Ultimately, the debate between symmetry and asymmetry may hinge on some of our most fundamental intuitions about the possibility of leading a moral life. Many things in our lives are beyond our control and we will often face misfortunes. The hope may therefore be that at least the option of leading a morally good life would be immune to bad luck. If only we do the best that we can to hold on to our principles, then we must be able to keep our hands clean. Otherwise we would end up with a rather dreary picture of ourselves and the world around us. The idea of symmetry, however, threatens this hope because it argues that once we are faced with a dirty hands situations there is no way for us to emerge from it with our hands clean. Accepting symmetry therefore entails accepting a tragic view of our lives in which we are not beyond the reach of bad moral

¹⁸ I will go into more detail about the particular emotional response appropriate to the conflict inherent in dirty hands situations in the next chapter.

luck. It does not matter how hard we try and despite our best efforts we will sometimes have to engage in evil and get our hands dirty. While we are unlikely to settle this debate any time soon, I have given some suggestions as to why we should prefer a symmetrical understanding of dirty hands. What makes something dirty is the remainder caused by a violation of a moral value, and whatever option the agent chooses she will inevitably become tainted.

3.5. Conclusion

My argument in this chapter has been twofold. I started by arguing that the dirty hands literature has overlooked an important question in the definition of dirty hands; namely whether we dirty our hands no matter what we do, or whether we can possibly keep our hands clean. I showed that a variety of papers on dirty hands have made implicit assumptions about the symmetry question, but have failed to defend them. I then discussed different versions of the asymmetrical understanding that hold that dirty hands can be avoided and that our hands can, at least in principle, stay clean. According to the symmetrical view, however, our hands become dirty when we violate or betray a moral value, and choosing between two evils in a dirty hands situation will always inevitably involve such a violation. Our hands can therefore never stay clean. I have argued that we have good reasons to support a symmetrical reading of dirty hands because adopting an asymmetrical reading comes at a cost that we should try to avoid.

Clearing up this issue has results beyond merely improving the way in which we define dirty hands. The stance we take on the symmetry or asymmetry view has to be considered when ascribing responsibility to the agent for her actions. If whatever she does she will be doing something dirty this might lead us to think, all other things being equal, that her responsibility for the wrongdoing and our ability to blame her is diminished; after all, there is no way she could have avoided getting dirty.¹⁹ In chapter six I will argue why this is not the case and that agents can be held morally responsible for getting their hands dirty even if avoiding wrongdoing was impossible. On the other hand, we might think that when we call an action dirty, this has particular implications for the third-person reactive attitudes that will be appropriate in such a case. In chapter six I briefly suggest that both praise and blame are a justified response to an agent dirtying her hands. If the agent gets her hands dirty by not ordering the torture, just like she would have if she had ordered the torture, this would imply that we can rightfully blame her for risking the lives of her citizens. This in turn might also affect whether or when we think we should hold dirty-handed agents accountable for their

¹⁹ An argument along these lines can be found in Levy (2007).

decisions.²⁰ Although discussing whether or not, and if so how, dirty-handed agents can be held accountable would be beyond the limits of this project, I raise some of the issues regarding this in the conclusion.

Having clarified this overlooked issue in the dirty hands literature, I can now go on to give an account of the nature and role of emotions involved in dirty hands decisions.

²⁰ For discussions on the issue of dirty hands and punishment see Stephen Garrett (1996), Levy (2007), Tamar Meisels (2008), and de Wijze (2013).

4. Emotions and Dirty Hands

4.1. Introduction

So far I have frequently referred to emotions in my account of dirty hands without exactly explaining what role they play and what kind of emotion I am talking about. While the issue of emotions has been taken up repeatedly in the dirty hands literature, there are a variety of claims made regarding this topic which, I think, require some disambiguation. We should distinguish between three kinds of points often made about emotions in the dirty hands context. I will deal with each of these in turn throughout the chapter.

The first one states that our de facto experience of negative emotions in supposed situations of conflict speaks in favour of the explanation that dirty hands theories give of these choice scenarios (Stocker, 1990, p. 125; Gowans, 1994, pp. 88-116; de Wijze, 2004, p. 458). This ultimately is a point about the fact that there is something rational about our emotions and that they can therefore tell us something about our moral reality – a reality that is best explained by the phenomenon of dirty hands. I show that emotions play a crucial role in rational thinking and deliberation and that they have determinate standards of appropriateness which tell us whether it is fitting to experience a certain emotional response to a given scenario.

The second point often made follows from the previous one; it asks what, given that there is something rational about experiencing a certain emotion in such situations of conflict, is this negative emotion supposed to be? What emotion is an appropriate response to the conflict inherent in dirty hands decisions? This debate has focussed on the notions of regret, agent-regret, remorse, and tragic-remorse (Williams, 1976; Baron, 1988; Stocker, 1990, p. 15; Cunningham, 1992, p. 242; Bagnoli, 2000; de Wijze, 2004). I will argue that the notions of regret and agent-regret have been wrongly identified as the appropriate response to the conflict inherent in dirty hands situations, and instead advocate de Wijze's (2004) notion of "tragic-remorse" as the fitting response to getting one's hand dirty.

The final point that is made about emotions in dirty hands is concerned with the specific function that this rational negative emotional response is said to play in both the reasoning and the character of the agent (Stocker, 1990, p. 31; 113; Cunningham, 1992, p. 245; de Wijze, 2004, p. 458). The function that this emotion fulfils will determine when it is appropriate for the agent to experience it, and also our assessment of the agent herself; i.e. if a certain negative emotional response is an integral part of deliberating well and properly understanding what moral values are at stake, this can have an effect on our judgement of

that agent's character. I will argue that experiencing tragic-remorse in response to a dirty hands scenario ensures a commitment to the forgone value, contributes to the agent's deliberation, and makes her behaviour intelligible to others.

4.2. The Rationality of Emotions

The first way in which emotions have been linked to dirty hands roughly goes the following way: in supposed dirty hands situations agents do seem to experience a certain negative emotional response. Additionally, were they not to do so, we would feel that there is something vital missing in their understanding of what they have done. This is supposed to speak in favour of dirty hands reasoning because it accounts for there being something wrong (i.e. the grounds for experiencing a negative emotional response) in doing what is nonetheless overall justified. For emotions to have such explanatory power, however, there has to be something rational about emotions because they can only tell us something about our moral reality if they are not arbitrary but instead have determinate criteria of appropriateness. In the following I will therefore indicate why I think there are good reasons to believe that there is something rational about emotions. I will then argue that what it means for an emotion to be rational is for it to be appropriate in a given situation. This will lead me to analyse in some more detail what appropriateness entails and what kind of appropriateness is required for emotions to be rational in a dirty hands situation.

The majority of thinkers that I will be drawing on in this section are probably best described as advocating a perceptualist account of emotions (de Sousa, 1980; Greenspan, 1980). Roughly speaking their position is situated between accounts regarding emotions as mere feelings (Prinz, 2005), and cognitivist accounts holding that emotions are the expression of certain judgements (Solomon, 1980). Perceptualists tend to think that emotions are more than mere feelings, and are instead based on a cognitivist representation of the actual world, and can be evaluated regarding their fittingness to the external object that they are a reaction to. At the same time, however, they reject the stronger cognitivist claim that these representations need to have any conceptual or propositional content, and concentrate instead on the more phenomenal character of emotions.

I reject emotions as feelings accounts on several points; firstly by equating emotions with feelings and sensations, it becomes difficult to distinguish different emotions from one another. Imagine experiencing a feeling of anxiety. We can easily see how this feeling could accompany emotions as diverse as anger, fear, and euphoria. Feelings accounts therefore do not seem to be able to tell us the entire story about emotions. Another problem with these accounts is that by assimilating emotions to feelings, emotions appear to be based entirely

on biological facts rather than having concrete ties to rationality; for instance anger can be explained by factors such as an increased heart rate and blood pressure, rather than as a conscious and rational reaction to an external object. Again, emotions as feelings accounts therefore seem to be unable to give us the whole story.

On the other side of the spectrum, two standard objections to cognitivism relate to the emotions of animals and children, as well as the issue of recalcitrant emotions. If emotions rely on judgements this would be unable to account for animals and very young children experiencing emotions because they lack the cognitive capacity to form the required judgements. Additionally, cognitivism cannot explain why we experience some emotions (e.g. fear of flying) despite our best judgement (e.g. that flying is statistically the safest mode of transport). If emotions are based on judgements, then recalcitrant emotions could not exist. Additionally, Carla Bagnoli offers another objection to cognitivist theories of emotions in the light of the kind of moral conflicts that I wish to consider. She claims that according to cognitivism an “emotion is justified only if there is a cognitive basis for it: only if a correspondent belief is justified” (2000, p. 171). Experiencing remorse could only ever be justified then if I have the justified belief that I did something morally wrong. The notion of tragic-remorse, though, which I will introduce in the next section, relies exactly on the possibility of one feeling this kind of negative emotion while holding that one did the overall right thing. Furthermore, I will argue that this emotion can be felt by the agent without her having to be subject to something like “emotional dissonance” (2000, p. 171) in which her emotions stand in a vicious contradiction to her judgements. The cognitivist account therefore does not appear to be able to make sense of our experience of dirty hands. Bagnoli claims that, “it seems to me that the question is not why apparently unjustified regrets survive reflection and deliberation, as cognitivism claims. The question is rather, why the agent has reason to retain them” (2000, p. 172). The point to consider is not why it seems that we have certain emotional responses that are in contrast to our judgement of a given action. A more fruitful enquiry looks at the perception of a certain part of the action that caused our emotional response and what that tells us about the situation beyond the overall judgement we made. Perceptualist theories appear to be superior because they seem to sit better with our phenomenology of emotions.

At this point I will not go into any more detail on the debate between feeling, perceptualist, and cognitivist theories of emotions. While the above distinctions and arguments are certainly superficial, it will be helpful for the reader to have this rough background in mind when considering the following arguments. In the following I will indicate why it seems

plausible to view certain emotions as rational. The aim of this section is to give the reader an understanding of my reasons for shaping my account of dirty hands around this assumption.

To understand the rationality of emotions we have to understand their function. Ronald de Sousa argues that the best way to do this is by considering a world without emotions. He claims that, “a being without emotion would either be some kind of Kantian monster with a computer brain and a pure rational Will, or else a Cartesian animal-machine, an ant, perhaps, in which every ‘want’ is preprogrammed and every ‘belief’ simply a releasing cue for a specific response” (1980, p. 135). Both beings would be fully determined by either programmed mechanisms or reason. He argues that, while the idea of the ant seems intelligible, even though alien, the idea of a Kantian monster seems difficult to comprehend. De Sousa argues that this is because “there is no such thing as fully determinate rationality” (1980, p. 135). The two most important features that tell against this determinacy are the issues of salience and of strategy.

Salience is the question of which of the many possible aspects of a given situation we should be focussed on, and it is also the question of what actions we should occupy ourselves with under the given circumstances. Salience also poses the question of the threshold of probability that is required for it to be rational for us to accept something being the case or not. De Sousa gives the example of a decision between being soft- and hard-headed. The former implies an attitude of being easily susceptible to impressions, though one is happy to alter these first impressions as quickly as they were made. Being hard-headed, on the other hand, describes an attitude of being less susceptible to impressions that are, however, difficult to lose once they are made. Logic and reason alone do not seem to be able uniquely to determine our focus or threshold here; they do not tell us which of these two attitudes is superior.

We are faced with the issue of strategy when, given certain wants, we have to ask ourselves what the best ways of achieving these wants are. De Sousa gives the example of choosing between a minimax and maximin strategy. Imagine a lottery where tickets are very expensive but my chances of winning are good and the sums that are payed out are very high. If I decide to play I have a lot to lose if I pay for the ticket but do not win, but equally I have a lot that I could potentially win. If, on the other hand, I decide not to participate, I have nothing to gain or lose. De Sousa argues that in such a situation it seems possible that, “the probabilities involved may be such that the expected desirabilities of the two are identical” (1980, p. 136). Our rational calculation of probabilities might suggest that the two options are equally valuable; yet, there seems to be an important difference between trying to maximise gains as

opposed to minimising losses. If we are faced with alternatives that have equal results in a rational calculation, reason alone, again, does not seem to be able to fully determine our course of action. What de Sousa follows from these points is that “the function of emotion is to fill gaps left by [...] ‘pure reason’ in the determination of action and belief”, and that therefore, “emotions are determinate patterns of salience among objects of attention, lines of inquiry, and inferential strategies” (1980, pp. 136-137).

Another reason to think that emotions are far from being irrational is the way in which we acquire our repertoire of emotional responses and how we adapt and refine them through experience. De Sousa adds to his account above that we learn to exhibit certain emotional responses through so-called paradigm scenarios. These present us from a young age with both a characteristic object of emotion and a set of characteristic emotional responses to it. De Sousa relates this to his wider account by arguing that “learning to ‘gestalt’ situations in terms of such scenarios is learning to attend differentially to certain features of an actual situation, to inquire into the presence of further features of the scenario, and to make inferences that the scenario suggests” (1980, p. 143). Peter Goldie takes this thought a step further: next to our ability to educate our emotions, our emotions can, and do, in turn educate our future decision-making. His emphasis lies especially on the influence of emotions such as regret in enabling us to learn from our mistakes. By externally engaging with others’ or one’s own past decisions that resulted in unfavourable outcomes we come to feel regret about them; regret is essentially a counterfactual emotion that makes us consider what might have been. This emotion then encourages the agent to engage in hypothetical reasoning about what other courses of action might have been available and which one of these should have been taken instead. Goldie concludes that “negative emotions, counterfactual narrative thinking, and regrets can have a feedback effect on one’s grasp of the relative hypothetical imperative, helping one to learn from mistakes” (2012, p. 87). I will return to the way in which certain emotions have a crucial impact on our practical deliberations with regards to dirty hands at the end of this chapter.

While these considerations have given us an idea of why emotions in general play a crucial role in rational thinking and deliberation, what we have not considered yet is how we can determine whether a particular emotion is rational or not in a given case. We can look to Patricia Greenspan (1980) for an account of the conditions that an emotion requires to be rational. To develop these conditions, she starts by considering cases of ambivalence. Imagine that my best friend has received the promotion that I was after, and now I experience two emotional responses: I am happy, and yet I am also sad, frustrated, and angry. The argument then goes that this is not clearly a sign of irrationality because emotions are

rational if they are supported by some relevant reasons and can hence be seen as appropriate in the situation. This does not have to be all-things-considered, though, as partial relevance can be sufficient. I am happy as a response to the fact that someone that I deeply care about has received a promotion; at the same time I experience a variety of negative emotions as a response to the fact that I have lost out on something that I desired. Therefore, a certain emotion is rational if it appropriately responds to some part of the situation to which it is a reaction. I will discuss the notion of appropriateness further at the end of this section.

Even if one accepts Greenspan's line of argument, one might wish to ask whether trying to resolve such cases of ambivalence would not be more rational than upholding them. Again, I think Greenspan has a convincing answer to this: no, it would not be more rational to resolve one's ambivalent emotions, as the agent might lose something of importance during that process. She argues that, "by allowing the conflict, but controlling its behavioural effects, I can express my strong commitment to someone else's interest without losing sight of my own" (1980, p. 241). My ambivalent feelings ensure that the complexity of the situation is not lost on me. While, for example, I might decide that it was all-things-considered the wrong decision for them to promote my friend because she was not the most qualified candidate, my ambivalent emotions of being angry about this state, while at the same time being happy for my friend, ensure that I am reminded of the different values at stake.

So far I have shown that emotions can be perfectly rational when they respond to some feature of a given situation. The next question is now what sort of emotion would be appropriate in dirty hands situations. Before doing so, it will be important to understand what exactly we mean by "appropriateness". I will use the language suggested by Justin D'Arms and David Jacobson (2000) in their discussion of the appropriateness of emotions. On what we can call the "fittingness interpretation" we ask ourselves whether the emotional response fits the external object to which it is a reaction to. The fact that your colleague has been promoted instead of you might make the emotional response of "anger" a fitting response to at least some of the features of the situation (e.g. the aspect of having lost out). On the "moral interpretation" we ask ourselves whether it is morally right to feel a certain emotion. I realise that the promotion was not based on merit, and my colleague did not deserve to get the job based on that criterion, so it is appropriate for me to feel anger. Lastly, on the "prudential interpretation" the question is whether it is useful for us to experience this emotion. Now that my colleague is in a higher position I might need their support for my future projects, so I should not show any anger because that might make a bad impression on her. Obviously feeling and showing an emotion are two different things, but I might come

to the conclusion that feeling anger could show in my behaviour even if I tried my best to hide it, so I should simply avoid feeling it altogether.

Which of these interpretations of appropriateness should we be concerned with when assessing the sort of emotional response that is an adequate reflection of the conflictual nature inherent in cases of dirty hands? The emotions of regret, agent-regret and tragic-remorse in question, similar to responses such as anger, can be described as moral emotions; that means that, as D'Arms and Jacobsen put it, "they present their objects in the light of such moral concepts as desert, fault, and responsibility" (2000, p. 87). The external object to which they are a reaction is of a moral nature so what is appropriate will therefore rely on the correct representation of a moral situation. The appropriate emotional response to the conflict inherent in dirty hands will have to reflect correctly the moral aspects of that conflict situation. As mentioned previously, it is possible for an agent to experience multiple, even conflicting, emotional responses that reflect different aspects of a particular situation. This is obviously also the case for dirty hands, but what I am concerned with in the next section is to identify the emotional response that will be present in any dirty hands case because it is the accurate reflection of the underlying moral conflict present in every dirty hands scenario.

4.3. Agent-Regret and Tragic-Remorse

A good starting point for understanding the appropriate emotional response to the conflict inherent in dirty hands is therefore to understand the moral considerations that our emotions ought to respond to. As an example, consider the following case: An evil criminal is holding you and two other people as hostages. The criminal now gives you the following options: either you kill one of the other hostages and you and the remaining person will be released, or the evil criminal will kill all three of you. I think it is not unreasonable to think that killing one of the other hostages might be the lesser of two evils in the situation. Given this, you choose to kill one of the hostages; for our purposes it does not matter whether you do so arbitrarily or based on prudential factors such as age, health or chances of survival. After you kill one of the hostages you and the remaining person are freed. You are a bit shaken by your experiences in captivity but, on the most fundamental level, are not troubled by the decision you made and the action you committed; it was the lesser of two evils after all. You go on with your life and are barely preoccupied with the fact that you have taken a life as a result of your own calculated deliberation and with your own hands. There seems to be something troubling about this attitude. The lack of a negative emotional response to what the agent has done seems to imply that she is not taking seriously the effect that her actions had on other people and how this should affect her as a moral agent.

This case is supposed to show us that it might be necessary for the agent to experience a specific moral and emotional response in order to fully comprehend the choice situation that she found herself in. The kind of emotion that would be appropriate in such instances, to accurately reflect the conflict inherent in dirty hands choices, will likely be a form of either regret or remorse because these are “the two central emotions used to characterise our responses to unfortunate and awful events” (de Wijze, 2004, p. 459).²¹ Which emotional response will be appropriate, however, is not as straightforward as in other instances of wrongdoing. De Wijze sums this up neatly by stating that “to feel mere regret about this state of affairs would fail to do justice to the serious moral violation [...] while to feel remorse would falsely suggest that [the agent] had no moral justification for [their] actions. Agent-regret will not do either since it is not merely the fact of [their] causal role in the event that is problematic” (2004, p. 464). All three notions (i.e. regret, agent-regret, and remorse) are discussed by Williams in his example of a car driver and their involvement in a car accident. It will therefore be helpful to start by introducing Williams’s account and showing why de Wijze is right in arguing that neither of the three emotions would be appropriate for dirty hands scenarios. Ultimately I will argue, following de Wijze, that tragic-remorse is a more fitting response.

Williams asks us to imagine three situations in which an agent is driving her car at night. The first driver is going along the road when she sees a child running out into the road and being hit and killed by a car going the other way. In the second scenario, the driver is conscientiously going along the road when, out of nowhere, a child runs into the road in front of her. She does not have enough time to swerve or break and hits and kills the child. In the final scenario the driver falls asleep behind the wheel. Even though only gone for a few seconds, when she opens her eyes a child is in the road in front of her. She has no time to swerve or break and hits and kills the child. Given the differences in their situations, the three drivers are going to have different emotional responses to the death of the child.

²¹ While guilt has also been suggested as an appropriate emotional reaction to the conflict faced by the agent in a dirty hands scenario (Walzer, 1973, p. 166) I will not consider this emotion here. One feels guilt, as defined by Anthony O’Hear, when “an unjust action is conceived as a transgression against a moral injunction” (1967, p. 82). Guilt is an acknowledgement that one has done something wrong and that one is liable to some negative third-person response as a result. Remorse goes a step further and is described by Raimond Gaita as the “suffering recognition and acknowledgement of one’s guilt” (1991, p. 49). Remorse adds a particular concern for the evil that one has done to someone else; as Ilham Dilman puts it, “in remorse it is the pain of what one has done to others that is sovereign in one’s consciousness of it” (1999, p. 325). Experiencing remorse ensures that “one apprehends the wrong one has done painfully in one’s concern for the person one has wronged and for the values one has violated” (1999, p. 326). In as much as remorse appears to imply an acknowledgement of one’s guilt but goes an important step further, I will be exclusively concerned with the subject of remorse in this section.

4.3.1. Regret

The first driver was merely a witness. She was in no sense at fault for what happened, nor could she have done anything to save the child. Nevertheless, she is likely to experience a negative emotional response toward the situation. She might wish that things would have been otherwise so that the child would still be alive. We can best label this emotion as “regret”, which is, in essence, what Bagnoli has described as a “counterfactual emotion” (2000, p. 177). Regret encourages us to engage in a hypothetical deliberation about how things might have been if the situation had played out differently. With regards to dirty hands, Cunningham, for example, has stated that they “involve actions that are morally justified but regrettable because of their grave moral costs” (1992, p. 242).

When I regret something I have the implicit wish for things to have worked out otherwise; in dirty hands cases, however, I have purposely chosen to act in a certain way because I came to the conclusion that it was the overall lesser evil. I might feel regret about the existence of this dirty hands situation in general, but I do not feel regret about the way I acted under the circumstances; I do not wish to have acted otherwise. Using the word regret to describe the emotional response to dirty hands is therefore conceptually misleading. As mentioned earlier, de Wijze critiques using this notion in dirty hands scenarios because it does not acknowledge the way in which the agent was implicated in the violation of an important moral value.

4.3.2. Remorse

The driver in scenario three, however, was clearly at fault for the collision and child’s death. She might wish that she had done things differently and that there was a way in which she could rectify the damage she has done. It weighs heavy on her that there is nothing she can now do to change what happened. What she is experiencing is best called “remorse”. It is what Raimond Gaita has described as the “suffering recognition and acknowledgement of one’s guilt” (1991, p. 49). He goes on to claim that remorse is not only about what we have done, but also about what we have become. Because of this, in comparison to mere regret, remorse can only be felt about something that we were morally responsible for. Finally, remorse can best be healed by an attempt to make amends for what one has done. Making amends is the active step to redeem oneself both in the eyes of others and in one’s own and to right the scales of injustice. With regards to dirty hands, Marcia Baron (1988) has suggested that remorse (in conjunction with the notion of agent-regret) would be an appropriate emotional response to the conflict faced by the agent.

But remorse, as it has been described so far, will not do either because the agent did what was all-things-considered justified. Remorse, in the sense defined above, would simply

overlook the complexities of the agent's deliberation and reasons for action. As de Wijze argued in the earlier quote, to advocate remorse as the appropriate emotional response to a dirty hands scenario would be to overlook that the agent had a moral justification for committing the moral violation in question.

4.3.3. Agent-Regret

The negative emotional response of the driver in the second scenario sits between those of the other two. She was driving conscientiously and to a good standard and there was nothing that she could have done better, and yet, even though she did not do anything wrong she caused the death of a child. Even though she only did so because she was at the wrong place at the wrong time, she is still very aware that her actions are what led to the child dying. This feeling is best described as "agent-regret". The driver acknowledges that, through the causal chain of events, she is implicated in the wrong done; it is not something that simply happened to her, but rather something that she did. Her driving was the immediate cause of the death of the child. She feels in some sense implicated because, as Williams argues, "in the story of one's life there is an authority exercised by what one has done, and not merely by what one has intentionally done" (2008, p. 69).

Going back to our driver example, Williams interestingly argues that others will rightly attempt to make the driver abandon her agent-regret. Now one might try to infer from this that agent-regret cannot be a rational reaction to the situation if others are justified in pushing the agent away from it. Williams's argument, however, implies nothing of the sort; that others are justified in driving the agent away from feelings of agent-regret is based on their concern for the agent; they "feel sorry for the driver, but that sentiment co-exists with, indeed presupposes, that there is something special about his relation to this happening, something which cannot merely be eliminated by the consideration that it was not his fault" (1976, p. 124). Others trying to push the driver away from her feelings is therefore not a sign of the irrationality of agent-regret, but an indicator of the delicate balance that has to be found in such situations between emphasizing the negative effects that one's action had on others, without forgetting the lack of control that one had in bringing these effects about. This latter aspect also indicates that even though the agent might rationally feel implicated in the wrong done it would be, at the same time, inappropriate for others to blame or negatively judge her. The driver was causally implicated in the harm and this causes her to experience agent-regret because of the role that she had in this harm, but this does not give others any reason to evaluate her negatively for that harm. As I will show in chapter six, causal responsibility is not, in and of itself, sufficient for ascribing moral responsibility to an agent.

Contrary to the way that agent-regret has been used in some writings on dirty hands (Bagnoli, 2000) it does not tell us the right story for dirty hands cases. In the case of the hostages (which is different to Williams's cases in a very important sense), you neither simply witness the killing of the other hostage, nor do you kill her because of carelessness, and nor do you just happen to kill her because of unfortunate timing; you are given two options and you knowingly and consciously choose to kill the other hostage. You were faced with a choice between two values of which you had to forgo one, and you actively chose one of them over the other.²² Remember de Wijze's quote with which I started section 4.3. earlier. He states that "to feel mere regret about this state of affairs would fail to do justice to the serious moral violation [...] while to feel remorse would falsely suggest that [the agent] had no moral justification for [their] actions. Agent-regret will not do either since it is not merely the fact of [their] causal role in the event that is problematic" (2004, p. 464). Marcia Baron seems to have a worry similar to de Wijze about agent-regret; she explains that concentrating on agent-regret rather than some form of remorse will enable the agent to see herself as merely causally responsible as opposed to responsible in any more substantial sense. She claims that, "despite what Williams's term would seem to suggest, the person who feels only agent-regret does not, with respect to the situation at hand, really see himself as an agent" (1988, p. 269).

4.3.4. Tragic-Remorse

De Wijze therefore introduces the notion of tragic-remorse²³ to discussions about dirty hands, to account for this concern. According to his definition, (1) tragic-remorse is an appropriate reaction to immoral acts or omissions that were nonetheless justified.²⁴ Given my account of dirty hands developed in chapter two, I will have to add that not just any justified immoral act will do, but that the immoral act must be one that violates one of the agent's core moral commitments. (2) It is a response to an action that the agent committed voluntarily, despite the fact that outside factors meant that it was only done because it was the lesser of two evils. (3) The agent will experience this emotion because she violated a moral value for good moral reasons. (4) It means that the agent will become morally polluted and experience anguish because of her choice, but (5) she would act similarly if the same

²² I will argue in chapter six how an agent can be said to be morally responsible even though they were acting in a situation of lesser evils in which they found themselves through no fault of theirs.

²³ This notion of tragic-remorse is in its essence close to the solution that Marcia Baron offers. She advocates for an emotional experience in which "remorse and agent-regret mutually temper one another" (1988, p. 274). The agent ought to understand her substantial, as opposed to merely causal, role in the events, while acknowledging that her agency was limited due to external factors outside of her control.

²⁴ It is important to note at this point that for the coherence view of rational moral judgement, which argues that there cannot be conflicts of absolute moral values, phrasing the problem along this line runs into the risk of reintroducing into dirty hands the irrationality that they have opposed. For them this condition could be rephrased into: (1*) Tragic-remorse is an appropriate reaction to an action that involves a choice between two pro tanto impermissible actions.

situation was to arise in the future. (6) As a result she does not have to reform the part of her character that made her act as she did. (7) It finally implies repairing the harm and giving a (public) justification for the wrong that one has done. In the following I will further explain and expand on these seven features of tragic-remorse.²⁵

Features (1) – (3) are a restatement of the conditions for something to be a situation of dirty hands. They can be summed up nicely by thinking of the object of tragic-remorse as, as Bagnoli puts it, “a valuable unchosen and not necessarily overriding alternative” (2000, p. 178).²⁶ With the fourth feature de Wijze wants to point us towards the effect that dirty hands have not only on those adversely affected by the choice, but also the effects on the agent herself. In dirty hands situations the action not chosen does not lose its force and still exerts an influence over the agent. This is the moral remainder that attaches to her. Because she has violated an important moral value, this remainder will elicit a negative emotional response. Feature (5) of de Wijze’s account tells us that the agent who experiences tragic-remorse does not reject her action and would act in the same way if a similar situation was to arise in the future. At this point of the account one might object that it seems questionable that we can feel actual remorse without repudiating our acts. I think this worry is based on a conflation of right and wrong, and good and bad, and I’d like briefly to defend de Wijze’s account against it. D. Z. Phillips and H. S. Price reply to the worry that there cannot be remorse without repudiation, that this objection wrongly “identifies good with what ought to be done, and evil with what ought not to be done” (1967, p. 18).²⁷ The objection therefore would seem to deny the possibility that in doing the overall right thing, we could not also do something evil. The situations that are said to require tragic-remorse, however, are specifically characterised by the fact that this is the case; in these situations the lesser evil might be what ought to be done and the very fact that we call it a lesser “evil” should show why the objection fails. If we acknowledge that what we did in the situation was what, overall, ought to have been done, and that it can at the same time include the violation of an important moral value, we can see how tragic-remorse without repudiation is possible. I would therefore like to hold on to de Wijze’s account of feature (5). The justification for feature (6) of his definition is related to that of the preceding feature. Tragic-remorse is not

²⁵ De Wijze also introduces a final feature in which he talks about some of the other emotions the agent might experience; these can be, according to him, guilt and shame, but also pride. I will briefly discuss the emotions that are likely to be present in addition to tragic-remorse later on in this section.

²⁶ While Bagnoli issues this statement about agent-regret and not about tragic-remorse, her version of agent-regret is an amendment of Williams’s account in such a way that it comes quite close to the notion of tragic-remorse. Therefore, I think that her description straightforwardly applies to our concept in question.

²⁷ Phillips and Price make this claim in relation to remorse, rather than tragic-remorse. They do, however, make their argument with the specific situation in mind where “whatever one does someone is going to suffer” (1967, p. 18). Therefore I think that their argument applies to tragic-remorse in the way I have described it, and that their use of the notion of “remorse” was not accurate for the situation they were trying to describe.

linked to moral failure on the part of the agent; after all, they chose the lesser evil in the situation. The emotional response is then not intended to be something like an internal sanction for the agent because of what they have become in committing this action; it is not meant to give them a motivation for changing. I will return in the next section to the specific function that tragic-remorse is intended to perform where I will argue that it constitutes a commitment to the forgone value, contributes to the agent's deliberation, and makes her behaviour intelligible. Feature (7) tells us that in cases where tragic-remorse is appropriate, the agent should seek to make amends to those that are left worse off by her actions. If we would not separate the overall justification for the action in terms of it being the lesser evil, from the fact that it still did involve a violation of an important moral value, we would be unable to account for this. Amelie Rorty argues, as part of her account of the appropriate response to choosing the overall right action out of two evils, that "it is morally and practically important to attend to the mutual dependency of the two to assume a larger responsibility" (1980, p. 496).²⁸ This larger responsibility is the agent's duty to try to compensate or make amends as best as she can. Now one might wonder whether this is not putting too much pressure on an agent who is already acting under morally difficult circumstances. My intuition here is that it is hard to imagine that a morally good agent, who takes the harm that her action has done seriously, would stop there and would not wish to support in any way those that have been left off worse because of her. I will not take this question up further, though, because for the purposes of this thesis I have bracketed the question of what the agent and others ought to do in the wake of a dirty hands decision.

I think tragic-remorse defined in this way is the best way to think of the emotional response that appropriately reflects the moral choice situation underlying every dirty-handed decision. Whenever an agent is confronted with a dirty hands situation it will be appropriate for her to experience tragic-remorse. As mentioned earlier, while tragic-remorse is the most appropriate response to the particular conflict underlying all dirty hands choices, other features of a particular dirty hands scenario may also give rise to additional emotional responses.

Take the following example: Agamemnon is commander of the Greek forces on a mission to Troy that was ordered by Zeus. As such, under the prevailing Greek moral and religious norms, Agamemnon is under a divine obligation to fulfil the quest and do everything in his

²⁸ Rorty says this about agent-regret rather than about tragic-remorse. Her account of agent-regret, however, seems to conflate features of these two notions. This particular feature of assuming responsibility is better suited to the definition of tragic-remorse than to that of agent-regret, as the latter only requires a causal connection between the agent's action and the outcome.

power to protect the cause and his men. Because of a past misdeed, Artemis wants to punish Agamemnon and she conjures up weather that prevents Agamemnon and his crew from making their journey home; if nothing changes this would ultimately prove deadly to them. Now Artemis offers Agamemnon a deal; she will ensure that the ship can continue its journey, if Agamemnon sacrifices his daughter Iphigenia. He is faced with the decision between both letting his men die and failing in his duty to both his country and to Zeus himself, and killing his own daughter. He finally decides to sacrifice Iphigenia, which the chorus of the play accepts as the all-things-considered preferable choice. He is, however, criticised for his lack of emotional response in the wake of his deed. Agamemnon is not subject to any form of negative emotional response that would indicate an understanding of the morally blameworthy act he had to perform in doing the lesser evil. Instead, when he decided that killing his daughter was the lesser of two evils, he wholeheartedly embraced that option as the right thing to do simpliciter. Next to his lack of tragic-remorse, which would have constituted the necessary acknowledgement of the tragic choice that he had to make, there are further emotions that we might be missing from him given the particularities of this case. We would probably expect sadness about missing his daughter, a longing for spending time with her again, anger at Artemis for pushing him towards this action, pride at having chosen the overall lesser evil in a difficult situation, and many more.²⁹ The only emotion that we might be able to attribute to him is contentment for having chosen the lesser of two evils. What this example goes to show is that tragic-remorse will seldom be a solitary emotional response but will be connected to, and potentially confounded, by a variety of other emotions.

After having given an indication for why it is plausible to see certain emotions as rational, and after having argued for tragic-remorse as the most fitting emotional response to the conflict inherent in dirty hands cases, it now remains to be seen why the experience of this emotion should be so important in dirty hands scenarios.

4.4. The Function of Emotions in Dirty Hands

In section 4.2. I argued that it would not be irrational to hold two conflicting emotions in response to a situation such as, for example, my friend being promoted rather than me. Now imagine a situation in which, rather than having two opposing emotions, we are faced with a contrary judgement and emotion. In a dirty hands situation we are said to find ourselves in a

²⁹ I think the fact that we would expect him to experience several of these emotions is another reason that speaks in favour of using a perceptualist over a cognitivist account to explain the rationality and appropriateness of emotions. Because these emotions only have to be an appropriate reaction to a partial feature of the situation, instead of being a full-blown judgement of the situation, the emotional responses can be more varied and nuanced.

situation with feelings of tragic-remorse while holding the judgement that we did what was right overall. Would it not be more rational to resolve this conflict? In the following I will argue that this is not the case because the conflicting emotion fulfils three important moral functions for the agent. It shows a commitment to the forgone value, it makes a contribution to her practical deliberations, and makes her behaviour intelligible to others.

4.4.1. Commitment to the Forgone Value

The first function lies in the way in which this emotion highlights the agent's commitment to the forgone value, and thereby adds a richness to our moral understanding of a dirty hands situation that would be lost if we were to look at it only through the lens of all-things-considered judgements. Drawing from Greenspan the insight that only parts of a dirty hands situation have to support the agent's reasons for experiencing a particular emotion, feeling tragic-remorse ensures that the value that had to be forgone is not forgotten. When an agent is faced with a situation of moral conflict, she inevitably will have to come to a decision on which action to take, which implies having to make an all-things-considered judgement of what the lesser evil in the scenario will be; but, crucially, the story does not end here. We will experience a response of tragic-remorse if the value that was lost out on is given due consideration. A lack of this emotion would be a sign that the agent did not fully understand the situation at hand. Even if the agent did appreciate the gravity of the situation, a lack of tragic-remorse would make it too easy for the agent to forget this in hindsight. Experiencing tragic-remorse reminds us of the different moral requirements that were at stake.

According to this function of tragic-remorse, the agent's emotional response in dirty hands scenarios is a vital component that is necessary to ensure that the situation can be comprehended in its full complexity. For this to be the case the agent will have to experience tragic-remorse after the dirty-handed act. It then presents an affirmation of the forgone moral value and a sign of respect for those that have been left off worse by the agent's dirty hands. As such it is not merely an instrumental but an inherent part of being a moral agent in a dirty hands scenario. Tragic-remorse, in this sense, is not merely a useful heuristic that makes us understand better what was at stake; on the contrary, this emotion becomes a necessary result of having fully comprehended the value that one had to forgo. When someone does not experience tragic-remorse after dirtying their hands, this is a clear sign that they have not apprehended the dirty hands situation in its full complexity, i.e. that when a moral value is outweighed this does not mean that it vanished; after all it still stands and exerts an influence over the agent.

4.4.2. Contribution to Reasoning and Deliberation

The second function of tragic-remorse lies in the contribution that this emotion makes to practical reasoning and deliberation. In section 4.2. I have already touched on this when talking about Peter Goldie's account of emotions. Goldie argued that negative emotions play a crucial role in our moral education by encouraging counterfactual and hypothetical deliberation about how things might have been had we acted differently. Carla Bagnoli takes a step forward from this claim and argues that "by calling attention to the alternatives the agent did not have, the agent may be pushing the boundaries of what she thinks possible for her to do. [...] Counterfactual reasoning is a way of questioning the ineluctability and necessity of some of our deliberative constraints" (2000, p. 180). When an agent is faced with what they think is a dirty hands scenario the prospect of the emotional burden of getting one's hands dirty ensures that the agent will search for alternative and morally unobjectionable courses of action. Bagnoli highlights that "the valuable alternatives are not merely descriptive features of the context of choice, but the outcome of the agent's deliberation" (2000, p. 181). While the agent might think that she only has two options available to her, in reality she will most likely already have dismissed a variety of other courses of action as unviable. We want to ensure that dirty hands reasoning does not supply agents with an excuse to act in morally objectionable ways by wrongly claiming that they had no other choice because they were faced with a dirty hands scenario. Tragic-remorse is a considerable burden for the agent to carry, so trying to avoid it can ensure that the agent considers other courses of action which she otherwise may have left unexplored. Tragic-remorse has the instrumental function of aiding the agent in her practical deliberation.

For tragic-remorse to fulfil this function the agent has to recall past or imagine future feelings of tragic-remorse before and during her deliberation. Additionally, I would like to argue that experiencing this emotion for this purpose is merely instrumental, as opposed to inherent, to being a moral agent in a situation of dirty hands. It provides the agent with a heuristic for becoming a better moral agent. An ideal moral agent might not require this help to ensure that they fix the parameters of their choice correctly, but given that none of us are such ideal moral agents, tragic-remorse is a useful device to ensure that we deliberate in the right way about the options available to us.

4.4.3. Making Behaviour Intelligible

The third sense, in which tragic-remorse is an essential contribution to dirty hands scenarios, is the way in which it makes the agent's behaviour intelligible. Remember that I have defined tragic-remorse in such a way that does not require the repudiation of the dirty-handed action

or the part of one's character that led to that decision. I have also briefly suggested that tragic-remorse implies that we ought to make compensation or issue an apology to those that have been adversely affected by our dirty hands. Without the notion of tragic-remorse it seems hardly intelligible why we should be making amends when we have done what was an overall justified action. This idea can be found in Bernard Williams's account of the importance of emotions when he argues that "in some cases, the relevant unity in a man's behaviour, the pattern into which his judgements and actions together fit, must be understood in terms of an emotional structure underlying them" (1999, p. 222).

To fulfil this function the agent ought to experience tragic-remorse after having dirtied her hands. This will help her understand what is morally required in the aftermath of a dirty-handed action. Like the second function of supporting the right kind of deliberation, the function of making behaviour intelligible is instrumental to good moral agency. As a heuristic it encourages the agent to understand better the ways in which an ideal moral agent ought to behave in the wake of dirtying her hands.

Now one might worry that giving such a central role to an emotion like tragic-remorse comes with certain dangers. It could be used in an egocentric way to manipulate others, for example, in order to gain attention or sympathy. Alternatively, the experience of tragic-remorse could be morally debilitating if the agent is given the impression that she cannot do the right thing whatever she does, even if she does what she ought to do. When what at the beginning could be called tragic-remorse is turned into a tool to manipulate others it is merely a sham rather than a genuine reaction to the way in which our actions have left others worse off. The case of moral debilitation is more difficult and this is a serious bullet my account will have to bite; but in these cases I think that we can dispel the worry, at least partially, by arguing that tragic-remorse nonetheless remains morally important; as Amelie Rorty puts it, "properly focused, [it] can conduce to agent responsibility, sensitising a person to preventive and remedial measures [...] and it is important to be aware of the harmful and undesirable features of desirable actions" (Rorty, 1980, p. 501).

What I have tried to show above is that one of the functions of experiencing tragic-remorse in situations of dirty hands is an inherent feature of being a good moral agent. Furthermore, given that none of us are ideal moral agents, it also provides us with a further two functions that are instrumental to moral agency in dirty hands scenarios. What we can conclude from this is that if an agent does not experience tragic-remorse after dirtying her hands, this is an indication that she has not fully comprehended what was at stake and that her choice was at best not fully informed, and at worst made for the wrong reasons.

4.5. Conclusion

Dirty hands theory takes recourse to the importance of emotions in a variety of ways. It relies on the assumption that our emotions are rational reactions to the features of choice situations that we are faced with such that our emotional responses can tell us something about our moral reality. The fact that agents actually do feel a certain negative emotional response in supposed dirty hands situations therefore gives credence to the way in which dirty hands theorists make sense of these choice scenarios. As a result, there has been debate about what the most appropriate emotional response is to feel in dirty hands situations. Finally, dirty hands theorists claim that the agent's emotional response fulfils a variety of important functions in the agent's deliberation and will affect the way in which we assess her character. In response to these claims I first set out in this chapter to show why emotions can indeed be rational and come with a set of conditions that explain why an emotional response is appropriate or not in a given situation. I supported the idea that emotions can be rational and can point us toward some of the features of our moral reality. I then argued that the emotional response most appropriate to the conflict inherent in dirty hands scenarios is tragic-remorse. Experiencing tragic-remorse is important because it shows a commitment to the forgone value, contributes to the agent deliberating in the right way, and ultimately can make her behaviour intelligible to third parties.

In the previous three chapters I have developed an account of dirty hands that understands them as a conflict between plural values which attacks some of our core commitments. This results in a moral remainder which attaches to the agent and shows itself in an experience of tragic-remorse. Once an agent is confronted with a dirty hands scenario, it is too late to keep her hands clean in any way. Her action will be dirty no matter what she does, and this points us toward the sometimes tragic nature of moral action. In the next part of my thesis I want to understand whether, and if so how, dirty hands reasoning can be applied to democratic politics and what results this has for both political actors as well as citizens.

PART II: Democratic Dirty Hands

5. In Defence of Democratic Dirty Hands

5.1. Introduction

Can politicians lying, deceiving, or even ordering the torture or killing of another human being be compatible with democratic politics? Advocates of dirty hands have tried to show that, in certain circumstances, such actions may present the lesser of two evils. As such, these actions can be justified, even if they nonetheless remain wrong. David Shugarman (2000) and Maureen Ramsay (2000a), however, have argued that there is no such thing as genuinely democratic dirty hands. Dirty-handed means are incompatible with the democratic ends supposedly used to justify them and the use of dirty hands is a sign that political action is no longer democratic. The aim of this chapter is to defend the concept of democratic dirty hands.³⁰ I will begin by outlining the background assumptions that these critics make about the nature of both democracy and dirty hands. Next, I will extract three arguments for the claim that dirty hands have no place in democratic politics. The first argues that it is contradictory, in principle, to use undemocratic means to pursue democratic ends. The second claims that using dirty-handed means, in practice, will undermine democracy more than they promote it and as such cannot be justified. The final criticism states, more generally, that dirty hands are a sign that politics is no longer meeting the criteria necessary to be called democratic. The chapter goes on to argue that the rejections of the notion of democratic dirty hands are based on some fundamental misunderstandings of the nature of dirty hands and democratic politics.

Before doing so, it will be useful to clarify exactly what criticism of dirty hands in democracies I am concerned with in this chapter. I want to distinguish between two worries; on the one hand what I call the “exegetical worry” and on the other what I call the “substantive worry”. The aim of this chapter is to refute the latter. The exegetical worry holds that if dirty hands are not understood properly by philosophers, politicians, and citizens, then dirty hands talk will have a corrupting effect on democratic practices. Some ways of talking about dirty hands need to be urgently revisited as a result in order to safeguard democratic politics. While this worry is not opposed to the idea of dirty hands in principle, it argues that our current understanding of the phenomenon in the literature prevents it from being democratic. Such

³⁰ Throughout this thesis I will be adhering to the terminology of “democratic dirty hands” that is most commonly found in the literature. Generally speaking, having democratic dirty hands can be understood as a short hand for getting your hands dirty in a way that is permissible in a democracy. We might think, however, that these two terms are not entirely identical. Take the example of stuffing ballot boxes in order to prevent a future dictator coming to power. While it may be permissible in certain circumstances to stuff said ballot boxes in a democracy we might think that this does not make such an action democratic. For the purposes of this thesis I will put this complication aside and simply use the term “democratic dirty hands”.

an argument can be found in S.L. Sutherland's (1995) work on the subject. Sutherland does not deny the possibility that sometimes politicians in democracies will have to get their hands dirty, it is just that dirty hands as currently understood in the literature and as used by politicians in practice will not be democratic. While this is not entirely clear in her writing, she appears to take the stance that, if the conduct appropriate in dirty hands situations is correctly understood as requiring politicians to be ultimately accountable to the people through formal retrospective processes, it can be squared with democratic values. As she puts it, "while it may be necessary to bypass deliberative politics in emergencies, in principle, such substantial debates as may have been avoided in the decision-making phases, with justification or not, can still be undertaken after the event" (1995, p. 504). Dirty hands could be made democratic if they honour the retrospective phase of deliberation and justice. This criticism is different from the substantive worry that I want to consider in this chapter, though. I am concerned with the more serious criticism that dirty hands, by their very nature, could never be compatible with democratic politics. While this worry does not deny the existence and necessity of dirty hands more generally, it denies the existence of genuine democratic dirty hands. This criticism can be found in David Shugarman's (2000) and Maureen Ramsay's (2000a) discussion of the topic in which they appear to take a stricter stance than Sutherland.³¹ I will respond to these two critics and argue that, in fact, there can be genuine democratic dirty hands.

5.2. Background Assumptions

In order to understand why Shugarman and Ramsay think that dirty hands and democracy are incompatible, it will be important to understand some of the background assumptions about both democracy and dirty hands on which their position relies.

5.2.1. Democracy

Shugarman states in a footnote that he is particularly influenced by John Dewey's conception of a participatory democracy that, according to Shugarman, shows "persuasive arguments that democracy is much more than a formal method for choosing or authorizing governments, that it requires effective participation by the populace in agenda-setting and decision-making and cannot be squared with elite rule in either political or economic organizations" (2000, p. 247). Dewey argues that the underlying ethos of democracy "is that all those who are affected by social institutions must have a share in producing and managing

³¹ This interpretation differs from de Wijze's (2018, p. 146) account of Shugarman. He argues that Shugarman takes the position that I have ascribed to Sutherland. He overlooks Shugarman's stricter stance on the opposition of dirty hands, however they may be conceived of, and the fundamental democratic values they override.

them” (1987, p. 218). The aim of democracy is twofold: to produce the full development of individuals as well as overall societal wellbeing. For democracy to achieve these aims it has to be, in Dewey’s view, a form of communal exercise. Knowledge and progress are generated when people pool together their intelligence and become habituated in the communal use of their capacities. In the context of democracy this means that popular participation has to extend beyond merely periodically electing officials who then take decisions for us in the interim. The people have to be included through discussion and consultation in the decisions that affect them. This is also necessitated by Dewey’s mistrust of elites and their ability to make decisions for us and in our best interest. Ultimately, these procedural requirements stem from Dewey’s focus on the equality and liberty of citizens as fundamental democratic values. “All individuals are entitled to equality of treatment by law and in its administration”, “each one is equally an individual and entitled to equal opportunity of development of his own capacities”, and “each has needs of his own, as significant to him as those of others are to them” (1987, pp. 219-220). This goes hand in hand with his emphasis on the individuality of each citizen and the need to secure this through ensuring their freedom, understood as “freedom of mind and of whatever degree of freedom of action and experience is necessary to produce freedom of intelligence” (1987, p. 220). In order to secure the ability to develop their individuality and ensure societal well-being, citizens have to become actively involved in the production and management of decisions that directly affect them. Those that represent us cannot be entrusted with the task of generating the knowledge and progress necessary to ensure these aims without the help of citizens. Democracy, therefore, requires a habit of active participation by the public. Anything that undermines the public ability to participate in frequent discussion of governmental policies and the political agenda itself would therefore constitute a problem for a secure and well-functioning democracy.

In contrast, Ramsay is less clear about the overall view of democracy she subscribes to. She does, however, identify four core features of a well-functioning democracy: consent, participation, representation, and accountability (2000a, p. 36). We can assume that for her, at a minimum, democracy requires the popular consent of the people expressed through their participation in elections to select their representatives who will be ultimately accountable to the people. In particular, she goes on to highlight the importance of free expression and discussion of ideas in a democracy based on John Stuart Mill’s argument for the importance of free speech. Mill provides us with three points in favour of freedom of speech. Firstly, we should encourage open and frank discussion because our ideas may be wrong. For him, “all silencing is an assumption of infallibility” (2006, p. 24). Secondly, we need to listen to the views of others, because it does not matter how true our own opinion may be, “if it is not

fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth” (2006, p. 42). We will forget the meaning of the view in consideration and as a result lose out on the full complexity of its truth. Lastly, freedom of expression is of utmost importance because any single view is unlikely to contain all of the truth; instead, we are most likely to encounter cases in which “the conflicting doctrines, instead of being one true and the other false, share the truth between them” (2006, p. 53). One of the results of Mill’s discussion of the fallibility of our views is that he wants to ensure that individuals are given equal chances to pursue their individuality in matters that do not directly harm others; “as it is useful that while mankind are imperfect there should be different opinions, so is it that there should be different experiments of living” (2006, p. 65). Mill emphasises the importance of an equal right to the liberty of our thoughts and ideas, as well as tastes and lifestyles.

Ramsay applies Mill’s arguments to the democratic context by claiming that “according to Mill, the silencing of discussion and the suppression of ideas assumes the infallibility of government decisions. Different ideas must be openly debated and exposed to contradiction and refutation, rather than suppressed” (2000a, p. 36). Her emphasis is on the fact that, ultimately, governmental powers need to be constrained by checks and balances which are achieved through transparency and accountability to the public. While she does not do so herself, we could add to this the important role that the values of equality and liberty play in democratic politics. After all, it is these values that open and free discussion are thought to enable and further according to Mill. Actions that violate these values and processes would therefore constitute a problem for good democratic governance.

5.2.2 Dirty Hands

When these pictures of democratic politics are combined with the critics’ particular understanding of dirty hands it will become clear why they oppose the concept of democratic dirty hands. I contend that the critics take their understanding of dirty hands from a particular reading of both Michael Walzer’s paper “Political Action: The Problem of Dirty Hands” (1973) and Machiavelli’s (2003a; 2003b) political thought to which the wider dirty hands debate is indebted.³²

As mentioned in chapter two, Walzer begins by characterising the conflict inherent in dirty hands as a clash between deontological and consequentialist morality. He says that “a

³² Ramsay’s and Shugarman’s accounts could already be objected to on the basis of some of the particularities of their understanding of dirty hands. For a criticism of their accounts along these lines see: (de Wijze, 2018). What I want to point out here, however, is that the reason for their objection to the idea of democratic dirty hands runs deeper and that it will be necessary to bring to light these more fundamental concerns in order to answer fully their criticism of democratic dirty hands.

particular act of government [...] may be exactly the right thing to do in utilitarian terms and yet leave the man who does it guilty of a moral wrong” (1973, p. 161). While everyday political decisions ought to be made adhering to deontological principles and rules, in extreme situations and emergencies, he argues, politicians ought to use consequentialist calculations. Ultimately the problem arises because a leader’s deontological commitments clash with the potentially severe consequences of sticking by them. Walzer justifies his choice to single out political actors because “the dilemma of dirty hands is a central feature of political life, [...] [which] arises not merely as an occasional crisis in the career of this or that unlucky politician but systematically and frequently” (1973, p. 162). To illustrate the problem he introduces the hypothetical ticking bomb scenario in which a political leader is asked to authorise the torture of a rebel leader in custody who may know the location of hidden bombs (1973, p. 167). In such a case, he argues, we want a politician to order the torture. Walzer thinks that a good political leader is one who holds on to her deontological commitments but knows when to break them and is willing to do so in the name of her citizens. Such a leader, he argues, will then rightly feel guilty for having infringed deontological constraints and will seek punishment for it. He draws an analogy to Camus’s play “The Just” in which revolutionaries willingly accept the price they have to pay for having become assassins. Their execution “is not so much punishment as self-punishment and expiation” (Walzer, 1973, p. 178). The politician, induced by her guilt, will ensure that she undergoes the appropriate form of punishment.

This characterization of dirty hands is taken for granted and is then, in the eyes of the critics of democratic dirty hands, given an inherently anti-democratic flavour by tracing this tradition back to Machiavelli’s treatment of politics.³³ Ramsay begins by pointing out that Machiavelli’s theory has been associated with “the justification of all political means, even the most unscrupulous, on grounds of reasons of state and the use of fraud, force, coercion and deceit in order to achieve political ends” (2003a, p. 5). Her reading of his politics becomes most obvious, however, in her paper “Machiavelli’s Political Philosophy in *The Prince*” (2000b). She lays out Machiavelli’s assumptions about human nature and the resulting state of politics. According to her, Machiavelli views “human beings as natural egoists with a lust for domination and power” which “led him to see history as an arena of conflict involving deceit, treachery, and violence” (2003b, p. 37). As a result order and security

³³ In the following I am going to concentrate on Ramsay’s reading of Machiavelli because it is more detailed and nuanced. Shugarman provides a rather crude overview that focusses on the single political leader and his need to engage primarily in military action and war, while overlooking Machiavelli’s explicit advice to princes that they are reliant on the goodwill of other political actors and the people and that his conduct has to be tempered by conventional morality as much as possible (2003a, pp. 53-54).

become important ends for all human beings because they are required in order to achieve and promote well-being. It is the ruler's task then to pursue these values, but the problem is that in doing so he will have to learn how not to be good. This is because "no ruler can possess or fully practice virtues because the reality of the human condition dictates behaviour which by normal standards would be condemned as immoral" (2000b, p. 34). She ascribes to Machiavelli four distinct, though related, statements. Firstly, the use of immoral means can sometimes be justified by the good ends in pursuit of which they are used. Secondly, not using such immoral means implicates the prince in the resulting bad consequences. Thirdly, the prince therefore has to understand that he cannot adhere to common moral standards in situations in which the common good or the state itself are at stake. Lastly, "sometimes, in employing immoral means, the Prince will be closer to displaying the virtues of conventional morality than those who, by embodying these virtues, achieve the opposite" (2000b, p. 35). According to Ramsay, Machiavelli does not take the use of immoral means lightly. A prince ought to adhere to conventional morality as far as possible, and should the constraints of human nature and politics make the use of measures that contravene it necessary, the good results do not negate the fact that the means employed to pursue them were immoral themselves. In order for a leader to act well he ought to cultivate Machiavellian virtú. She argues that it is not straightforward to articulate what is entailed by virtú, but that it "embodies those qualities, capacities and dispositions necessary for the Prince to establish, restore, or maintain the stability of the state, to win honour and glory for himself and to overcome the blows of fortune" (2000b, p. 36).

Ramsay argues that the problem with relying on a Machiavellian understanding of politics is that he takes expediency to be a core feature of political action because the "need for immoral action was for him part of the human condition" (2000a, p. 9). He presupposes a political situation in which an absence of checks and balances on political leaders leads to a constant struggle for power. This, she thinks, is inappropriate for today's politics. After all, according to Ramsay, "moral dilemmas where politicians must choose a lesser evil in order to avoid political catastrophe are not a standard ingredient of political life", "the costs of moral refusal are not frequently national ruin" (2000a, pp. 38-39) or the like, and we ought not to rely on Machiavelli's negative view of human nature. He cannot make sense of modern democracies, and letting his vision inform political action today makes the dirty hands debate anti-democratic in nature.

Based on their view of democratic politics as well as their reading of Walzer's article and the broadly Machiavellian tradition they see reflected in it, the critics of dirty hands in democracies have articulated three different problems. The first criticism argues that it is

contradictory, in principle, to use undemocratic means in the name of democratic ends. Shugarman begins by embracing a view that establishes a close connection between means and ends. He then shows that dirty hands are undemocratic because they undermine certain values and as such are illegitimate means to further those very values. As a result there cannot be genuine democratic dirty hands. The second criticism argues that, in practice, we cannot find a justification for dirty hands in democracies. Ramsay starts by setting out dirty hands as a clash between consequentialist and deontological morality. She continues that it is not possible, however, to make a successful consequentialist case for dirty hands in democratic politics because dirty-handed means in practice would always undermine democracy. There is then no such thing as democratic dirty hands. Thirdly, Shugarman and Ramsay also criticise the idea of democratic dirty hands on a wider level. What, after all, does it say about the state of politics that politicians feel the need to make use of dirty-handed means? There are certain conditions that a state has to fulfil in order to be called democratic, and when politicians have to get their hands dirty, this shows us that these conditions are no longer being met. Where justified dirty hands begin, democracy has ended. I will argue in the following that these critics have misread the nature of dirty hands and democratic politics and that, if properly conceived, the concept of democratic dirty hands does not fall prey to any of their objections.

Before discussing each of these objections in turn it is important to note that, if we subscribe to a symmetrical reading of dirty hands as I have advocated in chapter three, none of the following arguments can get off the ground. If once confronted with a dirty hands situation it is impossible for us to keep our hands clean, the idea that a politician could somehow avoid getting her hands dirty in democratic politics makes no sense. It is too late for that and democratic politicians will have to get their hands dirty either way. In the following I will show that, even if we do not accept the symmetry view and think that somehow an agent could choose to keep her hands clean in such a scenario, the arguments brought forward by the critics of democratic dirty hands do not hold up. Additionally, I think that in the process of refuting these arguments we can clarify some of the underlying misconceptions about the nature of both dirty hands and democracy that are implicit in some discussions of dirty hands in democratic politics.

5.3. It's Contradictory in Principle to Use Undemocratic Means for Democratic Ends

The first criticism of democratic dirty hands is conceptual in nature. Shugarman argues against the Machiavellian idea that the ends can justify any means and emphasises the

connection between ends and the means that can legitimately be used to pursue them. What he wants to show is that there is a contradiction in arguing that we could use undemocratic means to pursue democratic ends because “the proposition that it is democratic for a democracy to disenfranchise itself is logically [...] incoherent” (2000, p. 240). In particular, he states that he supports Martin Luther King’s position that “the means we use must be as pure as the ends we see [and] that it is wrong to use immoral means to attain moral ends” (King, cited in (2000, p. 232)). When discussing Camus, Shugarman ascribes to him the related view that “if the means necessary to a particular end are shameful, then we ought to choose a different end” (2000, p. 238). Our means ought to be as pure as our ends, and should we find that the end we desire can only be achieved through dubious means then we ought to reconsider the end itself. While Shugarman himself does not provide us with a justification for why we ought to accept such a view of the connection between means and ends, we can find a slightly more detailed articulation of this position in the writings of King. King argues that “means and ends must cohere because the end is pre-existent in the means and ultimately destructive means cannot bring about constructive ends” (1986, p. 255). He explains this relationship between means and ends further by comparing the means to the seed and the ends to a tree; you cannot grow a good tree from a bad seed because the means determine what the end can hope to be. King goes on to argue that the means represent “the end in process” (1986, p. 254); whatever end one wishes to reach has to be engendered by the means one uses. Immoral means inevitably taint the end that they are said to pursue and that are the supposed grounds for their legitimacy. Once, however, the end is no longer clean it cannot be used to legitimise the means anymore. Using immoral means, therefore, undercuts their own basis for legitimacy. Hence, there is a contradiction in trying to justify using means that are antithetical to the end.

While Shugarman is not explicit about the reasons he has for supporting the view that there is a contradiction in justifying using undemocratic means in pursuit of democratic ends, here is what he might say. There is a conceptual connection between ends and the legitimacy of the means used to pursue them. As soon as we make use of dirty means, we also inevitably undermine the democratic end that was supposed to legitimate their use. The grounds for legitimacy vanish because the dirty means inevitably undermine the supposedly clean democratic result. Undemocratic means can therefore not be justifiably used in the name of democratic ends.

What exactly are the dirty-handed means and democratic ends that Shugarman is concerned with and how does he perceive them to be incompatible? Based on his understanding of democracy as participatory, he is particularly concerned with preserving citizens’ ability to

get involved in the democratic process through consultation and discussion. The use of dirty-handed means is undemocratic because they turn the citizenry into a passive collection of individuals and the politician becomes a heroic leader who has to make choices for them without the need for her citizens' knowledge, consent, or judgement. As he puts it, "the picture painted of the dirty-hands leader is a composite of wily negotiator, clever manipulator, no-nonsense general, and 'father-knows-best' moral actor. It is a highly romanticized view of leadership and a dangerous one" (2000, pp. 242-243). This picture is aggravated by the supposed feature of dirty hands wherein a politician facing such a conflict would only be accountable to herself. Shugarman objects to allowing politicians to be judges in their own cases, because "the use of power without checks and balances leads to its abuse" (2000, p. 243).³⁴ Grounded in Dewey's distrust of the ability of political elites to make decisions that are in the best interest of citizens, and in his assertion that active political participation is necessary to ensure both equality and liberty, Shugarman opposes dirty hands in democracies because they undermine the relationship between leaders and led. Such actions are undemocratic because they undermine the processes that are supposed to secure the political equality and liberty of citizens, and, based on his earlier endorsement of King and Camus, such undemocratic measures cannot be justifiably employed to pursue democratic values. Dirty hands, he argues, are then not legitimate means to pursue democratic ends.

We can object to Shugarman's argument by calling into doubt the claim that it is always illegitimate to use undemocratic means for democratic ends. We could do so in either of two ways. Firstly, we could try to show that dirty-handed means in fact do not always tarnish the democratic ends. This, however, I do not take to be a fruitful strategy. I agree that when politicians dirty their hands, democratic values will have always been promoted at a cost (e.g. lies or violence) that we should not try to explain away. An important part of the dirty hands language is, after all, the acknowledgement of moral remainders that result when values are violated. The second strategy for driving a wedge between the connection of means and ends that he defends is to argue that sometimes using undemocratic means is more in line with democratic values than refraining from employing them. I want to adopt this strategy by

³⁴ The assumption that dirty hands prevent democratic accountability can be challenged. Take the example of President Carter and the Iranian Hostage Crisis. In an attempt to rescue the hostages he ordered a secret military mission – it failed, and cost the lives of eight citizens. The secrecy did not prevent the public from holding Carter accountable, though. Within a month's time a governmental enquiry into the failure of the mission was ordered. It concluded by identifying several major issues with the way in which the mission had been conducted. Additionally, the failure of this rescue attempt also had a negative impact on Carter's popularity and contributed to his defeat in the next presidential election. For a more in-depth discussion about how secrecy, accountability, and citizen participation could be squared with one another in a democracy see Thompson (1987, pp. 11-39). I will introduce his argument in more detail in chapter seven.

suggesting that using such means could simply constitute a lesser evil and as such could be legitimate in some circumstances. An example will be helpful to illustrate my reasoning.

In the film *Lincoln*, President Lincoln is portrayed in his struggle to abolish slavery.³⁵ Toward the end of the civil war he is concerned that he will have to pass the Thirteenth Amendment before the Confederate states can defeat it when the union is restored. In order for the amendment to pass, though, several factions with varying interests would have to be persuaded. The radical Republicans who backed Lincoln's push for the amendment did so because they prioritised ending slavery over ending the war. Other factions of the Republicans, especially those in the states on the border who were most immediately affected by the violent conflict, would only vote for the Amendment if doing so would not prolong the war. In order to secure the vote of these other factions of his party Lincoln therefore would have to engage in negotiations with the Southern States, something that the more radical Republicans would strictly oppose. He therefore had to lie and deceive to keep faith with the various demands of the different factions. Many of the Democrats had meanwhile lost their seats in the recent election (becoming lame ducks) and to ensure their vote in favour of the abolition of slavery Lincoln had to incentivise them by contacting them about the possibility of jobs in the new government. His duplicitous means in the end paid off and the Amendment passed by the smallest of margins. Around two months later the Confederate States surrendered.

Several of the measures taken by Lincoln seem morally questionable. He had to deceive the radical parts of his party about the fact that he offered to negotiate with the Confederate States. At the same time he had to deceive the rest of the Republicans that his main priority was to end the Civil War, even if that meant leaving slavery intact. He additionally had to manipulate the Confederacy into thinking that he was open to peace negotiations. Lincoln then also provided "incentives" to some Democrats for their votes. He used secrecy, lies, and deception to fool several factions within the government. In doing so, he did not treat his fellow politicians as equals and undermined their liberty to make their own informed choices. While this therefore violated the core democratic values that govern democratic political action, the reason Lincoln used it was to ensure the abolition of slavery. Surely that is a more than worthwhile endeavour, and most importantly for the criticism we are considering, it promotes core democratic ideals of equality and liberty. In a situation like this there is a genuine case to be made for saying that using dirty-handed means such as lies, secrecy, and deception have promoted democratic ideals such as equality and liberty more

³⁵ I will not discuss the historical accuracy of the film, but use the events as depicted in the film as my case at hand.

than they have undermined them.³⁶ Engaging in some undemocratic behaviour in such a case will be closer to exemplifying a serious concern for democratic ends than rigidly sticking by the democratic process. Doing something undemocratic can in the end be more in the spirit of democracy. If we were to go along with an argument about the inherent connection between means and ends, democracy after Lincoln's actions would be tarnished. Clearly, however, this is still more democratic than a state in which major parts of the population are enslaved. If Shugarman is right that politicians in a democracy ought not to get their hands dirty, the onus is on him to show why we should prefer the latter state over a democracy brought about through some morally dubious means.³⁷ Sometimes using undemocratic means can be the lesser evil when trying to promote democratic ends. This makes the use of such means legitimate in these cases because they do not undermine the end; on the contrary, they actually promote it. There is therefore no reason to think that politicians cannot have genuine democratic dirty hands.

5.4. Violating Democratic Values can Never be Justified in Practice

In contrast to Shugarman's conceptual criticism, Ramsay is less concerned with whether we can legitimately use immoral and undemocratic means to pursue moral and democratic ends in principle, and more with the empirical claim that we can, in practice, find a justification for dirty hands in democracies. Her answer is that dirty-handed means will always undermine the ends they are supposed to achieve. Her criticism relies on an understanding of dirty hands as originating from a clash between deontological and consequentialist reasoning. She argues that while dirty hands are supposedly justified when consequentialist reasons outweigh deontological constraints, we cannot in fact make a successful consequentialist case for violating fundamental democratic values in any particular case. While she is primarily concerned with cases that involve lies and secrecy, she seems to suggest that her comments are valid for all forms of dirty hands.³⁸

³⁶ There is a slight complication in this example because it is the equality and liberty of the enfranchised that is violated in order to promote the equality and liberty of the disenfranchised. In chapter two I argued, following Hurka (1996, pp. 563-564), that we should not treat these as two separate values but instead as instantiations of the same value (i.e. this person's and that person's equality are instantiations of the overall value of equality). There is then no problem for my argument that this is a case in which a value has been violated in order for that same value to be promoted.

³⁷ Shugarman has a potential reply to this. He can accept my point and say that, while in some circumstances it may be acceptable for a politician to get her hands dirty, this does not mean that she has democratic dirty hands. In fact, as soon as a politician dirties her hands this is a sign that we have stepped outside democratic politics. I will consider this objection later on.

³⁸ At one point she explicitly critiques the dirty hands notion that "the proper ends of politics can only be achieved by lies, deceit, fraud, force and strength" (2000a, p. 38). She thinks that democratic institutions can "undercut and replace arguments for the inevitability and necessity of fraud, force, lies and violence" (2000a, p. 41). Her mention of force, strength and violence in this context can give us reason to think that she wants her argument to apply to cases of dirty hands including cruelty just as much as those including lying and deceit.

When we perform a proper consequentialist calculation, she contends, we will see that there are strong consequentialist reasons against anything that undermines the democratic process itself. She draws an analogy between dirty hands reasoning and the minimal conditions stipulated by just war theory; the justifiability of dirty hands “would depend on the cause or end for which [they were] undertaken, on whether there were other means available, whether the harm caused [...] does not outweigh the good achieved and on whether there is a reasonable chance of success in achieving the end through these means” (2000a, p. 29). None of these conditions, according to her, can be satisfied by dirty hands in democratic politics. With regards to ends, she argues that there is no scholarly consensus on supposed ends such as the national and the public interest and that these therefore cannot be invoked to justify dirty hands. Politicians also face too many barriers such as “distorted judgements, discrimination, ideological bias, error and self-deception” (2000a, p. 35) to make a sound means-end judgement about the justifiability of dirty-handed tactics in a democracy. These barriers will prevent politicians from considering reasonable alternative options. Furthermore, the cost of circumventing the democratic process alone would be enough to outweigh the benefits of any dirty-handed lie, because “they contradict the basic principles of democratic society based on accountability, participation, consent and representation” (2000a, p. 35). Additionally, the repeated use of dirty-handed tactics will erode the integrity of public officials and cause cynicism about and distrust of politicians and democratic politics in general.

Ramsay therefore concludes that if the justifiability of dirty hands is the result of consequentialist reasons prevailing over deontological constraints, then there will not be any justification for dirty hands in democracies at all because the use of dirty-handed means is going to undermine democratic values more than they would further them. In the following I will show that Ramsay’s argument, as presented currently, is beside the point because of a false assumption she makes about the nature of dirty hands. While her underlying worry can be re-stated in terms that are in line with a more accurate understanding of dirty hands, I will show that this version suffers from internal flaws because of which we ought to reject her criticism.

Firstly, as I discussed at the beginning of chapter two, we need to question the major assumption that dirty hands are best described as a clash between deontology and consequentialism. As I have argued previously, this is a mischaracterisation of the phenomenon that could not make sense, for example, of a choice between equality and liberty. Ramsay’s (as well as Shugarman’s) conception of dirty hands as a clash between deontology and consequentialism does not explain the nature of the conflict and wrongly

constrains what can be called an instance of dirty hands. Consider another example in which a politician is faced with the following problem: her country is home to some important ancient places of worship and cultural heritage. Unrelatedly, the politician's secret service has been successful in incarcerating the members of a criminal organisation that has been operating in the country for some time now. The politician now receives a message stating that, unless she immediately agrees to free the prisoners, the criminal organisation will detonate bombs that will destroy these invaluable places of worship and heritage. The politician and her staff believe this threat to be credible. She now has to choose between preserving an important part of her country's culture and upholding the rule of law and not undermining justice.

What is at stake here is a trade-off between plural and competing values, not a clash between deontology and consequentialism. When there are two moral values or more at stake (e.g. cultural heritage and the rule of law) the politician will have to decide which one to prioritise under the circumstance. She might invoke moral theories in her deliberation (e.g. what obligations do I have to my citizens and my country, what action will result in the greatest happiness of the greatest number) but it is not at this stage where the original conflict was generated. She might even come to the conclusion that deontological and consequentialist reasoning are pointing in the same direction in this case (e.g. her primary obligation is to ensure that her nation's heritage is preserved and that ensuring this will also result in the greatest happiness for the greatest number of people) and yet she will feel conflicted about having to violate justice because of it. A deontology/consequentialism definition of dirty hands could not make sense of such a case. Insisting that dirty hands are always a result of a clash between deontology and consequentialism would therefore unduly limit the concept. As argued before, we should instead understand dirty hands as a clash between plural and conflicting values.

Stating that dirty hands in democratic politics cannot be justified because we cannot make a consequentialist case is therefore beside the point. We can, however, re-state Ramsay's underlying worry in terms that are in line with a more accurate understanding of dirty hands. It might be re-framed in the following way: it is never worthwhile to engage in dirty hands because using such means will always be counterproductive and ultimately undermine democratic values more than they promote them.

The overall problem with this argument is that, once we understand dirty hands as a clash between plural and conflicting values, we cannot rule out the existence of cases in which getting one's hands dirty might promote democratic values more than it would undermine

them in practice. Imagine you are in charge of overseeing ballot boxes in the 1932 German elections when you are being approached by an organisation who proposes to stuff said ballot boxes in order to prevent the NSDAP from rising to power. Tampering with ballot boxes is without a doubt a clear violation of one of the most fundamental democratic processes and if this action were to become publicly known, it could seriously erode the public's trust in the democratic system overall. At the same time, however, this would have been the only way to prevent the NSDAP from becoming the strongest power in Parliament which in the end led to dictatorship and the atrocities of WWII. We are then left with a situation in which the only way to prevent your democracy from turning into a dictatorship is to betray the democratic election process. Clearly, the harm done to the democratic process would be outweighed by the benefits derived from using dirty-handed means in this situation. The attack on democratic values can then sometimes be justified as the lesser evil because it promotes democratic values more in the long run. There is therefore no reason to think that politicians could not have genuine democratic dirty hands.

5.5. Dirty Hands are a Sign that Politics is No Longer Democratic

Even if Shugarman and Ramsay were to accept my above criticisms, they have a further worry about the idea of democratic dirty hands. The critics might argue in response to my earlier examples of Lincoln and the abolition of slavery or the hypothetical stuffed ballot boxes in the Weimar Republic that while dirty-handed means may have been justified or legitimate in these circumstances in pursuing democratic ends, they are nonetheless a sign that politics at that point was no longer democratic (or maybe was not democratic in the first place). If politicians are required to circumvent democratic values and processes in order to further democratic ideals, this is a sign that the current state of affairs cannot be democratic. The idea is that where dirty hands begin, democracy ends and therefore politicians cannot have genuine democratic dirty hands.

Shugarman makes this explicit when he states that “dirty hands is an extreme exception to democratic politics rather than a staple of it and resort to such tactics is the result of a failure of politics and a turn to war” (2000, p. 236). For him, the claim “that dirty hands and politics are inextricably linked such that [...] you can't have one without the other” (2000, p. 230) is misguided. He wants to deny that dirty hands can tell us something about the nature of democratic politics. Shugarman compares holding such a view of dirty hands to the notions that hard cases make bad law and not taking the exception to be the rule. While he acknowledges the existence of dirty hands, he argues that we should not make them an integral part of democratic politics. For him this cannot be the case because they undermine

values such as “integrity, trust, accountability, and publicity and as such the democracy/dirty hands connection is only sustainable given a highly truncated, narrow, elitist version of democracy” (2000, p. 244). Instead, when politicians have to dirty their hands, this is a sign that politics is no longer democratic.

Ramsay makes the similar point that dirty-handed means are a sign of non-democratic governance. She claims that “justifications for lies and violence as rational and realistic responses to political problems are less compelling, however, when applied to political contexts which do not conform to the realist model. Notions of practical necessity and *raison d’etat* are inappropriately applied in the context of relations between and within liberal democratic states” (2000a, p. 40). She argues, *pace* Walzer, that dirty hands situations in which “politicians must choose a lesser evil in order to avoid political catastrophe are not a standard ingredient of political life” (2000a, p. 38). The only circumstances under which dirty hands might be justifiable are in a Machiavellian international order, or when individuals within a state are powerless and do not have legitimate democratic channels of dissent available to them, and become one of Camus’s revolutionaries or freedom fighters. In the context of modern democratic regimes, however, the concept is simply not applicable because in such a realm “mutual recognition, legitimation, and common standards should dictate norms of inter-state behaviours and give rise to generalised principles of conduct” such as “interdependence, cooperation, collaboration, reciprocity, and conciliation” (Ramsay, 2000a, p. 40). She supports this point by arguing that the problem with dirty-handed means (in particular those involving secrecy and lies) is that they undermine the ability of the public to consent. After all, “the very distinction between a democratic and a non-democratic government is that in the former politicians rule by the consent of the people” (2000a, p. 36). Again, this suggests that when politicians have to get their hands dirty, this would be a sign of politics no longer being fully democratic. Where dirty hands begin, democracy ends.

The problem with these arguments is that they assume that democracy, based on agreement and consensus, could avoid the kinds of conflict that result in dirty hands problems. Even an ideal democracy, however, could not hope to do so. They overestimate the ability of cooperation and consensus to keep democratic politics clean, while at the same time underestimating the pervasiveness of conflict.

I want to argue that having a picture of democratic politics that is simply cleaned up through consensus and agreement is misguided. One way of showing this can be found in Bellamy’s rejection of the liberal idealist (with this he basically refers to Rawls and post-Rawlsians) idea

that we can somehow eliminate the need for dirty hands by having a clean politics. He argues that “liberal idealists have seen the entrenchment of rights in written constitutions and judicial review by constitutional courts as suitable mechanisms for keeping politics clean. Rights enshrine liberal political principles, while courts offer a suitably depoliticized mechanism for upholding them in an impartial way” (2010, p. 420). While there may be reasonable disagreement about what is in the public good in a given situation, they assume that there can be agreement about what is right. Bellamy, however, suggests that this will not do. He provides the example of free marketeers and social democrats arguing with one another about state involvement in economic matters. It is not just that they disagree about what constitutes economic growth and the economic good, but also that it involves a deeper running disagreement about what is right and how we ought to treat people. The problem with the liberal idealist picture is that “a given conception of political justice does not frame but is at issue in the political debate” (2010, p. 421). This means that reasonable disagreement is not simply at the periphery of politics but that conflict is an integral part even of ideal democracies. Bellamy argues that politics cannot do away with the occasional need for what he calls “massaging” (2010, p. 422) the truth. Politicians have to try and keep faith with a variety of different actors in order to engage in successful political action, and this will sometimes present them with moral conflict. Bellamy argues that a certain degree of “smoke and mirrors is often necessary even when presenting politics that a majority support because [the different parties] value them not for the same reasons but for a variety of different and possibly inconsistent reasons” (2010, p. 423). There arises a “need for democratic politicians to make deals and compromises either to accommodate diverse groups and interests and build coalitions between them, or to square the different and often conflicting moral concerns and considerations present within hard cases and difficult decisions” (2010, p. 412). If we acknowledge the complexity and conflictual nature of democratic politics, then we can see that dirty hands situations may frequently arise even in an ideal democracy. Additionally, being in a democratic country does not protect us from the immoral actions of others which might require politicians to act in a manner that conventional democratic processes cannot accommodate. Even in an ideal democracy a criminal or rogue foreign state could put a politician into a situation in which dirtying her hands may become necessary.

De Wijze also makes this point, drawing on Stuart Hampshire’s claim that “a person of experience comes to expect that her usual choice will be the lesser of two or more evils” (Hampshire, 1991, p. 170). Hampshire thinks that not only is conflict a standard ingredient of both personal and political life, but also that it is not a sign of vice or defect. We simply ought to accept that “as individuals, our lives will turn out in retrospect to be a rough and

running compromise between contrary ambitions, and the institutions that survive in the state have usually been cobbled together in the settlement of some long past conflicts, probably now forgotten” (2000, p. 33); in the end “conflict is perpetual” (2000, p. 48). Following from these insights, for de Wijze, politics is a tragic realm in which sometimes we will be unable to avoid engaging in what we think are immoral actions. According to him, the critics misrepresent democratic politics by claiming that its nature could somehow eliminate the need to engage in such behaviour. As he puts it, “to argue [...] that when facing such situations democratic politicians always have a higher and prior moral duty to not bypass or corrupt the democratic process of deliberation and disclosure, seriously and dangerously misunderstands the nature of politics and the challenges that might unavoidably arise” (2018, p. 137). Such a cleaned-up view of politics paints a picture of democracy in which adhering to democratic processes could never come at the cost of undermining important democratic values. This is a questionable empirical claim. Sometimes, as we have seen, adhering to these processes will actually represent a greater evil. In such situations, politicians may have democratic reasons to behave in undemocratic ways. Denying this possibility is dangerous because it could undermine the pursuit of fundamental democratic values. Politicians, both in ideal and non-ideal democracies, may have genuine democratic dirty hands.

5.6. Conclusion

In this chapter I have defended the possibility of democratic dirty hands. I began by showing, pace Shugarman, that using dirty-handed means to pursue democratic ends does not have to be contradictory in principle. Using dirty-handed means can be in the spirit of the democratic ends that a politician wants to pursue. In such situations the best way, or even the only way, to do justice to democratic ends can be through dirty-handed means. This does not have to corrupt the end in such a way as to remove the grounds for legitimacy from the means. I then showed, pace Ramsay, that there is no reason to think that dirty hands cannot be justified in democracies in practice. I firstly argued that her argument as initially presented is beside the point because her understanding of dirty hands falsely assumes that the conflict arises as a result of a clash of consequentialism and deontology. I argued that dirty hands are, instead, best understood as a clash of plural values in which the politician has to choose the lesser evil. After re-stating her worry I then showed that even this version is open to criticism because sometimes dirty-handed means can promote democratic values more than they undermine them. Lastly, I showed why dirty hands are not a sign that politics more generally is no longer democratic. Even ideal democracies may not be able to eliminate the need for politicians to dirty their hands. There is therefore no reason to think that dirty-handed means

are incompatible with pursuing democratic ends or that dirty hands should be a sign of politics no longer being democratic. Politicians may have genuine democratic dirty hands.

Sometimes, even in democratic politics, politicians will have to get their hands dirty. It is therefore important to understand what this entails for the political actors involved in such dirty-handed decision making. The following chapter will question how the dirt and moral responsibility is shared amongst different political actors who work together as part of the democratic decision-making process.

6. Who is Responsible: Political Actors

6.1. Introduction

So far I have established that it is permissible, and sometimes inevitable, that politicians will dirty their hands in democratic politics. As dirty hands are part and parcel of democratic politics, we are faced with the problem of how to react to those involved. On the one hand, people are left significantly worse off, harmed, or killed. On the other hand, these harms were only committed in order to prevent an even greater evil from occurring. So what are we to do with those with dirty hands? Are they blameworthy or praiseworthy? Should they be punished or rewarded? Indeed who exactly are “they” and on what grounds are they legitimate targets for ascriptions of responsibility in the first place? Once we are clearer on the answer to this latter question, we can move on to discuss questions of blame and punishment or praise and reward. What I therefore propose to do in the rest of this thesis is to provide the conceptual tools to analyse who has dirty hands in democracies and is therefore responsible for the outcomes of such decisions and actions.

There have been some attempts at understanding the responsibility of those involved in dirty-handed decisions in politics (Hollis, 1982; Archard, 2013; de Wijze, 2018) but none of them have presented a theory that will enable us to systematically track the responsibility of political leaders and public officials in dirty hands scenarios. Instead, they have mostly taken for granted that political leaders are responsible and have primarily engaged with the issue of whether citizens can be morally responsible for the dirty hands of their leaders. While this is an important question which I will take up in the next chapter, I first want to concentrate on the responsibility of different political actors.

Understanding the complex roles that different officials play in the decision-making process and their resulting implication in a dirty-handed outcome will be important for two reasons. The first is that it will dismiss the myth of the single-handed dirty actor. As briefly mentioned in the introduction of this thesis, the famous dirty hands examples such as Walzer’s ticking bomb scenario and the way in which the dirty hands literature has been developed more broadly could easily lead one to suppose that dirty hands reasoning relies on a notion of leadership that does not reflect political reality and that such reasoning is therefore beside the point. Sutherland, for example, claims that “the dirty hands dilemma is a circumstance in which a political actor must strive heroically and autonomously to achieve the least-evil outcome” (1995, p. 482). Similarly, Shugarman takes dirty hands to see “politics as very much a realm for the crafty, well-intentioned, ruthless warrior” (2000, p. 231). They repeatedly

allude to the idea of the lone decision-maker or tragic hero that has to make choices of lesser evil without the consultation or even knowledge of others. The idea here seems to be that if dirty hands reasoning requires us to focus on a single actor, then this concept will help us very little in an analysis of democratic political action in which a variety of political actors must work together. When we consider Walzer's account of dirty hands, one can see that this criticism seems to have some initial plausibility. Not only is it relevant to this initial description of dirty hands, but also to the way in which it is still being used in the more recent literature. Consider here Richard Bellamy's paper on dirty hands in politics where he repeatedly talks about the actions of a "democratic prince" (2010, pp. 424, 427). By unpacking the complex web of relations in which political leaders act with others to make decisions, and by understanding how this can affect the moral responsibility of the different actors involved, I will be able to address this misconception about dirty hands reasoning. Some of the actors that could, for example, contribute in one way or another to a given political decision are government ministers, members of parliament, special advisors, or civil servants. The problem of dirty hands does not presuppose a sole leader who acts heroically and in isolation from others; instead it is entirely compatible with complex democratic decision-making.

The second aim of this chapter is to combat a position that could potentially flow from the above misconception of dirty hands reasoning. When we focus solely on the political leader who makes decisions by herself one might follow from this that she alone takes all of the dirt and responsibility as well. Everyone else's hands would then stay clean. On the one hand this position is flawed because moral responsibility simply does not work like that. Neither politicians nor the democratic system have the power to take away the moral responsibility for dirty-handed acts from those who are involved in the political decision-making process. I will show why this is the case in more detail later in this section. On the other hand, such a position could also potentially be dangerous. It would enable public officials and citizens to disassociate themselves from the acts they were in some way or another involved in by providing them with something akin to a moral get-out-of-jail-free card. The political leader would turn into a scapegoat, which allows others to go on with their lives without having to reflect critically on their own involvement in the moral wrongs committed. This would make other officials and citizens more likely to support wrongdoing by their leaders if doing so could in some way be of benefit to themselves. By showing how different political actors can be implicated and partly morally responsible for dirty-handed outcomes I hope to show that political leadership cannot get other actors off the moral hook. I will turn to the question of citizen responsibility in the next chapter.

I will begin by giving a brief overview of the debates surrounding individual moral responsibility for outcomes. Given the subject of this thesis I will not be able to provide a thorough analysis of the nuanced debates in the responsibility literature. My discussion will, however, be sufficient to draw out some of the key principles that are necessary for ascribing moral responsibility for an outcome to an individual. I will then discuss the grounds we might have to hold political leaders and public officials responsible given the circumstances of their roles in democratic politics. In a final step I want to relate this back to the issue of dirty hands by applying the theoretical background I have laid out to a real-life dirty hands situation. The approach taken in this analysis could then be extended to apply to other dirty hands cases involving a multitude of actors as well.

6.2. Moral Responsibility

In the following I want to give a brief taxonomy of the concept of moral responsibility.³⁹ Firstly, we need to distinguish between responsibility for actions and for outcomes. In the former, we can hold someone responsible for what they do or say or what they fail to do or say. Agents can be morally responsible for their actions and omissions. In the latter case, we can hold someone responsible for the results of their actions and omissions. Agents can be, all other things being equal, morally responsible for the states of affairs that obtain in the world as a consequence of what they did or failed to do. In this thesis I will be primarily concerned with this latter concept. Agents can be morally responsible for an outcome to a smaller or larger extent. Additionally, responsibility for a given outcome is not a zero-sum game. The fact that one agent has more responsibility does not mean that the next one has to have proportionately less responsibility.

Secondly, there appear to be what Gary Watson (1996) has called “two faces of responsibility”. To be responsible, on Watson’s view, means to be a legitimate target for the reactive attitudes of others such as blame or praise. On the one hand there is responsibility as attributability and on the other there is responsibility as accountability. We can say that an agent is attributability responsible if the agent can identify with her action and its outcome. Judging someone to be responsible in this sense does not have to be moral in nature. It can come from what Watson describes as the “aretic perspective” (1996, p. 231). Imagine, for example, that I am not a morning person and really struggle to get up in the morning. Further imagine that my passion is baking and that I have often considered becoming a baker, thinking that I could earnestly excel in this line of work. Unfortunately, I know that being a

³⁹ My discussion of moral responsibility in this and the next chapter was greatly helped by reading Morten Hojer Jensen (2017).

baker involves going to work at 5am in the morning, which is at odds with the fact that I am not a morning person and physically struggle to be awake, alert and productive at such a time. Ultimately I decide not to pursue my career dream and instead take an office job which is neither particularly suited to my talents nor excites me. To say that I am responsible in the attributability sense for having chosen the office job over a career as a baker is to say that I am the author of that action and outcome. Not only am I causally responsible, but in an important sense I can identify with the action and the outcome because they are an accurate reflection of my reasoning and decision-making. Angela M. Smith, in her discussion of Watson's account provides us with the following analysis of his notions of attributability and accountability:

Just as we can evaluate writers on the basis of the quality of the stories they author, we can evaluate rational agents on the basis of the quality of the lives they author. But evaluating someone as a bad life author, he suggests, is different from holding her 'accountable' for the life story she tells. If we hold her 'accountable' for her life story, we are saying that she is a legitimate target of certain forms of 'adverse reaction' (such as blaming attitudes and behaviors) on the basis of the story she tells. And in order for someone to be the legitimate target of adverse reactions, he claims, it is not sufficient that her attitudes and actions reflect her practical judgment (that she be 'the author' of her conduct); she must also have had a fair opportunity to avoid being subject to those adverse reactions. (2008, pp. 376-377)

Given that I turned out to be a person who physically struggles with early mornings, for one reason or another, does not in and of itself give us reason to blame me for not pursuing my dreams and passions. It says something about the kind of person that I am, but it is not sufficient to say that I am blameworthy for it because, for example, my inability to function in the morning may not be something that I have control over. Watson argues that, even though attributability cannot ground our negative reactive attitudes, it is a proper form of responsibility because "in virtue of the capacities in question, the individual is an agent in the strong sense, an author of her conduct, and is in an important sense answerable for what she does" (1996, p. 229).⁴⁰ When I, in the following, refer to individual moral responsibility for an outcome, I have in mind this second face of responsibility. An agent is morally responsible if the reactive attitudes of blame or praise would be an appropriate response to their actions. In the following I want to give a brief outline of the conditions that need to obtain in order for ascriptions of blame and praise to be appropriate.

⁴⁰ There is a wealth of literature interpreting this distinction between attributability and accountability. For the purposes of my argument I do not have to engage with this in any further detail. For an argument pointing out the problems with Watson's distinction see Angela M. Smith (2008, pp. 375-380).

There mostly is agreement about the basic outline of the necessary and sufficient conditions for individual moral responsibility. An agent is responsible if she a) had the right cognitive capacities, b) fulfilled certain epistemic criteria⁴¹, c) acted voluntarily, and d) played a causal role in the outcome. The disagreement lies largely in how these different conditions are spelled out and weighted. I will briefly take each of them in turn and then discuss what might be additionally required to hold someone who is responsible for an outcome also liable to make up for it.⁴² While these conditions may seem common-sense, they will be relevant for the later discussion of this chapter and particularly crucial for the more messy case of citizen responsibility in the next chapter. As such it will be important to spend some time laying out the basics of these four conditions.

6.2.1. Cognitive Condition

The first condition an agent has to fulfil regards her cognitive abilities and state at the time of her action that led to the outcome in question. We only want to hold an agent morally responsible if she had the ability to understand her action, the context in which it was performed, and its likely consequences. She must have had the ability to deliberate and reason on these issues. Should she have been unable to do so, we generally do not think that she can be responsible for what she does. This is, for example, why we do not hold young children or adults with severe mental disabilities morally responsible for the outcomes of many of their actions. Often they simply will not have had the right cognitive capabilities to understand fully their action and the potential outcomes. The cognitive condition therefore requires a general ability to deliberate on and weigh up reasons for action in particular contexts in order for us to hold someone morally responsible for the outcomes of their actions.

6.2.2. Epistemic Condition

In addition to having the right cognitive capacities, the agent also must have had the ability, in principle, to know that her actions would lead to certain outcomes to be morally responsible for them. If, for example, I leave my house and by shutting the door set into motion some butterfly effect scenario in which a chain of unlikely events cause harm to someone in a way that was completely unforeseeable, I should not be held morally responsible for that harm. That the agent did not know that her action would lead to a certain

⁴¹ These first two conditions are what Aristotle designated as “voluntariness” (1999, pp. 37-40) and H.L.A. Hart has called them “capacity responsibility” (2008, p. 218)

⁴² Note that most of the literature is interested in responsibility for negative outcomes and liability to sanctions, but these points are meant to similarly apply to cases of responsibility for positive outcomes and distributing rewards.

outcome does not, however, always shield her from moral responsibility. She may have been ignorant, but if her ignorance was culpable then she is still morally responsible because she ought to have known better. If, for instance, I dispose of chemicals clearly marked as an environmental hazard in the local river and thereby poison and kill the fish in it, it will not do for me to say that I simply did not know that my actions would have such a result. Even if I genuinely did not know because I did not make the effort to check the label, this is not enough to shield me from moral responsibility for the environmental damage. The information was readily available and I could have known with little effort on my part. Holly Smith argues that there are three ways in which our ignorance can be culpable. Firstly, we may have deficiently investigated the information potentially available to us; “S would have believed B to be wrong if S had investigated the situation as thoroughly as he ought to have done” (1983, p. 544). This was the way in which the agent in the environmental pollution case was culpable for their own ignorance. Secondly, ignorance is culpable when the agent prevented herself at an earlier point from subsequently discovering the relevant information; “S would have believed B to be wrong if he had not at an earlier time induced (or failed to remove) a condition which made it impossible at the time of B for him to acquire true belief as to B’s nature” (1983, p. 544). A frequently discussed example of this are leaders who create structures that prevent bad information from the bottom of the organisation reaching them. Finally, an agent’s ignorance can be culpable when she does not make a correct inference from the beliefs she currently holds; “S would have believed B to be wrong if he had made the inference warranted by his background beliefs” (1983, p. 545). My neighbour has tasked me with looking after their cat that needs to be given their medicine every evening at 6pm. This evening I decide to go for drinks after work and the cat dies without the medicine. I failed to make the correct inference about what action was required from me based on the information that I had, so my forgetting to give the medicine to the cat was an instance of culpable ignorance. In general, Smith argues that instances of culpable ignorance consists of an original “benighting act” which leads the agent to commit a subsequent wrongful act, where this subsequent act “falls within the known risk of the benighting act” (1983, p. 551). I am morally responsible if I should have been aware of the risk that my earlier act could lead me to commit unwittingly a wrongful act later down the line.

6.2.3. Voluntariness Condition

It is generally argued that the third condition an agent has to fulfil in order to be morally responsible for an outcome is that she must have performed the action voluntarily.⁴³ The

⁴³ This condition has been questioned by non-voluntarists. In particular they are concerned with showing that we can be responsible for our characters, even if we were not in control over and had not voluntarily chosen

idea is that if an agent acts because of force, duress or compulsion then her act can no longer be regarded as voluntary. If, for example, I am a bank employee and a robber puts a gun to my head and demands that I open and empty the cash register, then we do not want to hold me morally responsible for having been complicit in the robbery because I did not act voluntarily but under duress. Similarly, if someone has hypnotised or brainwashed me so that I am no longer in control of my own actions and then instructs me to rob a bank, then we do not want to hold me morally responsible for having been complicit in the robbery because I did not act voluntarily but under compulsion. Serena Olsaretti argues that an action is not voluntary if “A does x because A has no acceptable alternative to doing x” (1998, p. 54). In the first example, the bank employee is forced to hand over the cash to the robber and only does so because she has no acceptable alternative – assuming that she sees agitating someone who is threatening to kill her as an unacceptable alternative – and thus the employee’s action cannot be called voluntary.⁴⁴ Olsaretti emphasises that this is not to argue that someone acts involuntarily whenever the alternative option is worse than the one chosen. Only if the other option is unacceptable can the action be involuntary. In a different paper she argues that “the standard of acceptability by which options are assessed is an objective one that views basic needs satisfactions as central, so that choices made so as to avoid having one’s basic needs go unmet are non-voluntary ones” (2004, p. 140).

While this notion of voluntariness appears to be quite plausible at first, it cannot make sense of some instances in which we want to argue that someone acted voluntarily even though they did not have an acceptable alternative available to them. Alan Wertheimer, in his critique of accounts like Olsaretti’s, asks us to consider a medical patient with a potentially fatal disease. Their only available options are to consent to a very invasive but potentially life-saving procedure, or to accept death. Death would clearly count as an unacceptable alternative, and yet it seems that we would want to say that the patient voluntarily gave their consent to the medical intervention (2012, pp. 235-236). If we accepted Olsaretti’s account the patient would not be acting voluntarily and, crucially in the medical case, this would undermine their ability to give valid consent. This would leave us with the option to say that either we should not provide the life-saving treatment in this case, or that it is acceptable to provide a very invasive procedure without the patient’s consent. The implications of either of these options are unattractive. Either we end up withholding life-saving surgery, or we

them. See, for example, Smith (2008). This question is not directly relevant for the kind of situations that I am looking at, so I will leave this debate aside for the purposes of this thesis.

⁴⁴ Imagine a case in which the employee still has a gun to her head but she does not hand over the money because of said gun (e.g. she may falsely believe that the gun is fake), but because she really hates working at the bank. While she did not have an acceptable alternative to handing over the money, this was not the motivation behind her handing over the money, so her action is voluntary.

undermine patient autonomy by overriding the fundamental importance of consent. Wertheimer argues that where Olsaretti's account has gone wrong is by attempting to find an empirical and value-neutral account of voluntariness. Such an account argues that we can determine the voluntariness of an action "by examining the agent's options, beliefs, and capacities at the time of consenting" (2012, p. 229). In Olsaretti's case, her exclusive focus on the alternatives available to the agent at the time of the action ends up giving us counter-intuitive results in the life-saving treatment example. Wertheimer opposes her approach with a moralized account which holds that in order to determine the voluntariness of an action we have to include certain moral judgements about the situation in which the agent is acting. In order to reach a decision, we therefore have to ask whether we have good moral reasons in a given situation to call an act voluntary or not. With regard to his example of the patient deciding between accepting death and consenting to very invasive surgery he provides us with both a deontological and a consequentialist reason for calling the choice voluntary. Wertheimer argues that calling the choice voluntary is the only way in which we can ensure the patient's autonomy (i.e. the deontological reason) and ensure that she can engage in actions that improve her well-being (i.e. the consequentialist reason) (2012, pp. 242-243). We want people to have the ability to give valid consent to treatment in life-or-death decisions because we think that doing so is an important part of having control over one's life. For people to have this power and to give valid consent, though, their decision will have to be voluntary. Therefore we have good moral reasons to call the patient's decision to consent to the very invasive but potentially life-saving surgery voluntary.

The kind of moral reasons that will speak in favour of an action being voluntary or involuntary will vary according to the kind of choice at stake. Take for example a public figure who is being extorted; unless they transfer thousands of pounds into the villain's bank account the villain will release private information about the public figure's marital problems to the press. We would not want to call transferring the money voluntary because we have good moral reasons for not doing so. If the transfer of the money was voluntary, then the public figure would have no legal claim for compensation. On the one hand this would undermine our understanding of property rights and on the other hand this would incentivise the practice of blackmailing which is something that we would want to avoid. We therefore have good moral reasons to call the public figure's decision involuntary.

Finally, let us consider the example of a politician who deliberates whether or not to order the torture of a suspect in custody. I think that we have good moral reasons to call the politician's decisions voluntary, because we need politicians to have the ability to make binding decisions. Imagine that, in this instance, torturing the suspect would be the lesser of

two evils, as such we want someone to have the ability to give the binding order to do so. The politician ought to have the final say and be able to make a decision that is then followed by those lower down in the chain of command. If this authority were not to exist and no binding order to torture (i.e. the lesser evil) could be given, then the suspect would in all likelihood not give up the locations of the bombs and many innocent citizens who the politician had a responsibility to protect would die (i.e. the greater evil). If the politician's decision in this scenario was involuntary because, for example, we think their decision was a result of coercion by the terrorist, it is not obvious that this decision would be binding and that those lower down in the chain of command would have to follow it. We therefore have good reasons to call the actions of those in political power in dirty hands cases, such as the ticking bomb scenario, voluntary, because it is morally important that such agents can make binding decisions and exercise their responsibility toward their citizens.⁴⁵

6.2.4. Causal Condition

The final condition an agent has to fulfil in order to be responsible for an outcome is that they must have in some relevant sense been a cause or the cause of that outcome. In order for this to be the case, the causal chain needs to run from the agent to the action to the outcome. An agent is responsible for an outcome only if the agent's actions or omissions⁴⁶ in some way⁴⁷ caused the outcome. For example, imagine an agent who, voluntarily and in full knowledge of the potential risks, decided to drink and drive. As a result of their intoxication they lose control of the car and hit a pedestrian and kill them. The driver's actions were a direct cause of the outcome (i.e. the death of the pedestrian) and as such we can hold the driver morally responsible for that outcome.

We have to refine this view, though. Take Feinberg's example of a drunk driver who, simply in virtue of driving past, spooks a horse and causes the rider to get injured. Now the horse

⁴⁵ The intuition that dirty-handed choices are voluntary appears to be shared, albeit for different reasons, by de Wijze who argues that a dirty-handed agent's "decision was not involuntary or the result of an accident (unless we implausibly think of such scenarios in politics as accidents); it was made after careful practical deliberation knowing full well the values she will violate and the consequences of both doing and not doing so" (2004, p. 464).

⁴⁶ It has been argued by, for example, Helen Beebe (2004) that omissions cannot be causes. For a discussion of the consequences of such a view on causal responsibility see, for example, Carolina Sartorio (2007). For the purposes of this thesis I will simply assume that omissions can be causes.

⁴⁷ For the purposes of this chapter it will not be necessary to go into more detail about the different ways in which our actions can be causally related to an outcome in such a way that we are responsible for it, because the political actors I consider will all stand relatively close in the causal chain of events to the action and outcome in question. I will go into a lot more detail on this in chapter seven when considering the more complicated case of tracing a causal chain from the actions of citizens to the political outcomes caused by the actions of their representatives. There I will argue that an agent can cause an outcome by either making a difference, individually or as part of a set, to that outcome, or by contributing to the wider background processes that could potentially affect the action leading to that outcome.

would have been spooked by any car driving past and nothing about the driver's drunkenness contributed anything to this outcome (1970, p. 195). Feinberg therefore thinks that we have to add what he calls the "causal-relevance condition" to our analysis of the relationship between causation and moral responsibility. This condition says that "the harm-threatening 'faulty aspect' of an act is a cause of a subsequent harm when the risk or certainty of harm in virtue of which the act was at fault was a risk or certainty of 'just the same sort of harm that was in fact caused' and not harm of some other sort" (1970, p. 199). This condition is to ensure that we hold the drunk driver only morally responsible for the horse bolting and the rider's injury if it was the drunkenness (the "faulty aspect") that caused the horse to bolt and the rider to get injured. Seeing as the horse would have reacted like this no matter the state of the driver, we do not want to hold the driver morally responsible for the rider's injury. We might still blame them for having been drink driving, but this is a separate issue from the incident with the horse.

6.2.5. Liability

The four conditions above jointly establish that an agent is morally responsible for an outcome and is thus an appropriate object of our reactive attitudes. They are essentially backward-looking conditions that ask who has committed a certain act or brought a certain outcome about. Liability to make up for the negative outcome, however, is not concerned with such backward-looking conditions but primarily with the forward-looking notion of who should rectify the consequences of an outcome. A finding that someone is morally responsible for a certain outcome is not in and of itself sufficient to show that this agent is also liable to make reparations for the damage done. While I cannot hope to give a full analysis of this complicated relation, I want to highlight some of the cases in which being responsible and being liable can come apart.

First let us deal with reasons why we might not want to hold someone liable who is morally responsible for an outcome. Consider the case of Germany after WWII. The atrocities of the Third Reich were countless, and the number of public officials and citizens who were either directly responsible for or complicit in them was equally large. While it might be relatively straightforward to show that, for example, a large number of low-ranking bureaucrats share in the moral responsibilities for the grave human rights violations, it is another question whether it would make sense to try to hold all of them liable. The idea is that doing so might simply not be feasible and would distract attention from those higher-ranking officials who are more deserving of blame and condemnation. Feinberg has argued that "when more than one person satisfies the [...] conditions [for moral responsibility] the judgement-maker may

sometimes choose between them on pragmatic grounds” because “when fixings of blame become too diffuse, they can no longer perform this function” so that “they might be true, but just not very useful” (1970, p. 211). Who we hold liable for an outcome is always going to be constrained by considerations of feasibility. It is worthwhile noting that Feinberg mentions a “judgement-maker” and this leads me to another case in which we may not want to hold someone liable even though they are morally responsible. Not just anyone can impose sanctions on another moral agent for an outcome, even if the latter was morally responsible. This may be because some agents would not be impartial enough or have sufficient expertise or experience to make a fair judgement about the sanctions appropriate in the particular case. Additionally, we might also think that agents who were involved in the moral wrongdoing cannot then claim the authority to hold the offending party liable; this would simply be hypocritical. This is going to become a particularly interesting issue when we consider whether to hold politicians with dirty hands accountable. If we think that some of the dirt from our political leaders and governments falls back on citizens, it may be difficult to see who would have the legitimate authority to demand that sanctions be imposed, or who could ultimately hold them to account. While my thesis concentrates on moral responsibility rather than liability, I will briefly hint at some of the discussions around this in the conclusion.

There may not only be reasons to not hold someone liable who is morally responsible, but also to hold someone liable who is not morally responsible. Feinberg notes that “to impose liability on a person to enforced compensation or other harsh treatment for some harm does not always require that the harm be his fault” (1970, p. 210). The most well-known case of this is that of strict liability in criminal law. In cases of strict liability an agent is being held accountable without the burden of proving that they were at fault. Strict liability laws are most commonly used to improve health and safety conditions for parts of the public. Imagine, for example, a patient who forges a doctor’s prescription and with it illegally obtains drugs. The pharmacist could, in principle, be held accountable for having sold drugs to someone without a prescription, even though he had no knowledge and could not have reasonably been expected to know that the prescription was not genuine. The idea behind such an instance of strict liability might be that the wrongful sale of drugs is such a grievous problem that the public ought to be protected from it at all costs, even if that is to include a heavy deterrent that will sometimes lead to an unfair burden on a single individual.⁴⁸ Arguably, the common good may sometimes provide us with reasons to hold someone liable

⁴⁸ This is a rather contentious issue. While strict liability was enforced in the UK in exactly such a case, other countries such as, for example, Germany do not allow strict liability in criminal law.

for an outcome even if they were not morally responsible for it and even if that places an unfair burden on that agent.

While it is important to have these potential exceptions in mind, this should not prevent us from acknowledging that in the majority of cases, if an agent is morally responsible for an outcome, she should also be liable for it and conversely, if she was not morally responsible, she should also not be liable. My approach in the case of dirty hands will therefore be, in the first instance, to establish who could be said to be morally responsible for the outcomes of the dirty decision. In this thesis I will not take up the further question of liability in much detail but will only hint at some of the discussions on liability in the conclusion. In dirty hands situations one or more people will be left off worse, harmed, or even killed. In a first step it will therefore be important to understand who is responsible for it. This information can then be used to make further inquiries into the issue of whether anyone should be held liable for dirty-handed outcomes, and if so who. I will start by considering the grounds of responsibility of political leaders. I will then consider the responsibility of public officials, those that advise political leaders as well as those that actually execute their orders. After discussing some of the theoretical background of their roles and how this is said to affect their moral responsibility for a dirty-handed outcome, I will apply this to a real-life case of dirty hands – the Claudy Bombing in Northern Ireland. In the next chapter I will take up the question of the responsibility of the public.

6.3. The Responsibility of Political Leaders

As Walzer puts it in his discussion on the responsibility for just and unjust wars: “acts of states are also acts of particular persons” (2006, p. 291) and that makes these persons legitimate targets for ascriptions of responsibility. It seems natural, therefore, to start by considering political leaders such as heads of state and their responsibility for dirty-handed actions. For Walzer “their accountability is clear [...] for they are the source rather than the recipients of superior orders” (2006, p. 291). With authority and the ability to have the ultimate decision-making power also comes a clear responsibility for the actions that they authorise. Political leaders can generally be said to fulfil the criteria necessary for moral responsibility. We can assume that they possess the mental capacities to fulfil the cognitive condition. Additionally, through their advisers and public officials, they are supplied with a comprehensive picture of the decision-making context. They are also given the opportunity to hear opposing sides and therefore to come to a considered judgement about the options available. It is true, however, that political questions may be very difficult and complex at times and we might think that no-one could be reasonably expected to know what ought to be done. Uncertainty and unexpected consequences are, after all, rife in politics. In such

cases, the extent to which certain consequences were genuinely unforeseeable may undermine the epistemic condition. Note, however, that I think that this will only very rarely be the case. Because political leaders shoulder major responsibilities, it is their obligation to play through a multitude of potential scenarios and to seriously consider the risks and benefits, and their respective likelihood, of each course of action available to them. They can be expected to have both the expertise and resources available to them to do this successfully. The epistemic condition should therefore be fulfilled. Because political leaders tend to have the final say in dirty hands type situations their causal relation to the end outcome is also obvious. They consciously set into motion the causal chain leading to the dirty-handed action and the negative outcome that leaves people worse off, harmed, or killed. Political leaders can also be said to act voluntarily. It is often acknowledged that dirty hands happen under the “harness of necessity” (Williams, 2008, p. 132; de Wijze, 2004, pp. 468-469) and the thought might go that acting in circumstances in which one’s options are reduced by external circumstances beyond one’s control to a choice of lesser evils could not be regarded as voluntary. As I have argued in section 6.2.3., we nonetheless have good moral reasons to call the actions of our political leaders voluntary. We need political leaders to have the ability to issue binding directives that ensure that the lesser evil is chosen and that the citizens for whom they are responsible are protected. In order for their decisions to have this binding force, though, they will have to have been voluntary. The dirty-handed actions of politicians are therefore best conceived of as voluntary. Given that political leaders satisfy all four conditions, holding them responsible for the outcomes of dirty-handed decisions seems obvious.

Walzer, however, goes on to consider that political leaders are, after all, representatives and as such can be said to act not out of their own volition but for the sake of others, i.e. their citizens. On the account that I have offered above, this might lead us to think that, because citizens are the true authors of political action, we have good moral reasons to argue that the politician’s actions were involuntary and only the result of following orders (e.g. we do not want people to be able to escape moral responsibility by delegating their action to others). Walzer quickly dismisses this problem, though, because he contends that political representation is not a risk-free undertaking. He argues that “political power is a good that people seek. They aspire to office, connive at control and leadership, and compete for positions from which they can do evil as well as good. If they hope to be praised for the good they do, they cannot escape blame for the evil” (2006, p. 290). I think that he is too quick to dismiss the potential impact that the representative function of political leaders could have on their responsibility, though. Walzer did not consider the weaker, and more

plausible, claim that while representation cannot wholly eliminate a leader's responsibility for an outcome, it might be able to lessen that responsibility. In this section I will hence be concerned with understanding the representative relationship to assess the extent to which it affects the responsibility of political leaders.

The basic thought behind representation is to make something present that is currently absent. In the case of democratic representative government, this is the idea of making citizens who are absent present in the assembly. Representation is therefore often thought to be an instrument to bridge the gap between direct democracy and large modern states in which it is not feasible for all citizens to assemble together. Representation does not, however, have to be a merely instrumental value; instead it could be argued that representation is an inherently democratic value. To understand this, let us take a look at Nadia Urbinati's depiction of the way in which citizens in Athenian direct democracy were involved in the democratic process. There were three categories: those who did not attend assemblies, those who attended and voted but who did not actively take part in discussion, and those who were fully participating members in debate. The latter group was small and, consequently, Athenian direct democracy resulted in the creation of an elite who used rhetoric to bring forward the interests of a particular group of citizens (even though they might not have been given a formal mandate to do so). What we can see then is that "it is not indirectness per se that distinguishes representative democracy from direct democracy" (2000, p. 765). Urbinati goes on to argue that the real difference between these two forms of democracy lies in the way in which they mediate between those actively and those only passively engaged in the political process. For Urbinati, the distinguishing feature of representative democracy is the lack of simultaneity between deliberation and decision-making. The result of this for her is that

representation allows citizens to shield themselves from speech. It gives them the chance to reflect by themselves, to step back from factual immediacy and defer their judgement. Representation creates distance between the moments of speech and decision and, in this sense, enables critical scrutiny while shielding citizens from the harassment of words and passions that politics engenders. (2000, p. 768)

This implies that representation is more than a useful instrument to make up for the impossibility of implementing direct democracy in large modern nation states. Instead, there is an intrinsic democratic value to the use of political representation because of the way in which it facilitates good deliberation.

In order to understand the representative relationship we need an understanding of two distinct, but related, questions. Firstly, whom does the politician represent? And secondly,

how does the politician then represent them? Finding answers to these questions is complicated when we assume that citizens and politicians will reasonably disagree about moral values and how they ought to be achieved. I will argue that the best way to deal with this complication is by relying on an adversarial conception of democracy and representation that values compromise over consensus. On my account politicians should represent with a degree of autonomy that allows them to engage in adversarial deliberation and compromise with other political actors.

6.3.1. Who to represent

The first question we have to ask ourselves is who exactly the politician is supposed to represent. Answers to this have most commonly ranged from (1) all citizens, (2) the politician's party, to (3) the politician's constituency. The most famous defence of the first was given by Edmund Burke (1889) in his speech to the citizens of Bristol. He argues that when the constituents of Bristol elected him, they elected him to act in their name for the national interest.

Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of parliament. (1889, p. 96)

Burke assumes, firstly, that there is a single and discernible national interest; secondly, that the national interest is not simply the sum of the interests of the nation's constituencies; and thirdly, that representatives have the wisdom and ability to discern the national interest. Because of this, it is the representative's mandate to pursue the national interest and, indeed, if a representative were not to act in this way, she would be letting down her constituents. It has to be acknowledged, however, that representation appears to be more complicated in real life. In particular we ought to question the idea that there is a single national interest which is stable and easily discernible by our representatives without the input of their constituents.

Maybe politicians also represent their party. To see why this might be the case we can look at Bernard Manin's (1997, p. 206ff) helpful depiction of a party democracy. According to him, parties were established to mobilise larger numbers of voters by enabling them to align themselves with a combination of social issues through party allegiance. In such a system voters elect someone who is wearing the colours of a party and as such their representative

“is bound by the party to which he owes his election” (1997, p. 211). The role of a representative is, on such a conception, not to pursue an independent national interest but to align themselves with their party’s interests. The problem here is that the party’s interest may easily depart from what would be in the national interest.

Probably the most famous articulation of the view that those elected should represent their particular constituents can be found in the Federalist Papers (Hamilton, et al., 2012, pp. 15-33). They start from the competing and constantly shifting factions and interests that inevitably arise in society but that are also inimical to the national interest. A representative then has to weigh the partial interests of her constituents against the interests pursued by other representatives in the assembly. According to Hamilton and Madison, these competing interests will then balance each other out so that reason and the national interest can prevail. This view would then be one in which representatives are supposed to represent their constituents as a tool to promote the national interest indirectly. Because of their emphasis on factions and the fact that interests are not homogenous and stable, this also means that, like in the federal assembly, there can be no clear-cut agreement within the representative’s constituency. The politician is therefore bound to represent the interest of the majority and has to result in an acknowledgement that politicians cannot represent the interests of the entirety of their constituency.⁴⁹

Depending on the particular position of a politician they will be torn to various degrees between representing the national interest, their party’s position and the particular interests of their constituents. A political leader, for example, will need a particular focus on the interest of her nation as a whole. A frontbencher will have a particular focus on the area that they have been assigned to oversee. A backbencher will first and foremost bring forward the interests of her constituents who voted for her. A politician who was not directly elected by constituents but through a form of list proportional representation may focus on representing the stance their party takes to give credit to the interests and wishes of those citizens across the country who voted for her party. While I cannot provide a more sustained discussion of this aspect of representation here, I would suggest that, given the issues surrounding all three forms of representation, it makes sense that politicians with different roles concentrate on representing different elements (i.e. the national interest, their party, or their constituents).

⁴⁹ Note that saying that she cannot represent the interests of all of her constituents does not mean that she is not a legitimate representative of her entire constituency.

6.3.2. How to represent

So how are elected politicians to represent? The main distinction that has been drawn in the literature on representation regarding this question is that between delegate and trustee, or what Hannah Pitkin calls the “mandate-independence controversy” (1972, p. 144), i.e. the question whether a representative should act according to what her constituents want or according to what is in her constituents’ best interest. While Pitkin talks about constituents the tension she identifies can be found in all representative relationships, for example, a political leader may be torn between the perceived interest of the nation as a whole and the express wishes of all citizens. Pitkin argues that the distinction between delegate and trustee is not a straightforward dichotomy but rather should be conceived of as the two ends of a continuum. At the most extreme end of the delegate side, representatives should only act on the express instructions of their constituents. On the side of the trustee, the extreme version would state that representatives can act in whatever way they want, the only restriction being that they think it is in their constituents’ interest. Between these two extremes there is a wealth of positions in the middle. A moderate conception of representatives as delegates, for example, might say that the politician is allowed to use her discretion as long as she consults her constituents about any new policies in advance. A moderate conception of representatives as trustees, on the other hand, might argue that politicians can act in any way they think will benefit their constituents as long as they do not turn around on their core election promises. Pitkin argues that there is a way to reconcile these understandings of representatives as delegates and trustees. She says that

the representatives’ obligation is to the constituent’s interests, but the constituent’s wishes are relevant to that interest. Consequently, the representative also has an obligation to be responsive to those wishes. He need not always obey them, but he must consider them, particularly when they conflict with what he sees as the constituent’s interest, because a reason for the discrepancy must be found. (1972, p. 162)

Pitkin provides us with two reasons for why representatives ought to take into consideration the wishes of their constituents. Firstly, while we usually expect individuals to want what is in their interest, this is not always the case. On such an occasion, the politician therefore needs to ask themselves why there is a mismatch between what they perceive to be in the citizens’ interest and what the citizens themselves want. She may come to the conclusion that the citizens in question are in some way misinformed and therefore do not accurately perceive their own interest, but equally she may come to the conclusion that her judgement of what is in the citizens’ interest was misguided and ought to be revisited. Either way, when the perceived interests and express wishes of those being represented do not align, the

politician will have to come to a reasoned judgement about the nature of this conflict. Secondly, she argues that there appears to be some truth to the following statement: “surely it cannot be called genuine representation if the man habitually does the opposite of what his constituents want” (1972, p. 163). The idea is that when a politician repeatedly does something contrary to the express wishes of those she supposedly represents, this surely can no longer be in their interest. As a result I agree with Pitkin that politicians need to strike a balance between what they perceive to be in the best interest of those they represent in a given area (e.g. whole country, government department, constituency) and what those they represent expressly ask for. This is complicated by two factors. Firstly, people reasonably disagree about what the right thing to do is, so it will be harder for a politician to discern the interests and wishes of those she represents.⁵⁰ Secondly, not only citizens but also other politicians reasonably disagree in this way. Therefore the representative will have to make her case in the assembly on behalf of those she represents to other politicians who will reasonably disagree with the case being brought forward. In order to engage successfully in such adversarial deliberation, representatives therefore need enough room to be able to deliberate, negotiate, and compromise with others. This means that representatives will need to have considerable leeway in what and how they represent.

Taking the earlier insight from Walzer that representation is not free of risk for the representative, I acknowledge that political leaders will hold the ultimate authority and responsibility in virtue of their decision-making power. They had the final say in ordering the dirty-handed action and that means that they cannot evade responsibility and wash their hands clean. Given that representatives are, however, to some extent bound to act in a way that advances the interests and wishes of those they represent, we need to take this into account when assessing their responsibility for what they did. To the extent that they had a duty to act in such a way as to advance the interests and wishes of those they represent, they could potentially be excused from the moral responsibility for their action. After all, it may be argued, they were not acting as themselves but were simply a tool for the execution of the interests and wishes of others. For two reasons, however, I do not think that this excuse will work to a significant degree. Firstly, on a more cynical note, some may think that political leaders are more concerned with consolidating their own power and partisan interests than with acting in the genuine best interest of their citizens. This line of thinking fits with Walzer’s description of how politics is essentially a struggle for power. The extent to which this is true would ultimately have to be settled empirically. There is also, however, a second

⁵⁰ So even if we took an extreme delegate view, a fair amount of judgement on the part of the representative would still be required.

reason that follows directly from my above analysis and explains why the representative relationship can only excuse politicians to a very minimal degree. Political leaders have significant leeway in interpreting what is in their citizens' best interest and how to implement those interests in practice. Even if the extent to which political leaders can use the excuse that they only acted in the name of their citizens is limited, that there is some room for this excuse is still important.⁵¹ In particular, this hints at the topic of the next chapter where I will be concerned with the responsibility of democratic citizens for the outcomes of dirty hands decisions taken by their leaders.

6.4. The Responsibility of Public Officials

It has been assumed by many philosophers discussing the problem of dirty hands that in such situations we are concerned with the actions of a single and solitary politician. This, however, is not obviously the case in real life politics. It is not just political leaders who will be morally responsible for the outcomes of dirty-handed decisions. Far from having a “democratic prince”, as Bellamy repeatedly calls political leaders (2010, pp. 424, 427), they act with others in a complicated web of relations. Dennis Thompson calls this “the problem of many hands”, arguing that “because many different officials contribute in many different ways to decisions and policies of government, it is difficult even in principle to identify who is morally responsible for political outcomes” (1987, p. 40). If we look at the four necessary conditions for moral responsibility that I have laid out above, it is not straightforward to see which agents engaged in complex democratic decision-making fulfil these and to what extent. It may be unclear how much each agent knew when making the decision, the way in which they causally contributed to the decision-making process, and the extent to which their contribution was voluntary. In order to understand decision-making in dirty hands situations in a democratic context we therefore need to understand the role of not only elected politicians, but also of the public officials – ranging from judges over civil servants to police personnel – and advisers who are involved in the democratic process. The question is how best to track these contributions and what weight we should assign to them respectively. I am generally sympathetic to Thompson's approach to determining the moral responsibility of public officials and will use his analysis as a starting point for my own discussion. As will

⁵¹ One might argue that there is no room for this excuse after all, because if political leaders did not agree with the public, they should simply resign. A failure to resign would be a clear sign that they committed the action in question because they thought it was right. I find this unconvincing for two reasons. Firstly, given the complexities of political decision-making, politicians will often have to make compromises and endorse positions that they do not fully agree with. Secondly, and following from that, it would be impractical for every politician to resign as soon as they have to compromise. Granted, it may be that, in extreme cases, resignation is the only appropriate option if the politician finds herself in a position in which she would have to sacrifice some of her most fundamental principles, and wants to signal to other actors that that is unacceptable. But, usually, resignation will not be necessary.

become clearer later on, I think that he has missed the way in which his analysis relates to dirty hands situations in particular. To show why this is the case I am going to introduce the difference between excuses and justifications later on and how these notions can or cannot be used by public officials in dirty hands situations.

6.4.1. Models of Tracking Official Responsibility

Thompson (1987, pp. 24-31) introduces three different models to track responsibility in the cases of public officials: the hierarchical model, the collective model, and the personal responsibility model. According to the hierarchical model the person responsible for a certain decision or outcome is the person on top of the chain of authority. However, Thompson identifies several problems with this model of tracking responsibility. It seems to ignore that officials act within overlapping areas in which it would be unclear what the chain of authority is and who would stand on top of it. Furthermore, politics is an area of bargaining and compromise in which success and influence are often more related to skill than to authority. The hierarchical model also seems to ignore that officials often have room for discretionary action that is not directly overseen by someone higher in the chain of authority. An additional issue, not mentioned by Thompson, is that this model overlooks the earlier mentioned point that moral responsibility is not a zero-sum game; just because someone at the top of the hierarchical order bears responsibility does not in and of itself take away from the responsibility of those lower down. The idea here does not run counter to my earlier argument that the political leader has a special responsibility in virtue of her authority. It is just that this cannot be the whole story. That others are also responsible does not have to detract from the leader's moral responsibility. Having therefore rejected this idea of tracking responsibility in cases of "many hands situations", Thompson moves on to consider two different ideas of collective responsibility.

The first model is one that rejects any form of individual responsibility and focusses entirely on the collective as a suitable candidate for being responsible for an action or outcome. The argument is that agents are neither "self-contained" nor "self-subsistent" (1987, p. 45), so ascribing responsibility to them on an individual basis would be misleading. This, according to Thompson, would have very counter-intuitive consequences that would both decrease the responsibility we can ascribe to politicians drastically, and would also make us unable to draw more fine-grained distinctions between the degrees of involvement of various actors. The second model of collective responsibility Thompson goes on to introduce is based on the thought that sometimes certain outcomes are not the results of faulty individual decisions but are down to the faulty structure of the group. This is then supposed to lead us to the

view that we should analyse moral responsibility solely in terms of the collective instead of trying to track individual contributions. Thompson argues that, while this might be a suitable explanation for certain groups, it cannot account for the fact that politics is an ongoing activity in which the officials are involved and in which we can hold them responsible for not having made appropriate efforts at noticing or changing these very faults within the group structure. Again, this concept of collective responsibility would prevent us from distinguishing between the various degrees of responsibility that should be due to different actors within the decision-making process. Because of the failure to deal with the complexities of situations of many hands accurately, Thompson proposes a third model.

According to this account of personal responsibility, officials are morally responsible if they are both causally responsible for the outcome and have volitional responsibility in the sense that the action that caused the outcome was not done due to non-negligent ignorance or compulsion. In essence he proposes to assess each agent's individual responsibility according to the four conditions that I discussed earlier. He argues that the advantage of this individual account for approaching the responsibility of officials is that it can meaningfully analyse the validity of excuses and mitigating circumstances that officials will invariably claim. He then analyses a variety of such potential excuses and determines which ones could in fact be legitimate grounds for lessening or doing away with an official's responsibility. Matters are slightly more complicated, though, than Thompson makes them out to be. To see why, we ought to distinguish between excuses and justifications. Following J.L. Austin's distinction, to justify an action is to argue that, while the action may have looked wrong on the surface, it was in fact the right thing to do. To excuse an action, on the other hand, is to agree that the action itself was wrong, but that the agent is not blameworthy because of some mitigating circumstances that ought to be taken into consideration. If our action was justified "we accept responsibility but deny that it was bad", and when our action was excused "we admit that it was [wrong] but don't accept full, or even any, responsibility" (1957, p. 2). Only very few excuses will, however, be able to get us off the moral hook completely. It is unclear on Thompson's account whether the supposed excuses he offers are really intended to be excuses or could in fact be attempts to justify an official's actions. Nonetheless it will be helpful to look at a variety of potential excuses and justifications to understand how we can assign responsibility within complex governmental structures. In particular I want to look at the following: (1) "I only followed orders", (2) "I didn't cause it", (3) "I didn't intend that", (4) "I couldn't have known", (5) "If I don't do it, someone else will", and (6) "If I hadn't done it, someone else would have done something worse". This discussion will also helpfully

point out some of the underlying assumptions about representative democracy and the general context of political action for public officials.

6.4.2. “I only followed orders”

The first statement I want to consider is public officials claiming that “I only followed orders”. Such claims are clearly intended to be excuses acknowledging that the act in question was wrong but that they are only partially, or not at all, to be held responsible for it. If they either have good reason to believe that a superior wants them to act in a certain morally objectionable way, or if such conduct is supported by a given bureaucratic system that is in place then it might be thought to absolve the official from responsibility for the outcomes of their actions because such systemic issues can often not be changed by a single individual. Additionally, at least on the face of things, there may be good reasons not to act outside the perimeters of one’s role description because general adherence to this is important for political systems to run smoothly and effectively. This is what Luban et al. have called “the positivist excuse” (1992, p. 2351), i.e. the idea that even though the action may have been wrong, because it was sanctioned by official or legal channels means that the official cannot be blamed for it. Thompson argues that public officials cannot rely on this excuse, though, because “although the requirements of role can create a *prima facie* excuse” (1983, p. 559)⁵², they will have to consider whether the harm resulting from adhering to their role may be greater than the harm that would result from going against their role requirements. A similar approach is also taken by John Burke who argues that next to the immediate set of rules applying to their role that officials have to fulfil, they also have a duty to protect the wider integrity of their office. Burke draws this distinction between duties by using Dworkin’s idea of consenting to an “enterprise as a whole” (Dworkin, 1977, p. 105). When public officials are exercising the more explicit obligations of their office they always ought to bear in mind that they have not only consented to the specific requirements of their role, but have also committed to upholding the integrity of their office. Should they perceive a clash between their role obligations and their obligations toward the wider purpose of their role, the latter can establish a legitimate ground for forgoing the former. Public officials can therefore not hide behind the fact that they simply followed orders to get off the hook from ascriptions of moral responsibility for the outcomes of their actions. Statements along the lines of “I only followed orders” are not able to excuse officials from moral responsibility for their actions.

⁵² Given my arguments in chapter two, what Thompson meant to say here is most likely that role requirements can create a “*pro tanto*” rather than a “*prima facie*” excuse.

6.4.3. “I did not cause it”

In other situations, a public official might claim that they do not bear the responsibility for an outcome because they did not cause it themselves. This claim presents us with an excuse that acknowledges the wrongfulness of the action but argues that the official in question bears no responsibility for it. The official may say that they simply advised or gave their opinion, but in the end it was someone else who actually made the decision or pulled the trigger. Therefore the causal condition necessary for moral responsibility is undermined. This excuse will only get officials so far, though. One’s advice and contribution to deliberative processes can have tangible effects on the ultimate decision taken and in that way can become a causal factor in the chain of events leading to the outcome. When what a public official says, or fails to say, makes the decision-maker change their mind, then that official bears part of the moral responsibility for that decision and the outcomes following from it. Thompson expands on this by arguing that, “an adviser often contributes significantly to the final decision an advisee makes. The way the adviser frames the alternatives, the weight he gives to various arguments, the language and the illustrations he uses (chosen perhaps to appeal especially to the advisee) – all these forms of influence may make the final decision different from what it would otherwise have been” (1983, p. 548). There are cases, however, in which a political leader changes their mind because of the advice given by the public official, and yet the latter should not be held responsible. If, for example, the political leader misinterprets the advice through no fault of the public official, then we would not want to hold the latter responsible. While they have a causal connection to the outcome, in such instances, I would argue, the epistemic condition would be undermined. To the extent that the public official could not have reasonably expected that their advice would be misinterpreted in this way, they can be excused. The excuse that, “I did not cause that” may also work in cases in which the advice or omission to give it would have made no difference to the way in which the politician acted. If what the public official said could have in no way strengthened or lessened the leader’s resolve because, for instance, the politician simply did not care to listen to their advisers, then we would not want to say that the public official was part of the causal chain in the decision-making process. The statement of “I did not cause that” will only work to excuse an official from moral responsibility for an outcome in a limited set of cases. In the cases where it does it will either undermine the causal condition because the official was genuinely unable to affect the decision-making, or the epistemic condition because the official was genuinely unable to foresee that her contribution would have the effect of leading to the outcome in question.

6.4.4. “I did not intend that”

Sometimes the outcomes of the actions we take are not the ones that we expected or foresaw. Public officials may have had the best intentions in implementing certain policies, and yet, the outcomes of those policies were that people are left off worse or harmed. To say “I did not intend that” is an attempt to show that the epistemic condition for moral responsibility has not been met. This is an excuse that acknowledges the wrongfulness of the action but tries to show that the public official is not responsible for it. As we have already seen in the above discussion about the epistemic condition, good intentions cannot shield an agent from moral responsibility if she should have anticipated that her actions, however well-intentioned, would lead to the negative outcome. What we can expect public officials to know can be quite far reaching. Take the following example: when President Johnson was making decisions about sending more troops into Vietnam he listened to the opinions of his advisers. They advised him against such an expansion of US military involvement. This, however, far from having the consequence of persuading Johnson against such an expansion, had the opposite effect and strengthened his resolve to send more troops to war. By allowing his advisers to speak he gave himself the illusion that all positions had a fair chance to be heard and that his opinion prevailed nonetheless. The advisers, contrary to their intention, became an integral part of the reason why Johnson justified to himself, and others, that US military involvement in Vietnam ought to be broadened. Thompson concludes that

at the point we could expect any reasonable person to recognise that his dissent has become counterproductive in this way, we would presumably consider a dissenting adviser at least a moral accessory. Good intentions may make us think less badly of the adviser than of the advisee, but they cannot, at this point, absolve the adviser of responsibility for the consequences to which he contributes. (1983, p. 552)

The public officials should have, arguably, removed themselves from the advisory process and through that made a clear statement to Johnson that he was not giving all competing opinions their due. This would have signalled their unwillingness to be used by Johnson to justify his policy decision. Unintended consequences are rife in the political arena, but many of these consequences should have and could have been foreseen by public officials. To say that one had good intentions can therefore not excuse one from moral responsibility.

6.4.5. “I could not have known”

Following on from my discussion of the epistemic condition, what could also count as an excuse is a public official stating that “I could not have known”. While they do acknowledge that the outcome was morally problematic, they argue that they cannot be held responsible for it. If the negative outcomes of their actions were not foreseeable, then we cannot hold

them morally responsible for those outcomes. Such a statement claims non-culpable ignorance. While this excuse can indeed work, we should be careful of when a public official can assert that they were not culpable for their ignorance. Thompson argues (1987, pp. 60-61) that public officials are culpable for their ignorance and therefore morally responsible if they explicitly order or implicitly suggest to those around them not to give them full or wholly accurate information.⁵³ The second case, according to Thompson in which ignorance will be culpable, is one in which the public official, even if she could not have foreseen that a specific political actor should behave in the way they did, should have realised that behaviour of that type was not going to be an unlikely occurrence. The final case regards public officials who are no longer in office. If they, during their time in office, initiated certain bureaucratic systems that were likely to encourage morally dubious behaviour and wrongdoing, they cannot escape moral responsibility for the outcomes of these mechanisms once they leave office. Even though they are no longer in the privileged position to have access to information about the actions of government actors, they can still be responsible for what happens as a result of the systems they initiated. While officials can use the fact they could not have known the outcomes of their actions as an excuse to shield themselves from moral responsibility, this is limited by the extent to which they caused their own ignorance. If they contributed to the circumstances that meant that they could not have known, their ignorance becomes culpable and we can hold them responsible for the outcomes of their actions.

6.4.6. “If I had not done it, someone else would have”

Public officials may claim that “If I had not done it, someone else would have” (Thompson, 1987, p. 49) in order to shield themselves from moral responsibility for an outcome. Again, this is an excuse that acknowledges the wrongness of the action but tries to claim that the official ought not to be held responsible, or at least be held less responsible, for it. If one public official refuses to fulfil the demands of their role or to follow an order, then their superiors might simply exchange them for another public official who will then do it anyway. This could be said to undermine the voluntariness condition for moral responsibility because the public official only acts in the way she does because she knows that there is no way that the outcome can be avoided. Thompson argues that the excuse, in this form, is simply incoherent (1987, p. 49). If the agent was not morally responsible because someone else would have just done the action, then this would be true of the alternative agent, and so on up to the point where no one would be responsible. The problem is that the excuse implies that one agent is relieved of moral responsibility because someone else would have been

⁵³ This is in line with my earlier argument in section 6.2.2. about the kinds of behaviour that can make ignorance culpable.

morally responsible. This cannot be the case when every alternative agent can claim that someone else would have done it, though. This would mean that we would routinely end up in a situation in which no one is responsible for acting within an organisation. On my account of voluntariness this provides us with good moral reasons to call their action voluntary after all. If the option is either to commit a morally wrong action, or to resign or be removed from that position, then we might reasonably expect our officials to choose the latter over the former. Should a new official then be instated who will commit that very wrongful action after all, this would no longer implicate the original official who would have been able to remove themselves from the causal chain of events leading to that action. The excuse that “If I had not done it, someone else would have” does therefore not undermine the voluntariness condition.

6.4.7. “If I hadn’t done it, someone else would have done something even worse”

Now Thompson argues that a different version of the above excuse may potentially excuse an official from moral responsibility. This could be the case when the agent claims “if I hadn’t done it, someone else would have done something even worse”. In such circumstances Thompson argues the agent might have to minimise the harm, even if that means going against her personal principles and personal integrity, because not doing so “seems too close to moral self-indulgence. It could represent an effort to keep one’s hand clean no matter what happens to the rest of society” (1987, p. 52). It seems odd, though, that Thompson wants to describe such a statement as an excuse. The very fact that he uses the language of “keeping one’s hands clean” should alert us to the way in which the scenario he describes above could be described as a dirty hands case. The official is aware that the action in question is morally problematic, but that, under the given circumstances, it would present a lesser evil. I have defined dirty hands cases as instances of justified violations of important moral values at the beginning of this thesis. If the action was justified, then it would appear odd to call this claim an excuse as Thompson does. When an official claims that “If I hadn’t done it, someone else would have done something even worse”, they are therefore offering a justification for their conduct. According to Austin’s definition of a justification this would entail that they accept responsibility but want to show that the action in question was not wrongful after all. In cases where the agent has to choose a lesser evil, however, matters are slightly more complicated. A justification in such circumstances cannot show that the action in question was entirely right after all, because this would be to ignore one of the core insights of dirty-hands reasoning, namely that the value violated by the agent has not been cancelled or annulled but instead still exerts an important moral weight. A justification that the agent

only acted in a given way to avoid an even greater evil is then intended to accept responsibility and to show that the action in question had at least some right-making features.

6.4.8. Excuses, Justifications, and Dirty Hands

There are then a variety of excuses that public officials might use to try and show that they did not meet the four conditions necessary for moral responsibility for a given outcome. As I have shown above, some of these such as “I only followed orders”, or “If I had not done it someone else would have”, or “I didn’t intend that” are not sufficient to do so. Others, however, like “I did not cause it”, or “I could not have known”, can sometimes provide a sufficient excuse to shield the agent from moral responsibility, or at least diminish it. We started to look at these excuses because we followed Thompson in pursuing public officials through personal responsibility, as opposed to a more hierarchical or collective approach. In the course of this analysis we have clarified the different ways in which an official can stand in relation to and responsible for the outcomes of a complex democratic decision-making process. Where I differ from Thompson is in his analysis of cases in which an official might claim that “If I hadn’t done it, someone else would have done something even worse”. I have argued that such statements do not constitute excuses but justifications. In fact, the situation described by Thompson here sounds very much like instances of dirty hands in which an agent has to choose a lesser evil. When an agent resorts to such a claim they are no longer trying to remove themselves from moral responsibility for that outcome. Instead, they are trying to re-describe the situation in such a way that we can see that, what looks like a morally wrong action on the surface, had right-making features after all, namely the prevention of an even bigger evil.

Now one might argue that Thompson’s approach does not take into account all of the complexities of political decision-making. There are elements of all three approaches that we ought to take into consideration when evaluating the responsibility of political actors. We should give some extra weight to those that are in positions of authority and as a result have a higher bargaining power or the final call. Additionally we should question whether, in some cases at least, there are structural features of the organisation that no single individual could have changed and that contributed to a certain action being taken. I think that this is plausible but that the personal approach to understanding the responsibility of public officials in situations of many hands can allow for that. When we are considering the extent of an individual’s moral responsibility for an outcome we ought to take into consideration whether they were in a privileged position that made it, for example, easier and less costly to speak their mind and disobey orders. Similarly, tracking personal responsibility does not exclude

the possibility of considering that sometimes there will be situations in which none of the agents individually acted in a morally objectionable way, but that their actions as a whole resulted in a negative outcome. Ultimately, public officials can, and often do, share in the moral responsibility for dirty hands. The dirt is not borne by a single political leader, but also transfers to the officials that she works with.

6.5. Praise and Blame

In the previous sections I have shown why a variety of political actors will satisfy the conditions necessary for moral responsibility. This means that it will be appropriate for us to experience and express certain reactive attitudes toward them. The question now is whether these should be positive or negative, i.e. whether praise or blame are most appropriate. Ultimately I want to argue that if we take seriously the complex nature of dirty hands decisions and acknowledge the appropriateness of a variety of first-person emotional responses to the act done, then this complexity also ought to be reflected in our third-person reactive attitudes to the agent.

There appears to be some agreement that the agent ought to be praised (Walzer, 1973, p. 179; Levy, 2007, p. 43; de Wijze, 2013, p. 896). After all, she brought about the lesser evil in a situation in which discerning the better course of action was very difficult. We ought to praise her for withstanding that pressure and doing the best that she could given the circumstances. While I think that, theoretically, it is appropriate to praise the agent, I think that there are good reasons to limit such a response in practice. Granted, we can acknowledge to a certain extent that the agent did well in choosing the lesser evil, but concern for the victims of her dirty hands should prevent us from emphasising this reactive attitude too much because it would show a disregard for the people that have been negatively affected by the dirty-handed decision. Imagine, for example, a situation in which a political leader decides to abandon a rescue mission for hostages captured by an enemy. They make this decision because the rescue would be likely to kill or seriously harm the soldiers involved and would also likely antagonise the enemy further resulting in an even worse retaliation attack. The hostages die in captivity. While we can acknowledge the courage that it must have taken to make this difficult decision, it would be inappropriate for us to dwell too much on the praiseworthiness of the leader for her action. Giving our praise for actions that made people significantly worse off, or harmed or even killed them would be disrespectful to those victims and would show a lack of understanding for the seriously negative effects that one's actions had on other people and their lives. So while I agree that, in theory, it is appropriate to praise a dirty-handed politician for having chosen the lesser evil when doing so was a difficult

decision, we should limit reactive attitudes of praise in practice, in order to show respect for the victims of those dirty hands.

While there has been some debate about whether we can, aside from praising, also punish the political actor, the question of whether the agent can be blamed as well as be praised has been largely left untouched. The only detailed discussion of this can be found in Levy (2007). He states that “agents are blameworthy for an action just in case there is some alternative act or omission available to them which would have allowed them to avoid blame” (2007, p. 44). As I have argued in chapter three, once an agent is faced with a dirty hands situations, there is no way that she can emerge with her hands still clean because she will have to violate a core moral commitment either way. Levy takes the same position and as a result concludes that “they therefore cannot avoid blame; by the principle of the avoidability of blame, they are therefore blameless” (2007, p. 45). Saying that the dirty-handed agent is not blameworthy, he argues, does not result in us explaining away the problem of dirty hands in the first place. According to Levy, just because we cannot blame them does not mean that their hands are clean. The dirty-handed agent has done something morally bad, even though it was not morally blameworthy. This is so because “if I perform the best action in the circumstances in which I find myself, but the best action is categorically wrong, then I perform a wrong action without being blameworthy for it” (2007, p. 45). His argument relies, on the one hand, on the premise that the politician in question engaged in a voluntary exercise of their agency when determining and choosing the lesser of two evils and as such can be morally responsible as well as praiseworthy for doing so. On the other hand, as mentioned above, it relies on the second premise that choosing to do something morally bad in a dirty hands situation cannot be seen to be a voluntary exercise of their agency because there was no acceptable “alternative act or omission available to them which would have allowed them to avoid blame” (2007, p. 44). In other words, while the agent has voluntarily chosen to do the best thing possible in the situation, she was unable to change the fact that the best thing possible was a morally bad action. We can therefore praise her for choosing the lesser evil but we cannot blame her for the lesser evil still being an evil.

Remember that I argued in section 6.2.3. against the conception that in order for an act to be voluntary the agent must have had an acceptable alternative option available to her. Instead, I argued that the voluntariness of an action depends on the moral features of the situation. Politicians have volunteered to take up political office knowing that doing so is not risk-free and that they are likely to have to make certain difficult decisions. They have accepted the power that comes with such a position and part of their role is that that the buck for governmental decisions will ultimately stop with them. They volunteered for this

position and we ought to treat it as their autonomous choice to take on this power together with the risks and responsibilities attached to it. In order to acknowledge their autonomous choice we should say that their decision to take office and bear the risks and greater responsibilities is voluntary. As such we have good moral reasons to believe that their conduct was voluntary and ultimately blameworthy even though they could not have avoided blame. Politics is not a risk-free enterprise and sometimes the best they can do will not be enough for them to avoid blame. This fits with the insights from chapter three in which I argued that the nature of dirty hands points us toward the tragic aspect of our moral lives.

We have yet another moral reason to call the politician's conduct voluntary and as a result blame them for their dirty hands. Politicians have been given great powers and we should be wary of creating responsibility shortfalls in situations in which they have used these powers in ways that have left people significantly worse off or even killed. In such instances it will be important that we reaffirm our commitment to this value and express our solidarity with those whose rights have been infringed and ensure that the stakes remain high for violating important moral values by those in power. If we want to avoid responsibility shortfalls in government through which people are left off worse through the actions of those that represent them, without being able to blame those who caused them to be worse off, then we have good moral reasons to say that dirty-handed politicians voluntarily chose to violate an important moral value.

Just as in the case of praise, though, our blame should be tempered by an acknowledgement of the complexity of dirty hands. I have bracketed the question of punishment for the purposes of this thesis but this would, for example, entail that even though we can blame politicians for their dirty hands, we cannot hold them liable in the same ways as for cases of ordinary wrongdoing. We ought to acknowledge that good moral politicians had moral reasons for their moral violations, and acknowledge this complexity in our third-person responses to their dirty hands. Ultimately, I would like to argue that we can both praise dirty-handed politicians for having made the overall best decision possible, while still blaming them for having chosen to violate an important moral value which has left people worse off – often the very people they were asked to protect and represent.

6.6. Example: Claudy Bombing

Let us illustrate these ideas with a real-life example. While I acknowledge that real-life examples will be a lot messier and I am unlikely to have all of the relevant information available, for the purposes of showing that dirty-hands reasoning can in fact be applied to complex decision-making processes and that the account of responsibility I have supplied so

far can successfully navigate this, using a real-life example will be necessary. I have chosen this particular example because there is an unusual amount of detailed information on the different agents' reasoning, and how they interacted with one another publicly available. On 31st July 1972 three car bombs exploded in Claudy, a rural village in Northern Ireland, and killed nine (three of them children) and injured over thirty civilians. 1972 was one of the most violent years of The Troubles in Northern Ireland; that year alone nearly five hundred people had died as a direct result of the conflict. At the time no one was charged with the bombings and no organisation claimed responsibility for the attack. In 2010, after several years of investigation into the matter, a report (Hutchinson, 2010) was published which concluded that then Secretary of State for Northern Ireland, William Whitelaw, together with high-ranking officials from the police and the Roman Catholic Church, conspired to cover up the involvement of the person they thought was responsible for the attack. The person the police believed to have directed the bombing was the Catholic priest James Chesney who was a high-ranking member of the local IRA. At the time, however, he was never taken in for questioning even though several police reports alleged his involvement. While at least one police officer wanted to arrest him based on the evidence that had been accumulated, he was told by a senior officer that "matters are in hand" (Hutchinson, 2010, p. 9). This latter officer then wrote a statement that was shared with both Whitelaw and Cardinal William Conway, the head of the Catholic Church in Ireland. The two then met and agreed that the way forward would be to transfer Chesney silently to the Republic of Ireland. This decision was fed back to the Chief Constable Sir Graham Shillington who agreed to these terms. Chesney spent the rest of his life until his death in 1980 in parishes in Ireland. An article in *The Guardian* summarised the justification senior officials gave for their decision as following:

The arrest of a priest in connection with such an emotive atrocity at a time when sectarian killings in Northern Ireland were out of control and the province stood on the brink of civil war was feared, by senior politicians, as likely to destabilise the security situation further. A deal was therefore arranged behind closed doors to remove Fr Chesney from the province without provoking sectarian fury. (Gabbatt, 2010)

We are unlikely to come to an agreement about whether this was the lesser evil or not. For the sake of argument I will simply accept the explanation given above and stipulate that dealing with Chesney internally was the lesser evil.

So who are the people that are responsible for the fact that a man who killed several innocent people, some of them children, was allowed to go free? We have a police officer that wanted to bring in Chesney for questioning but failed to pursue this any further because a superior assured him that matters were already being handled. The superior in question forwarded the

issue to higher authorities and failed to raise any objections to their decision. Whitelaw and Conway agreed to deal with Chesney internally rather than bringing him to justice in public. Shillington then failed to put up any objection to this decision. When we consider real-life situations such as this, responsibility will not simply fall on one single person. Instead a variety of actors at different levels will potentially be getting their hands dirty by contributing to the decision-making process or by their failure to become involved in it.

We can start by considering William Whitelaw. I think we can safely assume that he had the necessary mental abilities to satisfy the cognitive condition. In addition, he clearly foresaw that his decision not to arrest Chesney would lead to the outcome that a murderer would go free. The epistemic condition for moral responsibility therefore seems to be clearly fulfilled as well. What about his voluntariness? Whitelaw, as Secretary of State, had the ultimate decision-making power and authority. He gave the order that the police should ignore this lead in their investigation. There is therefore no doubt that he was acting on his own accord and was in control of the dirty-handed decision. Now one might object that there is a particular complication in dirty hands situations. By their very nature they are situations in which the agent is seriously constrained by outside circumstances in the options available to her. As mentioned earlier, the fact that Whitelaw was constrained by what Bernard Williams has called the “harness of necessity” (2008, p. 135) does not undermine his voluntariness. While this objection raises the tragic element of dirty hands cases it does not show, as I have argued earlier, that Whitelaw did not act voluntarily. We have good moral reasons to call such an action voluntary because we ought to ensure that leaders can give binding directive in such situations to ensure that the lesser evil can be effectively chosen. Whitelaw can therefore not claim that his actions were not voluntary because he only had options with significant moral costs available to him. Whitelaw was also clearly causally responsible because he gave the order to the police not to prosecute and sanctioned the church dealing with Chesney internally. So far it therefore seems clear that Whitelaw got his hands dirty and is responsible for the outcomes of that decision. Now one might want to object that I pointed out earlier that the representative relationship may to some degree lessen a political leader’s responsibility in as much as they acted not on their own accord but in the interest of their citizens. I do not think that this will work in the case of dirty hands cases such as this one, though. The nature of dirty hands situations means that there are good moral reasons to say that either action would be in the interest of the public, and the lesser evil may not be clearly discernible. In a state of civil unrest as in Northern Ireland at the time it arguably would have been in the public interest not to give the opposing sides reasons to escalate the conflict even further. At the same time it arguably also would have been in the public interest to uphold

justice to ensure that chaos and lawlessness would not take an even tighter hold on the community. Because of these conflicting moral reasons, Whitelaw would have had to do a considerable amount of interpretative work and would have had a large leeway in deciding what would be in the best interest of his citizens. He therefore cannot shield himself from responsibility to any significant degree by claiming that he was entirely constrained by his citizens. Overall, then, Whitelaw clearly got his hands dirty and is responsible as the person with the ultimate decision-making power and authority in this situation and neither representation nor the harness of necessity can undermine this.

What about Cardinal William Conway? We can safely assume that he fulfilled the cognitive condition for moral responsibility on the same grounds as Whitelaw. Additionally, he definitely foresaw that his action would let a murderer go free, so he fulfilled the epistemic condition, too. What about his voluntariness and causal relation to the ultimate decision? He might try to take recourse to the claim “I did not cause it”. Conway could claim that he did not have the ultimate decision-making power, which lay with Whitelaw alone, and as such he did not get his hands dirty and is not responsible. This will not work in this case, though. Firstly, we can assume that Conway was in favour of dealing with Chesney internally because he complied with the decision and made active provisions to transfer Chesney out of Northern Ireland. The decision to do so was most likely made jointly with Whitelaw and as such Conway cannot escape the dirt and responsibility for it. Secondly, even if Conway was not in favour of Whitelaw’s decision he could not use this to hide from the responsibility. As the head of the church he had sufficient power and standing to refuse to comply with Whitelaw’s orders. He failed to refuse to deal with Chesney in an internal way rather than bringing him to justice. Such a refusal on Conway’s part would have almost certainly changed Whitelaw’s decision because the option of quietly transferring him out of Northern Ireland would have no longer been available. Conway could have changed Whitelaw’s decision but failed to do so. This means even if he did not agree with Whitelaw, he still got his hands dirty and is responsible for Chesney going free.

We can now move on to the head of the police, Chief Constable Sir Graham Shilling. The same considerations that applied to Conway will also apply to him. He had the right cognitive abilities and the relevant information to foresee that not prosecuting Chesney would result in a murderer going free. Like Conway he was also in a position to refuse the order to let Chesney go and as head of the police in Northern Ireland he clearly would have had the authority and standing to prosecute him despite opposition. In comparison to Conway, however, Shilling is a public official and as such more open to pressure from the government. Not complying with Whitelaw’s order could have significantly affected his career and as such

he might claim that he was forced to comply and his decision not to prosecute Chesney was not voluntary. This, however, will not do. When it comes to matters in the public interest such as upholding the rule of law and due process then one cannot hide from responsibility by citing the possible negative consequences to one's career. Remember that we said that representation was not a risk-free enterprise; taking on any leadership position in public office is similarly not without risk. Shilling would have taken on his role knowing full well that he had an obligation to uphold the rule of law and that this might come at certain personal costs. If certain features of the choice decision exerted an influence on the agent's decision-making, even if these were not sufficient to undermine voluntariness as such, we can, however, acknowledge that they may lessen the degree to which we want to hold the agent morally responsible. In the case of Shilling I do not want to make too much of an allowance for this, however, because he was holding a position of sufficient power at the time to be able to withstand a lot of outside pressure. He has dirty hands and is responsible for Chesney going free.

There is good reason, then, to believe that the secretary of state, the head of the church, and the head of the police in Northern Ireland at the time got their hands dirty and are morally responsible for Father Chesney not being brought to justice. What about the unnamed police officer who wanted to bring Chesney for questioning and his unnamed superior who assured them that matters were in hand? Again, we can assume that they both had the relevant mental abilities to fulfil the cognitive condition. It might, however, be claimed that they did not have access to all of the relevant information necessary to foresee reasonably that to acquiesce in the order not to prosecute would mean that a murderer would go free. To a certain extent they have to trust that those in a position of authority who may have access to information that is unavailable to those on the ground make a decision that will uphold the law. The idea is that maybe the police officers could claim "I could not have known" to undermine the epistemic condition and ultimately their responsibility for the dirty-handed outcome. This excuse will only go so far in their case, though. Remember that Thompson provided us with several cases in politics in which ignorance may be ultimately culpable. One of them stated that ignorance is culpable if an actor, even though she could not have foreseen that her actions would lead to a certain outcome, could have been expected to understand that others would be likely to act in certain ways. In this case, given the politically charged nature at the time it would not be unreasonable to expect that those in authority could make a backdoor deal to circumvent justice and the rule of law. While I think that the epistemic condition was fulfilled for the police officers, there is good reason to hold them less responsible for the outcome given that they would have had to rely on a good deal of assumptions to come to

the conclusion that following orders in this instance would in fact mean that a murderer was able to go free. In particular this is the case for the lower-ranking police officer who first wanted to bring in Chesney because they were particularly far away from the decision-making process and the available information. What about their voluntariness and causal relationship to the dirty-handed action? In essence they face the same issues as Shillington. In their case, however, these are heightened because they are not in positions of authority, are more expendable, and would not have taken on the same risks as Shillington who accepted a leadership position. Additionally, we might wonder what they ultimately could have done to change the decision once it was jointly made by the secretary of state, the head of the church, and the head of the police. We might point out that they could have become whistleblowers. If they alarmed the public to the decision taken about Chesney they would have changed the options available to those in power and in that way affected their decision. In as much as they failed to object and in as much as that objection would have changed how Chesney would have been dealt with, they can be said to be complicit in the dirt and morally responsible. But things get even messier here: given the partial information available to them, whistleblowing would have been quite presumptuous and potentially dangerous. In the sensitive political climate of the time, making such an accusation publicly without being one hundred percent sure of it would have been problematic. Ultimately the police officers may be said to fulfil the voluntariness and causal condition, but we should take it seriously that they only do so on a very minimal level. They share in the dirty hands and moral responsibility but only to a very small degree given the position they were in.

We can take away a variety of important points from this discussion. Firstly, it is important to note that political leaders stand in a representative relationship that, in principle, can lessen their moral responsibility to the extent that they were bound by the public interest to act. As briefly mentioned earlier, this insight opens up the possibility that citizens in a democracy may hold some of the moral responsibility for the acts of their representatives. In dirty hands situations, however, the extent to which politicians can shield themselves from moral responsibility by taking recourse to the representative relationship is significantly limited. The morally complex nature of these situations requires too much interpretative work and gives the political leader too much leeway to claim that they were not acting voluntarily and on their own accord. Secondly, the fact that dirty hands situations seriously limit the options available to a political leader does not impede their voluntariness and therefore cannot be used to refuse to accept moral responsibility for a dirty-handed decision. Thirdly, the fact that a political leader is ultimately morally responsible does not exonerate others who also contributed or failed to object. Moral responsibility in democratic politics is not a zero-sum

game and the dirt can fall on a variety of political actors. The more they are removed from the actual dirty-handed decision-making, however, the more they will be able to claim that they did not have the relevant information available to them or were not able to control or take causal influence over that decision.

6.7. Conclusion

In this chapter I have briefly introduced my account of moral responsibility and showed how a variety of political actors can be said to share in the responsibility for dirty hands decisions. In order for an agent to be a legitimate target for ascriptions of responsibility they have to fulfil certain cognitive, epistemic, voluntariness, and causal criteria. In the case of political leaders these will be most clearly fulfilled. They have the required mental capabilities to reason about complex decisions, they have the relevant information about the choice situation available to them, we have good moral reasons to call their decision voluntary, and their choice is the clear origin of the causal chain that leads to the dirty action. The buck does not stop here, though. Unlike much of the dirty hands literature which has focussed on the single political leader, I have argued that the dirt extends to a variety of other political actors that work in conjunction with the political leader. While such actors may try to make use of a variety of excuses to shield themselves from this responsibility, the majority of these will not work. That other political actors share in the responsibility and dirt ought not to distract, however, from the leader's responsibility. Moral responsibility, after all, is not a zero-sum game and that additional agents share in the dirt does not have to distract from the leader's responsibility. The question left to answer now is whether the dirt and responsibility reach even further and are shared by the citizens of a democracy. I will take up this issue in the next chapter.

7. Who is Responsible: Democratic Citizens

7.1. Introduction

In the last chapter I discussed the distribution of moral responsibility for a dirty-handed outcome among different political actors. In this chapter I turn to the question of whether the moral responsibility for dirty hands can extend to the citizens of a democratic country. This question has been given some recent attention in the dirty hands literature (Bellamy, 2010; Archard, 2013; de Wijze, 2018; Thalos, 2018). These writers seem to agree, in principle, that the actions of a democratic government are the actions of its citizens; however, the exact relationship between leaders and led is left unclear. It is important to note that so far discussions of the dirt that potentially attaches to citizens have treated the public as a homogenous group without differentiating between citizens. Additionally, the dirty hands literature has not sufficiently taken into account insights from the already-existing moral responsibility literature and linked it to the issue of the dirty hands of citizens. This chapter aims to change this not by simply asking whether citizens are morally responsible or not, but by asking what exactly it is that would make a citizen more or less, or not at all, morally responsible. Responsibility is a matter of degree and any satisfactory account of the moral responsibility of citizens will necessarily be complicated and messy. By starting from the four individually necessary and jointly sufficient conditions identified in the previous chapter, I am going to show what makes citizens more or less responsible and what could exempt them from responsibility altogether.

I will start by giving a brief overview of the kinds of issue that have been highlighted by writers in the dirty hands literature. In particular, there are three questions in relation to dirty hands that my account of moral responsibility will have to be able to answer. (1) Is there a difference, qualitative or quantitative, between the responsibility of political leaders and of citizens for dirty hands? (2) How can citizens share in the dirt of their leaders when some, if not many, dirty hands decisions have been taken without their knowledge? (3) Can citizens claim that they do not bear any moral responsibility for the dirty hands of their leaders if they have distanced themselves from them in some form or another? I will then develop an account of the relationship between citizens and governmental decisions that can ground ascriptions of moral responsibility.

I will argue that virtually all citizens participate in or contribute to a given political decision or the wider democratic process and that we can hence ascribe to them a causal role, to varying degrees, for the actions of their political leaders. Of those that satisfy the causal

condition, many citizens have participated or made a contribution voluntarily. Virtually every citizen could have done more to affect or change the decision taken, and deciding not to take such action was voluntarily. Even for citizens who are seemingly only implicated in the decisions of their leaders because they have to obey the law and pay their taxes, as they happen to live in that state, can be said to have been so voluntarily in as much as they voluntarily embraced their membership of that state. In turn, of those citizens whose participation in or contribution to the political process has been voluntary, most will also satisfy the epistemic condition to varying degrees. Even when they did not know, and could not have known, that their actions would likely result in a certain dirty-handed decision, this will not be sufficient for them to evade responsibility. In as much as citizens not knowing how their actions would contribute to a dirty-handed action further down the line is due to citizens contriving their own ignorance, they will also satisfy the epistemic condition. After all, they could have known had they not contrived their own ignorance. Finally, of the set of citizens that has voluntarily participated or contributed and could have or should have known, a majority will also qualify as having the required cognitive abilities for ascriptions of moral responsibility. We are then left with a set of citizens who are legitimate targets for ascriptions of moral responsibility for the dirty-handed actions of their political leaders. Given the extent to which they fulfil each of the four criteria, though, the moral responsibility of citizens can vary greatly.

The two questions raised by the dirty hands literature regarding the ignorance of citizens and their ability to distance themselves from their politicians, and thus evade responsibility for dirty hands, will be answered within these arguments (in the sections on the voluntariness condition and epistemic condition respectively). Finally, I will apply this account to the question of whether there is a difference, qualitative or quantitative, between the moral responsibility and dirt of political leaders and of citizens. I will show that there is a quantitative difference, in that political leaders will bear a greater responsibility than citizens.

7.2. Some Issues Regarding Responsibility and Dirty Hands

In order to understand whether citizens can be morally responsible for the actions of their political leaders, we will first have to understand what the relationship between leaders and led is and how this could ground a transmission of responsibility from one to the other. Discussions in the dirty hands literature have proposed a variety of ways in which we might be able to ascribe moral responsibility to citizens. What they all have in common, though, is that they conceive of the public as a homogenous group and do not distinguish between the

responsibility of different citizens. They simply assume that, if the particular conditions of their account are met, all citizens are in fact responsible for dirty hands.

Both Thompson and Gowans claim that when politicians act with the consent of their citizens, then citizens share in the moral responsibility for the actions of their leaders. Neither provides much detail on how exactly citizens are consenting, to what they are consenting, or how this could affect their moral responsibility. Thompson simply stipulates that consent will be able to transfer responsibility (1987, p. 11), and Gowans restricts himself to the statement that “we grant a power of prerogative to the executive to do what is morally best, and in this way we consent to those actions properly taken under this authority” (1994, p. 232). Neither of them takes up the matter of how exactly this process works in any more depth. They also do not engage with the question of whether all citizens can be said to have consented in this way, or whether some citizens may be exempt from this.

In contrast, Miriam Thalos describes the relationship between citizens and political leaders not in terms of consent but in terms of authorisation. The nature of authorisation, she stipulates, implies that in a representative democracy citizens are the ultimate authors of the political leader’s action and as such bear moral responsibility for the dirty-handed action, as long as the political leader was acting in good faith within the boundaries of her mandate. This is so, according to Thalos, because political leaders stand in as representatives for the wishes of those who elected them. While the responsibility falls on citizens, the phenomenology of dirt sticks to the political leader because they “are literally the instruments used to perform the actions in question” (Thalos, 2018, p. 176). The idea here is that while the politician will feel dirty, it is ultimately not the politician but democratic citizens who are morally responsible for the action taken. On her account, political leaders are not acting in their own capacity but simply execute actions on behalf of another. Authorisation “deflects the moral responsibility” (2018, p. 181) from the politician who commits the action to citizens. Thalos, however, does not offer us an argument in favour of her particular view of authorisation. I will show later in this chapter why her account is unrealistic and cannot account for the workings of complex democratic decision-making.

Finally, Garrett, Archard, and de Wijze argue that we can understand citizens as complicit in the actions of their leaders and as such they share in the moral responsibility for dirty hands. It is unclear on Garrett’s account what the basis for the complicity of citizens is supposed to be. At one point he claims that political leaders have some form of writ from the public, at another he focusses on citizens’ ability to supervise the actions of their leaders, and finally he implies that if citizens approve of a given policy decision they will be complicit (1996, pp.

17-18). The relationship between these different grounds and how exactly they can lead to complicity is not further elaborated on. Given that it is left ambiguous what exactly makes a citizen complicit on his account, it is also unclear whether all citizens will be complicit or merely some. Archard, on the other hand, is clear that the complicity of the democratic public is based on the authorisation of their political leaders and their possible actions. For him this means that, for any political decision within the politician's mandate, "the public 'owns' the actions of its politician. [...] As the etymology of 'authorization' indicates the public is the true author of the actions performed by others" (2013, p. 781). Unlike Thalos who claims that it is "the citizenry on whose shoulders responsibility falls" (2018, p. 179) because politicians are merely "the instruments used to perform the actions in question" (2018, p. 176), Archard instead claims that "politicians are identified as the appropriate source of political acts and yet constrained in what they are permitted to do in the name of those who gave them power so to act" (2013, p. 781). Political leaders are not mere instruments but moral agents when they make policy decisions. As such the democratic public does not hold all of the moral responsibility, as in Thalos's account, but becomes complicit in the actions of their political leaders. Archard acknowledges, however, that this brief account is a simplified summary of the matter and that many important questions about the nature of the mandate given to politicians, and what exactly they can and cannot do within this mandate, is left unsaid. Archard is only interested in the public as a whole and appears to claim that all citizens, simply in virtue of their membership in the state, will automatically be responsible.

The most sustained discussion of complicity in dirty hands cases is presented by de Wijze in a recent paper. He argues that citizens "are potentially and sometimes actually accessories, causally linked to the immorality done in their name" (2018, p. 140). He presents three reasons that jointly lead to that conclusion. Firstly, politicians who get their hands dirty commit a justified wrongdoing in the best interest of their citizens. Secondly, this shows that their intentions are good and that they do not commit these wrongdoings for the sake of personal gain, but for the public good from which all citizens can stand to benefit. Thirdly, "citizens rightly expect their politicians to protect them from harm even in situations where there is no morally cost free action or policy" (2018, p. 140). Given these considerations, de Wijze concludes that we can assume that citizens implicitly consent to their political leaders getting their hands dirty for them. This is then supposed to ground their complicity. It also follows, for him, that all citizens who are part of democratic society are to some extent complicit, whether they voted for that politician or not, because "citizens cannot seek to mitigate the moral pollution by insisting the [democratic dirty hands] were not in their name. Such actions were necessary and unavoidable to bring about the lesser evil from which all

citizens benefit” (2018, p. 142). As a result he argues that “a collective responsibility falls equally on all members of the public regardless of their choices or level of political activity” (2018, p. 142). Owing to the moral division of labour in which political leaders are the ones who ultimately act, they also shoulder a greater moral responsibility than ordinary citizens. This is so because the “exercise of political agency comes with special powers, duties, responsibilities, and privileges” (2018, pp. 141-142). De Wijze is not clear enough, however, on how the three reasons that ground the complicity of citizens are enough to establish a sufficient causal link to the politician’s action necessary for ascriptions of moral responsibility. He also does not sufficiently engage with the option that there may be good reasons to distinguish between the moral responsibility of different citizens and instead simply focusses on the public as a whole. Overall, much of the discussion of the responsibility of citizens for the dirty hands of their leaders has not made enough reference to the already-existing literature on the responsibility that citizens hold for the actions of their government and state more generally. It is especially noteworthy that those writing on dirty hands seem, in the majority, to agree that individual citizens can be morally responsible for the actions of their leaders simply in virtue of their democratic citizenship. This is, however, a rather controversial claim to make (Feinberg, 1970; Parrish, 2009; Stilz, 2011; Lawford-Smith, 2018) and would require a substantive re-think of our conception of moral responsibility.

To get clarity on the moral responsibility of citizens for the dirty hands of their political leaders, I will apply my account of moral responsibility from the previous chapter to this particular problem. In doing so we will encounter a variety of complications, though. Remember that in the last chapter one of the necessary conditions for individual moral responsibility for an outcome was a clear causal connection between the agent and that outcome. It is difficult, however, in the case of citizens in a large democratic state to see how such a causal link could exist. Secondly, given that we have not chosen the state we are a part of, how can our participation in and contribution to it satisfy the voluntariness requirement? Are we in an important sense forced to participate in or contribute to the state in such a way that we would not want to assign moral responsibility to ourselves for our actions? Also, what would it take for us to remove ourselves sufficiently from the decisions of our politicians so that we can no longer be held responsible for them? Thirdly, dirty-handed decisions will sometimes, or even often, be taken in secret and away from the public eye. Citizens will be lied to or deceived about the decisions and actions taken by their leaders. What if citizens simply did not know and could not have known about a particular instance of dirty hands⁵⁴? Will this necessarily undermine their moral responsibility for the outcomes

⁵⁴ This question is raised by Thompson (1987, p. 22) and Archard (2013, p. 785).

of their politician's decision? Some people might wish to argue that a certain amount of secrecy is essential for a political leader to work efficiently. From this it could be followed that, at least sometimes, citizens should not know about the dirty-handed actions of their leaders. In what way would this affect their moral responsibility for the outcomes⁵⁵? Finally, not all citizens will satisfy the cognitive condition. Where should we draw the line in the capabilities required for understanding complex democratic decisions and procedures? Even if we establish that citizens somehow satisfy the above criteria, a successful account must be able to answer in which way the responsibility of citizens is going to be similar or different to the moral responsibility of their political leaders. Is there a quantitative or qualitative difference⁵⁶? I will provide answers to these questions so that we can reach a comprehensive picture explaining why many citizens are legitimate targets for ascriptions of responsibility regarding the dirty-handed actions of their political leaders.

7.3. The Moral Responsibility of Citizens

In this section I will discuss how we could ground the moral responsibility of citizens for the actions of their leaders. Before introducing different accounts of this relationship it will be important to clarify a few points.

Firstly, examining the moral responsibility of citizens is different to understanding their criminal responsibility or political liability. Criminal responsibility asks whether citizens are due any penal sanction for the actions of their leaders, and political liability is concerned with the question of whether citizens have any remedial responsibilities for the actions of their leaders. While these are interesting and important questions I will not take these up as part of this thesis. Instead, I want to understand which, if any, citizens can be appropriate targets for ascriptions of moral responsibility (i.e. being legitimate targets for ascriptions of praise or blame). That is, I want to understand what it is that makes citizens more or less, or not at all, morally responsible for what their politicians do.

Secondly, and following on from this, I am interested in the moral responsibility of individual citizens as opposed to the collective moral responsibility of either the public or the state as a whole. I cannot do full justice to the debate surrounding collective moral responsibility here, but I want to give a brief indication of why I have chosen an individual rather than a collective focus for making sense of the moral responsibility of citizens. Generally we think that, in order to be held morally responsible, a collective needs to satisfy certain criteria to be called a moral agent in the first place. Peter French has argued that collectives can do so if they

⁵⁵ This question is raised by Hollis (1982, p. 396), Bellamy (2010, p. 426) and de Wijze (2018, p. 141).

⁵⁶ This question is raised by Gowans (1994, p. 233), Archard (2013, pp. 782-783), de Wijze (2018, p. 140) and Thalos (2018).

have sufficient “internal decision structures” (1984, p. 41). Such a structure requires an outline of the different positions within the collective and the way that power is distributed between them. Additionally the group also needs decision-making rules and regulations that govern the behaviour of the individuals within the collective. There are established decision-making mechanisms in place that structure the interactions between individuals. Such groups will have a stable identity over time, interests, and goals, and can form and execute collective intentions through the above internal decision structures. If a group exhibits all of these features, it is an appropriate subject for ascriptions of collective moral responsibility. Anna Stilz has argued that the state can satisfy all of the above conditions and should therefore be understood as a collective agent to whom we can ascribe moral responsibility (2011, pp. 191-192). Regarding the public, Avia Pasternak has concluded that it can only be understood as a collective agent if we loosen the above requirements and allow that “even if a group does not possess the same level of moral agency as (some) individual persons, it may still be subjected to moral evaluation” (2011, p. 107). For the sake of argument, we can simply assume that it is possible to argue along the lines of Stilz and Pasternak that both the state and the public as a whole could be held morally responsible for the actions taken by its political leaders.⁵⁷

So what follows from such a finding for the members of the state or the public? As Margaret Gilbert has aptly put it: “nothing. Everything depends on the details of a given member’s particular situation” (2006, p. 109). Depending on an individual member’s relationship to the group and their participation in or contribution to the particular act in question, an individual member of a morally responsible group may be themselves morally responsible to varying degrees. In some cases, individual members of a morally responsible group may not be morally responsible at all, for example if they were non-culpably ignorant of the action or if they were not a voluntary member. In the first instance, I therefore think that it makes more sense to try and find an account of how we can understand the individual level of moral responsibility that each citizen holds in virtue of her position within the state or the public. Given that we cannot make any inferences from a finding of collective moral responsibility about what this means for the members of that collective, nothing seems to be lost by focussing directly on individual moral responsibility. Now, there may be one rare case in which, without a collective analysis, we would end up with a responsibility shortfall. In extreme cases, even though Gilbert argues that this is unlikely to occur, it could be “possible

⁵⁷ Others have argued that because the public does not satisfy the conditions necessary for collective agency, we should not focus on ascriptions of moral responsibility, but instead be concerned with finding potential grounds for holding citizens politically liable for the actions of their leaders and the outcomes thereof. For example, see Parrish (2009).

that no member of a given collective is personally to blame in relation to the collective's blameworthy action or actions" (2006, p. 110). In such instances there will be value in assessing the responsibility of the collective, though this would still leave us with the thorny question of whether and how we could distribute the burden of collective moral responsibility amongst members who are not individually blameworthy for that action or outcome. In the first place, however, I think it makes more sense to attempt to account for moral responsibility on the level of the individual. Should this leave us with a responsibility shortfall, we can then take recourse to talk of collective moral responsibility. As I will argue throughout this chapter, we can make sense of the individual moral responsibility of the vast majority of citizens for the actions of their political leaders, and so we can safely ignore the issue of the collective moral responsibility of the state or the public as a whole for the present purpose.

As argued in the previous chapter, there are four individually necessary and jointly sufficient conditions that an agent has to fulfil in order to be morally responsible. The cognitive condition requires the agent to have sufficient mental capabilities to, in principle, understand the possible implications of her actions and to reason about them. The epistemic condition requires that the agent knew, or should have known, that her action would lead to a certain outcome. Whether or not a citizen satisfies the voluntariness condition will depend on the particular features of the situation at hand and whether there are good moral reasons to call their actions voluntary. Finally, the causal condition requires that the agent's action was part of the causal chain that resulted in that particular outcome. If we want to know whether citizens are morally responsible for the dirty-handed actions of their political leaders, we first have to answer four distinct questions: a) did citizens have the right mental capacities to understand their involvement in the democratic process? b) did citizens know, or should have known, that the politician would dirty her hands? c) did citizens participate in or sustain the democratic process voluntarily? d) did citizens cause the dirty-handed outcome in any meaningful way? I will take these questions in reverse order.

7.3.1. Causal Condition

Before starting the discussion on the causal condition I want to clarify briefly some distinctions that will be useful to bear in mind. When a single person causes an outcome, they are the cause of that outcome. When, however, more than one person causes an outcome, they are a part of that cause. One can be a part of a cause in two ways. Firstly, one can participate in causing that outcome by making a difference, whether individually or as part of a set, to that outcome occurring. On the other hand, one can contribute to an outcome when one's actions make it more likely that another agent or group of agents will

cause the outcome, even if one's own action is too far removed in the causal chain to have made a determinate difference to the outcome. These distinctions will become clearer throughout the section but it will be useful to have this rough overview when going through the following arguments. Ultimately I will argue that citizens can participate in or contribute to political decision and the wider democratic process more generally in three broad ways in order to satisfy the causal condition for moral responsibility. They can make an individual difference to a political decision, or they can make a difference to said outcome as part of a set of citizens. Finally, they could simply contribute to the wider democratic process in virtue of which political decision-makers are enabled or encouraged to take certain political decisions.

Intuitively, we might think that we only want to hold individuals morally responsible for a particular political decision and outcome if they can be said to have made a difference to that action or outcome. This is what Christopher Kutz has described as the "Individual Difference Principle" (2007, p. 3). When we can trace a causal chain of events from the agent to the outcome, such that the agent's action made a difference to that outcome, we can ascribe moral responsibility for that outcome to the agent. I will introduce an example of this view and then identify two problems with it that should lead us ultimately to look for alternative ways to understand causal responsibility. Walzer, who argues in *Just and Unjust Wars* (2006, pp. 296-303) that citizens could make an individual difference to political decisions in an ideal democracy, albeit not in a real one, appears to pursue this line of reasoning. He starts from the assumption that the nature of democracy makes it a system in which the moral responsibility for actions can be distributed because citizens get to have a say in the selection of their leaders and policies. If they have some input in the system they can also, in principle, be morally responsible for the parts on which they had a causal impact. He asks us to imagine an idealised state in which all citizens are well-informed and get to have a say in policy decisions. In such a situation, he argues, all citizens who voted for or helped to implement or sustain a particular policy would therefore be morally responsible for that policy and its outcomes. These citizens, according to Walzer, would have made a difference to the voting outcome and hence had a direct causal impact, and therefore must share in the responsibility of the actions of their leaders. Conversely, according to Walzer, those who voted against or did not cooperate with that policy cannot be morally responsible. After all, they did not make a difference to the voting outcome and do not stand in any causal relation to the policy or its outcomes. Finally, he considers those who did not vote because they were indifferent, lazy, or scared to commit to a position. In cases where they could have made a difference because their vote could have helped to prevent the policy, they can be

morally responsible for having failed to prevent it. From this analysis, however, he argues that it does not follow that we can straightforwardly assign moral responsibility to all citizens and to equal degrees. Instead, “our actual assignments will vary a great deal, depending on the precise nature of the democratic order, the place of a particular person in that order, and the pattern of his own political activities” (2006, p. 299). So Walzer leaves room for citizens in an ideal democracy to make an individual difference to political decisions and therefore to carry some moral responsibility for them.

The problem, as I will show in the following, is that if we require individual citizens to satisfy the Individual Difference Principle in order to meet the causal condition, pace what the above argument may appear to suggest⁵⁸, virtually no citizens will be morally responsible. This is because the Individual Difference Principle is faced with two challenges in democratic settings. The first problem is that of over-determination. Pace Walzer’s assumption that when citizens contribute in an ideal democracy they could be said to have made an individual difference to the political outcome, in large nation states the single vote that each citizen has cannot be said to make an individual difference at all. One could have the deciding vote, but the chances of that are infinitesimally small. Individual voting or shows of public support (i.e. in a demonstration) do not actually make a difference to the overall decision and as such the individual cannot be said to have caused the outcome. The same goes for abstaining from engaging in the political process. Even if a single citizen had participated, their contribution would not have changed the final outcome. This outcome is over-determined and the individual’s taking part is too minimal to actually make any difference. As a result, it does not matter what an individual citizen does, because they are only one of too many and cannot be said to make the causal impact necessary to ascribe moral responsibility to them. If the only way to satisfy the causal condition is to have made an individual difference to an outcome, virtually no citizen would be morally responsible for what their government does.⁵⁹

Even if we were to overcome this issue, we would be faced with yet another problem in ascribing moral responsibility to citizens. Even if they made a difference in an ideal democracy, real life politics does not look like the scenario described by Walzer. He goes on to argue that

The state is an enormous state, governed at great distance from its ordinary citizens by powerful and often arrogant officials. These officials, or at least

⁵⁸ Walzer himself, as I will show, argues that the Individual Difference Principle would leave barely anyone responsible in a real, as opposed to ideal, democracy. What he, however, did not acknowledge is that even in an ideal democracy the Individual Difference Principle will run into serious trouble.

⁵⁹ The assumption of the Individual Difference Principle in conjunction with this criticism has, for example, led Holly Lawford-Smith (2018) to reject the idea that citizens could be morally responsible for what their politicians do.

the leading among them, are chosen through democratic elections, but at the time of the choice very little is known about their programmes and commitments. Political participation is occasional, intermittent, limited in its effect, and it is mediated by a system for the distribution of news which is partially controlled by those distant officials and which in any case allowed for considerable distortions. (2006, p. 301)

In real-life politics, citizens only become involved in politics periodically during election time and can only vote for candidates rather than directly for certain policies, and decisions are taken by politicians without prior consultation of citizens, or even if they are consulted, the mind of politicians might already be made up irrespective of public opinion. Citizens may make a difference to which politician is elected, but they then have little influence over what particular policy decisions that politician takes, because politicians act largely independently of citizens. The actions of the politician present, as is called in legal theory, a *novus actus interveniens* which breaks the causal chain from the action of citizens to the eventual policy outcome. Because politics requires frequent bargaining, compromise, and amending or even entirely going back on one's election promises, citizens cannot foresee with certainty what consequences will follow from their voting decisions. Once a politician is in power citizens have very little influence over what daily policy decisions that politician will take. The causal connection from citizens to any particular policy-decision will therefore be too far removed to ascribe moral responsibility to the vast majority of citizens. It is worthwhile noting that there may be a small subset of citizens that could satisfy the Individual Difference Principle and therefore the causal condition for moral responsibility nonetheless. These citizens will most likely be well-informed and hold some form of sway over political decision-makers. The majority of citizens, however, escapes moral responsibility.

In the following I will argue that we ought to reject the idea that the only way a citizen can satisfy the causal condition for moral responsibility is by having made an individual difference to the outcome. I will deal with the issue of over-determination first and then move on to the problem of real democracies.

In order to make sense of cases of over-determination, we have to re-think the basis on which we ascribe a causal connection between an individual agent and an outcome. While the Individual Difference Principle may work in most straightforward cases of causation, more complex cases that see several agents involved in the causal chain of events will require a more sophisticated account of causation in order to make sense of their respective moral responsibility. The problem with the Individual Difference Principle is that in more complex situations it commits what Derek Parfit has called a "mistake in moral mathematics" (1984). Let us consider an example in which "X and Y simultaneously shoot and kill me. Either shot, by itself, would have killed" (1984, p. 70). In such a case it is true, given the individual

contribution that each made, had one of them not made that contribution, the outcome would have remained unchanged. One might mistakenly follow from this that neither X nor Y made a difference and neither X nor Y caused my death and that, as a result, neither of them is morally responsible for killing me. Parfit argues that the reason we reach such an objectionable conclusion is because we have committed the second mistake in moral mathematics; we have falsely assumed that “if some act is right or wrong because of its effects, the only relevant effects are the effect of this particular act” (1984, p. 70). When it comes to cases of over-determination (or co-ordination problems) we cannot just take into account the individual act, but need to consider the set of acts of which it is a part. In as much as X and Y are part of one and the same act that kills me, X and Y *together* kill me. In as much as they have contributed to a set of acts that, together, brought about my death, they are causally responsible for their contribution to this set. To see the plausibility of this claim we might wish to consider a claim where praise, rather than blame, would be an appropriate reaction to an individual’s contribution to a set of actions. Parfit asks us to imagine a scenario in which, if four people were to stand on a platform, this could provide sufficient weight to set into motion a lift that will elevate a hundred people out of a well that is slowly filling up with water. Now as it happens, five bystanders jump onto the platform. In this case it is true that none of these people individually made a difference because, given the individual contribution that each made, had one of them not made that contribution, the outcome would have remained unchanged. And yet, *together*, they moved the lift into motion. All of the five have made a contribution to a set of actions that saved the hundred people. In virtue of this contribution they can satisfy the causal condition and be morally responsible so that we can assign praise to them for their action. I think it would be an odd conclusion to say that, if there were four people we could have praised them individually, but given that there are five of them over-determining the outcome, praise is no longer in order. In the case of voting and demonstrating the argument runs in a similar way. While my particular vote might not have made an individual difference to the election of the politician, I nonetheless was a contributor to the set of acts that elected her. As such I am causally responsible for being a part of that set of acts and can be open to moral responsibility.

This idea of taking into consideration an agent’s causal contribution to a set, rather than the individual difference they made regarding an outcome, has led some legal scholars to use the NESS (Necessary Element of a Sufficient Set) Test by Richard Wright (1985, pp. 1788-1803)⁶⁰ in order to determine the responsibility of an agent. According to the NESS Test, “a

⁶⁰ The NESS Test shows great similarity – even though Wright’s project is not entirely identical – to J.L. Mackie’s “INUS condition” which an action fulfils if it was “an insufficient but necessary part of a condition which is itself unnecessary but sufficient for the result” (1965, p. 245). The important distinction between the

particular condition was a cause of (condition contributing to) a specific consequence if and only if it was a necessary element of a set of antecedent actual conditions that was sufficient for the occurrence of the consequences” (1985, p. 1790). The best way to show the difference between relying on the Individual Difference Principle⁶¹ and the NESS Test is to consider some of the examples that Wright uses. Take for instance a case of air pollution. Wright imagines a case in which five units of pollution would be both necessary and sufficient to harm an individual. There are seven individuals who all simultaneously emitted one unit of pollution. None of these seven could be said to have made an individual difference because their emission was “neither necessary nor independently sufficient for the injury” (1985, p. 1793). Their single unit was not sufficient to cause harm by itself, and had they not emitted the single unit the harm would have still occurred, so it was not necessary for the injury either. The Individual Difference Principle would struggle to make sense of this case. When none of the polluters can be said to have been an individually necessary or sufficient cause of the outcome, none of them can be morally responsible on this view. This would leave us with the counter-intuitive result that no one is responsible for the harm to the individual. On the NESS Test, however, we can explain this because each unit of pollution was a necessary element of a sufficient set as part of which it could have caused the harm. There are several sufficient sets that could be said to be the cause of the harm. As long as the single unit of pollution in question was necessary for one of these sufficient sets, then this single unit of pollution can be said to have caused the harm as part of that set. Wright then goes on to supply us with a second example in which two agents, A and B, independently of one another try to kill a third agent, C. Imagine that A has poisoned C’s tea, and just when C is about to drink, B shoots and kills C. According to the NESS Test only B is responsible for the death of C, because B’s “shot was necessary for the sufficiency of a set of actual antecedent conditions that did not include the poisoned tea” (1985, p. 1795). Remember that, per definition, the agent is only causally responsible for her contribution to an *actual* antecedent condition, so “a set that included the poisoned tea but not the shooting would be sufficient only if [C] actually drank the tea” (1985, p. 1795), but C never actually drank the tea. The Individual Difference Principle, in comparison, would again come to the conclusion that neither A nor B were responsible for the death of C. Even if A had not poisoned the tea, C would have died because of B’s shot, and even if B had not fired the shot, C still would have

two for the purposes of this thesis is that Mackie does not intend for his account to answer the problem of over-determination. In his example of a fire started by the combination of an electrical short-circuit, the presence of flammable material, and the absence of a sprinkler system, he clarifies that “no other sufficient condition of the house’s catching fire was present on this occasion” (1965, p. 245). I will therefore rely on the NESS Test for the issue of over-determination instead.

⁶¹ Wright calls this the “but-for test” (1985, p. 1792). According to this someone is causally responsible if, but for their action, the outcome in question would not have occurred.

died because of A's poisoned tea; so neither of them can be said to have made a difference to the outcome. C would have died no matter what A or B individually did.

So what can the NESS Test tell us about citizens engaging with politics through over-determined channels such as voting?⁶² This will depend on our conception of voting. There are two ways in which we can perceive voting; one treats voting as if it were a simultaneous activity while the other one insists that it is not a simultaneous activity in practice and should not be treated as such.⁶³ We can start by considering the latter conception. According to this, in the case of voting we in fact have two separate sets of actions so that one of them pre-empts the other. The first one consists of the voters who up to time t_1 voted for the politician, when the threshold of votes she required to win had not yet been reached. According to the NESS Test, their votes would have been a necessary element of a set of antecedent actual conditions that was sufficient for the politician winning the election. What about those, though, that cast their vote after the number of votes had already reached that threshold? If we understand voting as a case of pre-emption, the NESS Test would come to the conclusion that these voters were not in fact responsible for the politician winning the election. Wright argues in a footnote regarding a pollution case that if "five units arrived before the other two and produced the injury before the other two arrived, the first five units were causes of the injury and the last two were not" (1985, p. 1793). Equally in the case of votes, the number of votes up to t_1 caused the politician to win, while any votes coming in after t_1 cannot be causes of the politician winning the election. While such a result allows us to hold at least some citizens causally responsible, if voting was indeed a case of pre-emption, using the NESS Test means many citizens who voted for a politician would still not be causally responsible for that politician winning. If they are not causally responsible for that politician winning the election even though they voted for them, they are also not going to be responsible for the decisions that this politician is then going to take in their name and for them.⁶⁴ While, according to the NESS test, some citizens are causally responsible for the election of leaders, it still leaves a lot of citizens entirely free from causal, and therefore also moral, responsibility for the actions taken for them and in their name if voting is a case of pre-emption.

There is, however, another and, I would like to argue, more plausible understanding of the nature of voting. On this view voting is treated as a simultaneous activity. After all, we do

⁶² This could also include actions such as protesting, but the voting case is particularly difficult, so I will concentrate on that issue here.

⁶³ For an account advocating the former see Alvin I. Goldman (1999). For an account advocating the latter see Jensen (2017).

⁶⁴ This is assuming that they do not act in such a way that at a later point they become a necessary element of a sufficient set that resulted in the politician taking that particular decision.

not care whether our vote is cast at 8am or 8pm on election day. We also do not care whether our vote will be counted first or last. In fact, those who voted first may be counted last and vice versa. We also do not announce the winner of an election as soon as they have received a majority, but only once the final vote has been counted. All of these observations suggest that we in fact conceive of voting as a simultaneous activity in which we would not have to distinguish between the actions of those before t_1 and the actions of those after t_1 . Goldman in his paper on why citizens ought to vote also makes this point when he argues that “elections standardly feature a certain conventional element with respect to time. Even if voters cast their ballots at different times on election day [...] the system conventionally abstracts from this actual or ‘natural’ order and considers all the votes on an equal basis” (1999, p. 213). If we accept this understanding of voting, then everyone who voted for the politician or policy would be a necessary element of a set of antecedent actual conditions that was sufficient for the politician or policy winning the election. In a similar vein, everyone who did not vote could also satisfy the NESS test if that set was large enough to have impacted the voting outcome. The only citizens that could not be held causally responsible for the voting outcome would be those who did not vote when that set was not of a sufficient size to have made a difference together, or those who voted against that politician or policy. It is worthwhile noting that in real-life elections, even in those with a relatively high voter turnout, the number of citizens who do not vote is usually large enough that their set could have made a difference. Generally only those who voted against a politician or policy can therefore evade causal responsibility for the outcome of the election.⁶⁵ The first problem when thinking that only the Individual Difference Principle can satisfy the causal condition for moral responsibility was that it could not even account for citizens being responsible for electing a politician. The NESS test can account for such cases of over-determination and show why citizens can be responsible for the politicians they elect.

But even if we now have an account of how citizens can, together, make a difference, we are still faced with the second problem for ascribing to them causal responsibility for political decisions. Electing a politician does not automatically equate to causal responsibility for what that politician does because the latter acts with a considerable degree of freedom, as I have argued in the previous chapter. Holly Lawford-Smith draws a helpful distinction between the

⁶⁵ Goldman, who comes to a similar conclusion, albeit through a slightly different approach, additionally speculates “that the reason so many people do vote, as a matter of fact, is precisely because of their grasp of the rationale offered here, including their grasp of the ‘contributing cause’ role that their voting occupies within the system” (1999, p. 216). If true, this would give further support to the idea that accounting for the way in which we cause outcomes together with others is in line with how we understand voting and similar instances of collective action.

direct (e.g. voting for a policy in a referendum) and indirect (e.g. voting for a politician) commissioning of acts:

in cases of direct commissioning, the commissioners have a reasonable expectation that the commissioned action will be done, they can more easily foresee the effects of its being done, and they are a bigger part of the explanation of what is done (it strikes me as a plausible principle that the greater the distance between the commissioning and the action, the greater the responsibility of the agent who performs the action compared against the agents who commissioned it). (2018, pp. 117-18)

We therefore need to find an account of how citizens can be causally implicated in the actions of their politicians, given that the actions of their leaders are relatively independent of the actions of citizens once they have been elected and could be construed as a *novus actus interveniens* that severs the causal chain between the citizen and the political decision in question. This problem is particularly relevant when the decision in question has been a dirty-handed one. Such decisions will often have to be made quickly so that there is no time to consult citizens, or they will have to be kept a secret from citizens at the time of the decision. I will go into more detail on these issues when discussing whether citizens satisfy the epistemic condition for moral responsibility, but it will be sufficient to note at this point that dirty-handed decisions are likely to be taken independently from any input from citizens.

I will argue that the causal condition for individual moral responsibility can be fulfilled by merely contributing rather than participating, in the sense of making a difference individually or as part of a set to the outcome in question. Even if citizens cannot be said to have made a difference, whether individually or as part of a set, to a particular political decision, we could hold them causally, and potentially morally, responsible for the way in which they contributed to the wider political process and therefore complicit in the political decisions taken within that system. When an agent merely contributes to rather than participates in an action that results in an outcome they can be said to be complicit in having brought about that outcome. Chiara Lepora and Robert Goodin introduce a distinction between principal agents who commit the principal wrongdoing and secondary agents “whose actions do not constitute the principal wrongdoing but are part of a causal chain leading to it and even to agents whose actions appear related although, at a closer analysis, make no causal contribution to it” (2013, p. 33) and in virtue of this can be complicit. The idea is that even if the politician acts independently of citizens and their actions can be said to constitute a *novus actus interveniens* that severs the causal chain between a citizen and that particular political decision, the citizen is still connected to that decision through their wider contribution (e.g. electing that politician) in such a way that they can be said to fulfil the requirements for moral responsibility. A secondary and complicit agent makes “potentially causal contributions to

the principal wrongdoing of others, without their acts in any way constituting part of that principal wrongdoing in themselves” (2013, p. 41). A secondary act can contribute to the principal wrongdoing in a variety of ways, it can “make it possible”, “induce”, “facilitate”, “make it easier”, “incentivize”, or “encourage” (2013, p. 42). A common form of complicity is, for example, through collaboration. A collaborator is to some extent aware of the intentions or plan of the principal and acts in such a way as to support or further them. Complicity can, however, also come in less conspicuous forms. Sometimes it may be enough to connive in or condone the actions of the principal in order to be complicit, if doing so encourages the principal to execute or continue with her plan. Similarly, simply consorting or having contiguity with the principal could be sufficient for complicity if that encourages or strengthens the principal’s resolve to execute or continue with her plan. The basic idea is that the secondary agent does not have to be part of some form of joint action with the principal⁶⁶, but that it is sufficient for the secondary agent to in some way or another contribute to the principal executing her intention or plan. This is not to deny, however, that the more the secondary agent’s contribution is central to and joint with the principal wrongdoing, the higher their level of complicity will be.

What can complicity tell us about the causal responsibility of citizens for the actions of their political leaders? If we allow that citizens in some way contribute to their leaders taking a given policy decision, we can show that they are complicit in a way that can satisfy the causal condition even if their actions did not, either individually or as part of a set, constitute the political action because their politicians take decisions independently of them, and can be said to constitute a *novus actus interveniens* that severs the direct causal chain between citizens and the decision taken. Using the language introduced by Lepora and Goodin, on a fundamental level we can argue that citizens “make it possible” for politicians to do the things they do. Citizens take part in a system that transfers individual decision-making power to elected representatives who are given the authority and leeway to take decisions for them and in their names. All citizens who participate in or sustain a democratic state would therefore share this baseline complicity. In addition, many citizens are likely to make a variety of the following, non-exhaustive list, of contributory actions: they “make it easier” for politicians to act independently of citizens by not taking an active stance on political issues;

⁶⁶ This is where Lepora and Goodin are different to Christopher Kutz’s account of complicity (2007). Kutz argues that an agent is complicit when they are part of a joint action through their overlapping participatory intention. It is, however, unclear what the lowest common denominator is for an intention to overlap and for an action to count as joint on his account. Additionally, as Lepora and Goodin note, it also eradicates the distinction between merely contributing to an action and joining in that action; on the most fundamental level complicity requires mere contribution instead of full participation as required by Kutz (2013, pp. 80-81). This is why I will use Lepora and Goodin’s understanding of complicity.

they “incentivize” or “induce” politicians to take certain decisions through promises of re-electing or threats of not re-electing them; they “encourage” politicians to take certain decisions through public shows of support or opposition; and they “facilitate” politicians taking certain decisions by co-operating with these policies.

The second problem we were faced with in this section was that causal responsibility for electing a politician does not equate to causal responsibility for what that politician does, because citizens cannot be said to have made a difference, whether individually or as part of a set, to that particular political decision as politicians act largely independently of citizens once elected. If, however, we allow that an agent can fulfil the causal condition for moral responsibility in virtue of being merely complicit in the principal wrongdoing, we can explain why a citizen’s contribution to the wider democratic process is enough to implicate them in the decisions their leaders take for them. The level of responsibility and corresponding level of blameworthiness will depend on how central a citizen’s contribution was to the principal wrongdoing of the politician; the less essential it was, the less blameworthy they ought to be. There are then three broad ways in which citizens can fulfil the causal condition for moral responsibility in the case of policy decisions: they can make an individual difference to a policy decision (e.g. a wealthy donor that has sway over a political decision-maker), they can make a difference to a policy decision as part of a set of citizens (e.g. a citizen voting for or against a given policy in a referendum), or, on the most basic level, they can be complicit in a policy decision in virtue of their contribution to the wider political process (e.g. voting for the particular politician or party, condoning the policy in an opinion poll or on social media, buying a newspaper that condones the policy, or on the most fundamental level by merely being a good citizens who votes, pays taxes, and obeys the law). Obviously the further down the list we go, the less responsible citizens become for their participation in or contribution to the political process.

7.3.2. Voluntariness Condition

So far I have established the set of citizens who have the right kind of causal connection to the dirty-handed actions of their political leaders to be potentially morally responsible for their actions. The question now is which citizens of this set can also be said to have made their participation or contribution voluntarily. My approach here, remember, is one of step-by-step elimination in which I start by narrowing down the pool of citizens who satisfy the first condition and then ask which members of that pool can then also satisfy the next condition, and so forth. Voluntariness, as I have defined it, depends on the moral features of the situation at hand. Additionally, in the previous section I identified three broad categories to distinguish the sorts of actions that make a citizen causally responsible for what

a political leader does. Either they make an individual difference, or they make a difference as part of a set, or they are complicit through their contribution to the political process more generally.

When democratic citizens actively participate and make a difference to the political outcome, either individually or as part of a set, they can be said to have done so voluntarily. In democratic states there are generally no forms of force, duress, or compulsion present that would make citizens vote a particular way or join a particular demonstration etc. Citizens do not have to fear any serious repercussions from the state or its agencies when they decide to vote one way or another or not go to the ballot at all. Just like citizens who participate in a democracy, citizens who actively contribute to the wider democratic process in a variety of different ways (e.g. voting for a politician or party and thereby enabling them to pursue certain policies, or buying newspapers that support certain political narratives, thereby allowing them to take a stronger hold in the public conscience) can also be said to have done so voluntarily. Again, the citizen in question was not forced or compelled to contribute to politics in this way. Given the absence of force, duress, and compulsion together with the fact that we think it is important for citizens to have the ability to make their own self-directed and autonomous political choices in such situations, we have good reasons to think that their actions are voluntary. Of course, citizens could be faced with a dirty hands situation when participating in or contributing to the political process such as, for example, two policies in a referendum that would both have detrimental consequences and, as a result, present them with a choice of lesser evils. In this case, as in the case of politicians and public officials faced with dirty hands situations, we have good moral reasons to say that the citizens acted voluntarily. In this case, our reasons are similar to those in the case of the political leader faced with a dirty hands scenario. We only want to count people's votes if they have been given voluntarily and not as a result of force, duress, or compulsion. We also think that it is important that people have the ability to make their voices heard in such a referendum and in this way indicate to us which of the options at hand is preferable (even though it may only be a lesser evil). This is, after all, one of the most important ways in which citizens can shape political discourse and policies. Were we to call their choice in such a voting scenario involuntary we would thereby invalidate their vote. Ensuring that citizens have an ability meaningfully to get involved in politics therefore gives us good moral reasons to call the decisions they make voluntary, even when faced with a dirty hands scenario.

Other types of contributions, however, do not obviously appear to be voluntary. When citizens do not pay their taxes or obey the law more generally, they have to face the serious repercussions for not doing so. Some citizens may pay their taxes and obey the law because

they genuinely want to do so, independently of whether there are any serious repercussions for non-compliance. In these cases we would want their decision to do so to be called voluntary as it seems to be a genuine exercise of their agency and we want citizens to have the ability to make such self-determined decisions. But, I suspect, there will be a considerable set of citizens for whom this is not the case; they may only pay their taxes and generally obey the law because they feel that they are forced to do so by the state. In this case, the threat of the law represents a metaphorical gun to the head which coerces them in such a way that their choice to follow the law and pay their taxes is not a sign of their agency. On the face of it we would therefore not want to call their decision voluntary because calling actions done only for the fear of being, for example, imprisoned, cannot be said to help protect their ability to make autonomous and self-determined choices about their lives. If this characterisation were accurate, this would imply that their contribution to the political process is not voluntary and that they therefore cannot be morally responsible for what their political leaders do. I will argue that we ought to resist that conclusion. In order to show why, we need to understand the nature of the relationship between citizens and their state, because if citizens have in some sense voluntarily chosen to be part of the state, then they cannot argue that their contribution to it is not voluntary. To understand the relationship between citizens and the state it will be helpful to take a look at the political obligation literature which has discussed this connection in much detail.

If we could show that their participation in or contribution to the political process is the result of consenting to enter that state, then their actions can satisfy the voluntariness condition because valid consent presupposes that it was given voluntarily. An account that argues for the position that citizens have consented to being part of the state can be found in John Locke's work. He starts from a state of nature characterised by a state of perfect liberty in which no individual has more power than another. The only restriction on what an individual may or may not do comes from the law of nature that governs the state of nature. This law of nature, intelligible to all individuals through their capacity to reason, is that, given the inherent equality of all individuals in the state of nature, no one may harm another individual. The only exception to this is when another individual has broken the law of nature. Any individual in the state of nature has the right to punish the offence. The problem for Locke is that in a state in which individuals are judges and executioners in their own case, chaos will likely ensue. The introduction of civil society and government is then supposed to present a remedy for this issue. Each individual gives up their own natural liberty in the state of nature in order to join society and gain the security and stability afforded by a central authority whose different branches take on the role of judge and executioner (1999, pp. 269-

278; 318-330). The only way in which individuals can give up their natural liberty, however, is through consent. Consent can come in two distinct forms. Firstly, an individual could give their express consent to enter civil society. Express consent is given through verbal or written agreement at a distinct point in time. I will not pursue the idea of express consent any further because I agree with A. John Simmons that “most of us have never been faced with a situation where express consent to a government’s authority was even appropriate, let alone actually performed such an act” (1979, p. 79). Instead, I want to focus on the second way in which Locke argues that individuals could give their consent to entering civil society; this is the idea of tacit consent. He argues that “every man that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doth thereby give his tacit Consent, and is as far forth Obliged to Obedience to the Laws of that Government” (1999, p. 348).⁶⁷ The idea here is that simply in virtue of taking up the advantages offered to us by civil society, an individual tacitly consents to become a member of that society and to have to obey its laws. Seeing as it is the individual’s choice whether or not to take up these advantages, an individual’s decision to enter civil society is voluntary.

While this presents an argument for those individuals that initially decided to form civil society, Locke goes on to consider those in later generations who have simply been born into that society. The problem for his account is that it seems as if citizens cannot but have the kind of enjoyments that are a supposed sign of their voluntary and tacit consent. Locke responds to this issue that, in fact, there is a distinct point at which individuals have the power to decide whether to take up these enjoyments. Firstly, children are not born the subjects of any society or government. Instead they are simply born into the authority of their father. When this child then comes of age, they indeed have the ability to decide whether to take up the enjoyments of the civil society of which their father is a part. If they do so, we can infer that they have tacitly consented to becoming part of that society. Locke argues that “people take no notice of it, and thinking it not done at all, or not necessary, conclude they are naturally subjects as they are Men” (1999, p. 347). Just because this is a choice that we are not usually aware of, does not mean that this choice does not exist. There is an obvious problem with this solution. Leaving aside the questionable premise that children are not born into civil society but under the authority of their father, really how much of an option is it to renounce our entire life and leave the society that we have grown up in when we come of age? As David Hume has noted, “can we seriously say, that a poor peasant or artisan has a

⁶⁷ This understanding of what tacit consent entails has been questioned. For a convincing criticism see: Simmons (1979, pp. 75-100). Simmons then pursues a different understanding of tacit consent, but still comes to the conclusion that it cannot adequately explain our relationship with the state. For the purposes of my enquiry I will therefore simply concentrate on Locke’s original account of tacit consent.

free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires” (2006, p. 193)? When the costs of exiting society are so high, then the mere enjoyments of the advantages of the society into which one was born cannot amount to any form of tacit consent to that civil society. Hume provides us an analogy to support this point (2006, p. 193). Imagine that in your sleep you have been kidnapped and carried on a ship. When you wake up the ship had long set sail and you find yourself in the middle of the ocean. Your only options are either to join the crew and obey the commands of the captain, or to jump ship and perish at sea. Hume argues that clearly, we would not want to take your remaining on the ship as a sign of your tacit consent. The same goes for individuals who find themselves part of a civil society.

The result of this brief discussion of Locke and Hume is that we cannot take merely living in and obeying the laws of a state as a sign that a citizen has consented to that community and state. We therefore cannot use consent as a ground for explaining how citizens who obey the law and pay taxes only to avoid the repercussions of not doing so satisfy the voluntariness condition for moral responsibility in virtue of their contribution to the wider political process. Tacit consent is, however, not the only way in which writers in the political obligation literature have attempted to explain the relationship between citizens and the state. Tacit consent theorists such as Locke usually start from a state of nature and then argue that through a voluntary commitment we move into a political community. They then try, in a later step, to somehow justify what happens to people who are already born into a political community using the same theoretical grounds. Such an approach, however, seems misguided. When we want to understand the relation between citizens and the state we are looking at individuals who, for better or worse, are already embedded in a given social and political order. We want to explain how these people are related to the state. As a response to this worry, associative accounts, as opposed to consent theories, start from individuals who are members of a political community right from the start and how their relationship with the state can be made sense of. The basic premise of associative theories is that we come to stand in certain relations and acquire certain moral obligations in virtue of the social roles that we occupy and that this is the case even when we have not voluntarily chosen or consented to occupying that role. John Horton provides us with the analogy of a family (1992, pp. 145-152). We are born into families and our conception of our membership within that family is a crucial part of our self-identity. The way we conceive of our role within the family is important for shaping and making sense of who we are. This is so, even though families are characterised by a relationship and mutual obligations that have not been voluntarily chosen. This relationship and the obligations that come with it are ultimately

derived from the simple fact of our membership and do not require any further moral justification. We cannot say that the relationship and resulting obligations between, for example, siblings is on a most basic level explained by consent, fairness, or even love. After all, we do not get a choice in who our siblings are and we might think that this special relationship between us holds even if we are not receiving anything in return or do not particularly like that sibling. Standing in this relation and having these obligations to the other individuals in my family is simply what it means to be part of a family. Having such obligations is constitutive of being a member. The idea is that a similar case can be made for citizens.

Associative accounts generally operate on the basis of two premises. Firstly, we are all born into a political community which fundamentally shapes our understanding of who we are. Secondly, political obligations are a constitutive part of our role as members of that society. As a result, when our identity is crucially shaped by the society of which we are a part and as a result identify as members of that society, then we also have to accept the political obligations that are constitutive of that very membership. This means that, as Horton puts it “the sense of identity which is constituted through membership of a particular polity is most naturally expressed through the acknowledgement of the authority of its laws and government” because “it is these that characteristically define the terms of association within a polity” (1992, p. 165). The underlying idea in associative accounts is that obligations arise in virtue of our membership, but a pre-requisite for that membership is that the individual, even if only unconsciously, identify as a member. This results in, what Horton calls, a sense of authorship for the actions of our political community and its leaders; “for there is an important, though limited, sense in which we understand ourselves as the authors of such actions, even when we oppose them: they are the actions of our polity, the polity of which we are member” (1992, pp. 152-153).

Someone may object now by asking: what happens to citizens of illegitimate regimes? We clearly would not want to say that citizens of a violent dictatorship incur political obligations in virtue of their membership in the political community. Horton argues that associative accounts can deal with this worry. The institutional obligations we have in virtue of being members in a political community do not exist in a vacuum. Other moral commitments will put limits on what institutions can be justified and what obligations our membership in them can give rise to. Horton provides us with the following analogy: “if Fred promises Mary to murder John, Fred acquires no obligation to murder John, for it was not something Fred was entitled to promise, and Mary has no right to its enactment” (1992, p. 156). The promise in this case does not generate any form of obligation that is then overridden by our other moral

commitments (e.g. murder is wrong). Instead, there was simply no obligation because the features of the situation entail that no obligation can be generated in the first place. The same goes for membership and obligations in an unjust regime. Associative accounts therefore can make sense of our intuition that while membership in a democratic state generates political obligation, membership in a dictatorship does not.

So how is an associative account supposed to help us in understanding whether there is a voluntary element in the relationship between citizens and the state sufficient to make the former morally responsible for the contributions they make to the wider political process, if they do so merely by obeying the law and paying taxes in order to avoid the serious repercussions of not doing so? Surely, if we acquire membership and our identity as a member automatically through birth and our upbringing within that political community, this would appear to be a highly involuntary process, because surely we have good moral reasons not to call conduct that was forced by the threat of, e.g. incarceration, voluntary. After all, allowing for such decisions to be called voluntary would hardly protect the agent's ability to make self-determined and autonomous choices about their life. It is at this point that Massimo Renzo, when developing his particular associative account, argues that once we acknowledge that our self-identification as a member of a political community is crucial to the relationship that we have with the state, we have to make room for the idea of some form of voluntariness.

He argues that while “we have family obligations simply because we occupy certain roles (of son, brother etc.), and since in many cases we do not choose to take up those roles, we cannot be said to have chosen the obligations attached to them [...] the fact that we did not choose to take up these roles does not necessarily mean that we do not voluntarily occupy them” (2012, p. 120).⁶⁸ The idea is that just because I was born into a family, does not mean that over time I cannot come to identify myself as a member of that family in such a way that I can be said to voluntarily occupy that role. Similarly, just because I have not voluntarily chosen to be born into a given society, this does not mean that I now cannot be voluntarily occupying my role as a citizen in that society. Unlike for consent theorists, voluntariness on this account does not require a specific point in time at which an individual needs to decide whether they want to be a member or not. Instead, “membership within the political community is [...] the product of a gradual process of identification that we carry on throughout our entire life” (2012, p. 126). Throughout our lives we continually develop the

⁶⁸ Obviously this statement in and of itself is not sufficient to show that we now necessarily occupy this role voluntarily. I will elaborate on the conditions that need to be fulfilled in order for someone to voluntarily occupy the role that they originally did not voluntarily choose as this section goes on.

understanding we have of ourselves and the roles that we occupy. As part of this, many, if not most of us, come to see our membership in a political community as a part of what constitutes who we are. There is no clear point at which this becomes true or not but instead is part of an ongoing process that changes over time. This process tries to make sense of the various roles that I occupy throughout my life, some voluntary and some not, and this is partly under my control. I have some control of how to fit these roles and the obligations attached to them together, and how to make sense of who I am based on this. Renzo wants to call this “quasi-voluntary” to distinguish it from the kind of choice that express or tacit consent theorists use (2012, pp. 121-122). While we have, in most cases, not voluntarily chosen to be a member of a given political community, we have quasi-voluntarily chosen to endorse this membership over time. We have good moral reasons to call such a choice voluntary because we want people to have the power to decide how they want to live and what positions and roles they want to occupy. As a result my acts as a member of that state that continue to sustain that political community can be said to be voluntary. While it is true that some people only pay their taxes and obey the law more generally because they know that this is what they have to do to live a peaceful life in their society, when they have voluntarily endorsed a picture of themselves as a member of their political community they can also be said to have voluntarily assumed the obligations constitutive of that membership. Those citizens can therefore satisfy the voluntariness condition for moral responsibility as long as they, like most of us, identify and act as members of their political community.

Conversely, those who genuinely do not identify themselves as members of their community and only contribute in some ways because they have tried to but cannot avoid doing so, will not be morally responsible for the actions of their political leaders. Their actions are involuntary because we want to acknowledge that they have made a self-determined choice not to be members but are now forced to exercise the obligations constitutive of that membership nonetheless. It is not, however, sufficient for someone to claim that they do not identify as members without actually altering their conduct. As Horton argues,

to participate fully and actively in the political life of a community; conscientiously to observe the rules and standards of the community; and generally, over a sustained period of time, consistently to behave in ways indistinguishable from those recognised as appropriate for a member of the political community; but then to deny that one acknowledges any political obligation lacks conviction. (1992, p. 160)

Now someone might argue that if citizens who genuinely want to renounce their membership have to take some form of action to actually remove themselves from society, we are then back at Hume’s ship analogy. After all, it is one thing to realise that you no longer identify

with your membership of the political community, and another to actually remove yourself from your social role as a citizen altogether by moving away from your country. Doing so is in many cases so onerous that it would be too costly to renounce your membership even though you no longer identify as a member. If the only way to renounce your membership would involve taking such drastic measures, then your membership in that society could not be assumed to be voluntary. My response to this is twofold. Firstly, I want to argue that physically removing oneself from one's country is not the only way that one can renounce one's membership. Secondly, I want to clarify that physically removing oneself from one's country is, in and of itself, not sufficient for escaping moral responsibility for the actions of one's leaders anyway.

Let us start by examining other ways in which citizens could reasonably renounce their membership. Consider citizens who have decided that they no longer identify as a member of their society but, rather than showing this by extracting themselves from their political community in order to avoid participating in or contributing to its actions, want to do so by staying in it in order to change it from within. Surely that is a worthwhile and noble approach and we should not follow from their remaining within the territory of the state that they still see themselves as endorsing their membership of that state. Take for example the case of Dietrich Bonhoeffer. He was a German pastor who vehemently opposed the Nazi regime from day one. He found their actions to be entirely incompatible with his religious beliefs and was dismayed that the majority of his fellow citizens were following the Nazi ideology. There is no question then that Bonhoeffer could no longer conceive of himself as a member of Nazi Germany. For short periods of time he indeed left Germany but ultimately returned to join the underground resistance in order to undermine the regime from within. He used his standing in the church and his connections to preach against Nazi ideology and help Jews escape from Germany. At the age of 39 he was imprisoned and executed when his connection to the resistance became known. Bonhoeffer had the opportunity to disassociate himself completely from Germany and clearly renounce his membership, but chose to stay. What this example shows us is that moving away from one's country is not the only way to renounce one's membership fully. When one's entire life and all of one's actions are geared to protest against one's polity and trying to affect change from within, then that should be efficient evidence of having renounced one's membership. As a result the relationship between the agent and the state would be severed so that we would not want to hold that individual morally responsible for what the politicians in that country do. So even if we did not have the means to physically remove ourselves from our political community to renounce our membership, we could have worked to change it for the better from within by

committing our lives and actions to undermining the current regime or prevalent attitude. In as much as this is a viable option for citizens to renounce their membership, when they do not take up this opportunity to remove themselves from their political community in both word and deed they can be said to remain members voluntarily.

We should, however, acknowledge that not all of us can become Bonhoeffers. Many citizens will simply lack the means (e.g. financial, reputational, educational) to remove themselves from their political community in the way and to the extent that Bonhoeffer did, no matter how much they would like to do so. These citizens who, over time, have come to the conclusion that they do not see themselves as a member of their political community should instead try to remove themselves from that society above a certain threshold given the means available to them. Throughout our lives we have ample opportunities to let those in power know that we disagree with the way in which they use their power (e.g. voting, going to demonstrations, signing petitions). We were in no way forced to take up these opportunities, our failure to do so can clearly be attributed to our agency and constitutes an autonomous choice, and to acknowledge and protect citizens' autonomy we ought to call these choices voluntary. Only when a citizen has exhausted a large proportion of the means available to them to take part in these ways to show that they do not endorse their membership of a state that engages in certain behaviours, should we therefore say that their participation in or contribution to their state is no longer voluntary. These citizens would therefore not be morally responsible for the actions of their political leaders. Because the means available to engage in these behaviours vary, the threshold at which a citizen can be said to have renounced their membership and to be no longer voluntarily contributing to the political community will also vary accordingly. Especially people in the in the lowest socio-economic strata of society who genuinely do not identify themselves as members of that community anymore will therefore have a comparatively low threshold of what it takes to remove their name from the political community and no longer to be responsible for what those in power do. Given that the majority of us, however, do not exhaust a large proportion of the means available to us to renounce our membership, the vast majority of us can be said to contribute to the political process voluntarily and are as such legitimate targets for ascriptions of responsibility for the actions of our political leaders.

So what about removing oneself from one's country as a way to renounce one's membership and to avoid moral responsibility for the actions of our political leaders? While this clearly is not possible for many citizens, it will be a viable option for some. When we consider that trying to change the system from within (to the extent that they have the means to do so) can be reasonably expected of citizens, then physically removing oneself from an immoral

situation is clearly not sufficient for evading moral responsibility for that situation. Leaving the state may be sufficient to escape its political authority, but that surely cannot be enough to escape moral responsibility for the harms that one's country perpetrates. That would make it too easy for individuals to rid themselves of that wrongdoing even though they could have taken steps to lessen or even eliminate it. Imagine that you have joined a violent group that likes to beat people up in the street. After a while you start to question the morality of the group's actions and half-way through perpetrating an attack you simply walk away. You do not try to help the victim yourself, you do not attempt to gather bystanders to help the victim, you do not call the police. You simply walk away. I think that we would not want to say that you have thereby avoided all responsibility for the attack on the victim. Your responsibility may have been lessened in as much as you are not handing out any further punches, but you could have reasonably been expected to try and save the victim. The same goes for citizens. By physically removing yourself from the state you are obviously no longer participating in or contributing to the harm in question, but surely you could have been reasonably expected to do more to lessen or eliminate the wrongdoing in which you had been complicit. In many cases I think that this is true, but I think that there are certain cases in which physically removing oneself from one's country can be sufficient to remove oneself from responsibility. This is when one thinks that removing oneself can help stop the harm that is being perpetrated. Most likely this will take the form of publicly announcing that one would rather make the onerous decision to renounce one's membership than be associated with that system any longer, in order to draw attention to the issue and build pressure on those who have the ability to make changes to that system. Recently a white student resigned from her fully funded PhD programme at the University of Cambridge because of the structural racism she encountered. She acknowledged that "it is always tricky to know whether to divest one's energy from an unjust institution or to stay and fight to improve it", but after having tried to change the institution from within and having found doing so impossible she decided to leave because she did not want to be "re-legitimising it by contributing [her] time, effort, and skills as a member of the university" (Seresin, 2019). Her public statement has sparked a lot of debate and in that way contributes to the pressure on the institution to make changes. In a similar way, when citizens make their reasoning to leave the state public, their leaving can become a tool in effecting change when doing so from within would be unlikely. While leaving the state can reduce one's moral responsibility for any ongoing wrongdoing, it cannot eliminate it fully if it does not contribute to an effort to change the issues identified with the state in question.

I began this section by arguing that much of our participation in and contribution to democratic politics (e.g. voting, taking part in demonstrations, buying newspapers) can be said to be voluntary. I then considered that this does not seem to be obviously true for some other forms of contributions, though, in particular paying one's taxes and generally obeying the law, because non-compliance would come at a significant cost to the individual such that they could be said to be forced to take part in politics in that way. If they do not contribute voluntarily, however, they could also not be responsible for the actions of their political leaders that they have indirectly enabled. I responded that some of the people who do nothing but pay their taxes and obey the law may still do so voluntarily if they do so because they genuinely want to, independent of the fact that there are serious costs to non-compliance. We were then, however, left with a considerable number of citizens for whom this is not the case. Do all of them therefore only contribute to politics involuntarily and are they thus unable to be morally responsible? I argued that this is not the case in as much as many of these citizens will have voluntarily endorsed their membership in that state and therefore also the kinds of obligations such as paying taxes and obeying the law that are constitutive of that membership. They have done so voluntarily because it is open to them to renounce their membership, though this will have to be done both in word and deed. I have suggested that this can be done by, at the extreme end, becoming a martyr like Bonhoeffer or by moving away when doing so can contribute to institutional change. Neither of these options can be expected of the average citizen, though. In order to renounce their membership from the state they would have to exhaust a large proportion of the resources available to them to show that they take back their name from the actions perpetrated by the government. Given that the majority of us, however, do not exhaust a large proportion of the means available to us to renounce our membership, the vast majority of us can be said to contribute to the political process voluntarily and are as such legitimate targets for ascriptions of responsibility for the actions of our political leaders.

A critic of my account may argue that these standards for renouncing one's membership are still so high that not living up to them is not voluntary. Should it not be enough that I take some steps in my life (e.g. voting against the politician or party that embodies the things that I cannot identify with) rather than having to give up life as one knows it? While I agree that most of us will never exhaust a large proportion of the means available to us to renounce our membership in the political community as far as possible, I think that we simply have to accept that this makes us potentially responsible for the actions of our leaders. Given the way in which our actions enable and support the ability of our rules to make decisions that will leave people significantly worse off or even dead, it is important to ensure that it is not

too easy for people to divest themselves of responsibility and create responsibility shortfalls. As such, people's decisions not to do more can be said to be voluntary. To be sure, this makes morality very demanding and might require us to re-think seriously what it takes to remove ourselves from responsibility for much that is wrong with this world, but that is a conclusion that I am happy to reach. Take the example of living in a capitalist society. I have strong anti-capitalist sentiment, I support and vote for political parties that want to counter-act some of the capitalist forces in our society, and I share my worries about capitalism with my friends and family and hope that they will be convinced by them. I still, however, eat and shop at large multinational corporations that I know to embody much of what I dislike about capitalism (e.g. horrible working conditions, zero-hour contracts, and pay that is below the living wage for most of their employees). I might eat or shop at these places because it is more convenient, or because of peer pressure, or because I would like a product that only they supply. Either way, though I show some opposition to the capitalist system in terms of my political choices and engagement with others, I also actively support it through the consumer choices that I make every day. I think that we can ascribe moral responsibility to me for the way in which I participate in and contribute to this capitalist system. Voicing some criticism and acting in some ways to counter-act that system is not sufficient to renounce my membership in it. As such I ought to be responsible for the ways in which I sustain and further that system. Obviously the degree to which I criticise or act against a certain system, even if it is not sufficient to eliminate all moral responsibility for it, can still significantly lessen my responsibility. For example, someone who votes for anti-capitalist candidates, occasionally goes to anti-capitalist demonstrations, and reduces the amount of shopping they do at major international corporations will be less morally responsible than someone who votes for capitalist parties, publicly opposes legislation to hold multi-national corporations to account, and does not support local shops.⁶⁹ If we do not physically remove ourselves from the political community in a way that could support institutional change, become Bonhoeffers who dedicate their lives to changing the system from within, or exhaust a large proportion of our resources trying to do either of these, we can be said to have voluntarily chosen to remain in the relative comfort of that system, and as a result we can be morally responsible for the results of that system.

⁶⁹ As a result of the capitalist argument someone might say the following: "Look, we're all equally responsible, so you're no better than me, so stop telling me to change what I'm doing". This kind of example could be used to shut down arguments and ascribe some form of hypocrisy to those who want to motivate people to change their behaviour. I want to point out that this is not what my invocation of the capitalism example is supposed to do, and that this is at odds with my emphasis on the different grades of responsibility that citizens have in virtue of their participation in or contribution to democratic politics. My account is supposed to give us an incentive to re-evaluate our relationship to the actions of our political leaders and what this entails for our behaviour.

Another objection to my account might point out that so far I have only talked about citizens who clearly embrace their membership in the political community and those who have decided, at least in their mind, that they do not. But what about citizens who do not do either? There is most likely a non-negligible number of citizens who have simply failed to reflect on their membership in society and the ways in which their actions contribute to the wider political community. Do they thereby escape political obligation and, according to my argument so far, moral responsibility? Note that I mentioned earlier that unconscious identification with one's political community is sufficient for membership on an associative account. Renzo briefly argues, in line with what Horton has asserted, that such individuals weakly identify with their political community and that this is sufficient for generating political obligation because "the question of what justifies political obligation over these individuals (the fact that they do identify, though only weakly, with the political community) is not to be confused with the question of what motivates them to obey the law (habit or self-interest)" (2012, p. 115). Now even if we were to grant that such weak identification could generate political obligation, for the purposes of my argument, would such weak identification not be involuntary and therefore not generate the moral responsibility that I want it to? After all, it would be odd to call our failure to do something that we were not aware of having to do voluntary. Making such demands would be at odds with the expectations that we can reasonably have of others. Firstly, we ought to remember that we are not thinking of the kind of choice that express and tacit consent theorists usually have in mind when talking about voluntariness. While the citizens in question have not chosen to be members at a specific point in time, they have, over the course of their lives, failed to make use of their ability to reflect on their social role as citizens. It is probably fair to say that many people are aware that they should and could know more about politics and their role within it but that they are not interested in reflecting on that area of their lives. They have voluntarily made a lot of autonomous choices and these have accumulated over time into a failure to remove themselves sufficiently from membership in their community and the responsibilities that result from that. Their voluntary choices have led them to become complicit in the actions of their political leaders. As mentioned throughout my discussion, their failure to reflect will obviously be involuntary if they did not have the means available to do so. For example, a single parent who has to work several jobs just to keep afloat is unlikely to have the time or energy available to them to reflect on their membership in the political community and can hardly be said to have voluntarily chosen not to do so. We also want to make allowances for the fact that, while many people have voluntarily chosen not to reflect on their membership, doing so would have been a lot easier for some than others. For

instance, someone who received little to no political education in school and was not taught the importance of understanding the way in which our lives are inextricably linked with the actions of our political community will be less responsible for failing to reflect on their membership than someone who received a basic political education but decided not to dwell on it.

It is true that many citizens will neither endorse their membership of the political community nor reject it, but will simply have failed to reflect on it altogether. Their failure to reflect on this issue that they were not even really aware of was in many cases nonetheless voluntary. Unless they did not have, for various reasons, the means available to become aware of the fact that they ought to reflect on their membership in the political community and instead contrived their own ignorance by choosing not to dwell on such questions, they can be said to have done so voluntarily. I will take up the issue of contrived ignorance in more detail in the following section. As a result, many of the citizens who do not embrace their membership in the polity but simply unreflectingly go on with their lives contributing to the political community do so voluntarily and therefore satisfy this condition for ascriptions of moral responsibility for the actions of our political leaders.

In the previous section I showed that citizens can satisfy the causal condition for moral responsibility in a variety of ways through the different kinds of contributions they make to their political community and the wider democratic process. In this section I have then shown that for those citizens who satisfy the causal condition, their participation in and contribution to the political community can be understood as voluntary in as much as they were not forced into them and we can understand their voting, attending demonstrations, buying newspapers etc. as a result of their self-determined and autonomous agency. Even in the case of citizens who only have more tenuous causal links and only contribute because they happen to live within the confines of the state can be said to do so voluntarily in virtue of the individual's voluntary identification and action as a member of that political community.

7.3.3. Epistemic Condition

So far I have argued that there is a large set of citizens who are causally responsible for the actions of their political leaders through the way in which they can make a difference, individually or as part of a set, to the decisions their leaders take or simply through the way in which they sustain or further the wider democratic process which makes them complicit. I then showed in the previous section that of this set of citizens, a large number will have made their participation or contribution voluntarily. Even for those citizens who only

marginally contribute to politics simply in virtue of happening to live within the confines of the state, this contribution can be understood as voluntary in as far as citizens have voluntarily endorsed a picture of themselves as members of their political community and where their actions are constitutive of that membership. Now that we have a set of citizens who have voluntarily participated in or contributed to the actions of their leaders and the democratic process more widely, we have to question which citizens within this set also satisfy the epistemic condition for moral responsibility. In short, they either need to have known, or should have known, that their action or inaction was likely to lead to the outcome in question. Many citizens can be reasonably expected to have informed themselves about a variety of ways in which their conduct makes them direct participants in or indirect contributors to a certain action. When citizens vote, whether in a referendum on a particular policy issue or an election for a particular politician or party, many of them can reasonably be expected to have gathered the necessary information to make an informed choice. In a democratic society in which a wide variety of information about the policy implications and voting intentions of particular options are freely and readily available, most citizens cannot claim ignorance in order to shield themselves from moral responsibility. Similarly, when citizens buy newspapers or contribute to social media sites that support a certain political agenda, or even when they simply follow the law and pay their taxes, many can be expected to understand how that may enable or strengthen the ability of a politician to take certain decisions.⁷⁰

Politics is not always that straightforward, though, and citizens may sometimes be faced with the rather unexpected consequences of their actions. What, for example, about a situation in which a party goes back on their core election promise? Consider the Liberal Democrats who promised their voters during the 2010 UK general election that they would not raise tuition fees for university students. They gained a lot of votes based on this promise which enabled them to enter a coalition government with the Conservative Party. Once in government, however, they no longer opposed the raising of tuition fees, and costs for students to attend university were nearly tripled. A citizen who voted for the Liberal Democrats may claim that there was no way that they could have reasonably expected the party to go back on their election promise entirely, so they should not be held responsible for having voted for a party that approved the rise of tuition fees. I agree that in some cases where politicians make u-turns on their core election promises, citizens could not have reasonably expected that to happen and should therefore not bear moral responsibility for

⁷⁰ I have purposefully said that we can expect this of many or most citizens, but not all. I will elaborate further on the expectations that we can have of different groups of citizens later in this section.

said u-turn. Some u-turns, however, could have been reasonably foreseen and as a result citizens who voted for that party are still directly implicated in that outcome. The Liberal Democrats argued that the reason they had to turn back on their election promise was because of the limited financial means available to them, something they had not foreseen before taking up government. In as much as it was foreseeable that the Liberal Democrats would support Conservative austerity measures that reduce spending on social, educational, and healthcare measures while at the same time opposing measures that could bring in additional revenue such as, for example, raising the taxes of high earners or large corporations, voters could have anticipated that the Liberal Democrats would not be able to hold on to all of their election promises. Given some of the core economic principles that the Liberal Democrats adhere to, some of the ambitious spending measures in their election manifesto would have always been difficult to implement. While citizens could maybe not have been reasonably expected to have known that the Liberal Democrats would support the raising of tuition fees, they could have been reasonably expected to foresee that the ambitious targets for social spending laid out in the Liberal Democrats' election manifesto could not be realistic and that they were unlikely to stand in strong enough opposition to Conservative austerity measures. To this extent, citizens who voted for the Liberal Democrats could still be said to be partly complicit in the party's actions, although clearly to a lesser extent than in a case in which they could have known for certain that the party would turn their backs on that particular election promise.

So far I have argued that we can reasonably expect citizens to understand the way in which their voluntary participation in or contribution to different political processes can affect and lead to certain political outcomes. As a result, they could not claim ignorance in order to shield themselves from moral responsibility for those outcomes. This, however, presupposes that all citizens have the same ability to educate themselves sufficiently on complex political matters. That does not seem to be true, though. Firstly, the level of political education that different citizens receive varies greatly and as a result it will be a lot easier for some citizens to make sense of complex political information than for others. What can be reasonably expected of a citizen may therefore differ and also result in different levels of responsibility that we can ascribe to them. Similarly, some citizens will not have the time to stay on top of complex political issues. Someone who has to work several jobs just to make do is likely to be constrained by the tasks of daily life in such a way that getting to terms with complex political issues would be a much greater burden than for someone who has considerable leisure time available to them because they have secure finances to live off. Again then, what level of political knowledge we can reasonably expect of people may vary greatly, and

therefore the level of moral responsibility for policy outcomes that we can ascribe to them will vary as well.

Understanding how citizens satisfy the epistemic condition is particularly problematic in many examples of dirty-handed actions, though. As mentioned at the beginning of this chapter, the issue of secrecy and lies and the way in which this potentially precludes citizens from knowing how their actions will contribute to certain outcomes, has been a focal point of discussions on democratic dirty hands. Many dirty-handed decisions will be taken in secret, behind closed doors, and without the knowledge of the democratic public. The very nature of the kind of emergency situations that are emblematic of the dirty hands problem is that the public cannot and maybe even should not know about them at the time of the decision-making. When a political leader has to make a decision on whether a hijacked passenger plane ought to be shot down, the time-sensitive nature of the situation will not allow for public consultation and deliberation. In the example of the Claudy bombing from the previous chapter, where a delicate balance had to be struck between bringing a murderer to justice and preventing a violent conflict from escalating, informing the public would have undermined the dirty-handed decision in the first place. Should a politician fail to inform the public, or act contrary to their wishes, then she seems to be faced with a second dirty hands problem. Not only did she commit the dirty deed in question, she also violated the democratic process. In the following I will briefly discuss Thompson's discussion of dirty hands problems involving secrecy and lies. Thompson argues that in cases where dirty hands are hidden away from the public and where this is not mitigated in the three ways that he suggests, politicians will carry the dirty hands by themselves and citizens do not join in the responsibility for such actions. I want to show that this conclusion overlooks the way in which citizens may have helped to contrive their own ignorance in such situations.

Thompson starts from the premise that "if citizens cannot know what officials have done, they cannot, in any substantial sense, approve or disapprove of their actions" (1987, p. 22). Thompson goes on to consider three ways to alleviate this problem: "retrospection", "generalisation and "mediation" (1987, p. 24ff). Retrospection encourages a formal review process after the dirty-handed act has been done. The problem with this, however, is that by the time that citizens get the chance to judge, the damage might have already been done and they might even be forced to continue with certain policies that they object to because of that initial dirty hands decision. Generalisation suggests that while the particular act cannot be made known publicly in advance, we can discuss the general type of decision in public that can then be used as grounds for decisions by politicians in the future. This can only be of limited use, however, because general discussion cannot be a substitute for judging the

particulars of dirty hands problems. These often include highly contested options that will be very dependent on the specific context. Lastly, mediation is the idea of having certain legislative bodies overseeing the actions of the executive at the time of action. Even if the public cannot be told of some dirty hands decision in advance, these regulative bodies could ensure that decision-makers take into account and weigh appropriately the right kind of reasons. This method, like the two before, will unfortunately not be able to solve all the problems caused by secondary dirty hands problems. Thompson suggests that, when the regulatory body is made up of officials with outlooks similar to those of the executive, the process of overseeing them will run only too smoothly and in reality there will be very little oversight and mediation. At the same time, the more diverse we want these regulatory bodies to be, in order to represent as many views of the public as possible on these highly contentious issues and to encourage actual oversight and mediation, the higher the likelihood that we will have to include too many people in the process. Executives will then be less likely to disclose any relevant information to the regulatory body because there was a reason in the first place for the information not to be given to too many people. Thompson concludes from this that none of these strategies will be able to cover every case of secondary dirty hands problems fully “and for those left uncovered politicians do not have democratic dirty hands shared with citizens; they have doubly dirty hands, all their own” (1987, p. 32). He concludes that we should implement these remedial measures as much as possible because, for him, “partly democratic hands are less bad than just plain dirty hands” (1987, p. 39). The issues of lies and secrecy lead Thompson to conclude that, while they can be mitigated in some ways, they will sometimes lead to situations in which politicians will have doubly dirty hands while citizens are absolved from moral responsibility for the actions of their leaders. After all, they could not have known and as such they cannot be legitimate targets for ascriptions of moral responsibility.

What this misses, however, is the way in which citizens are complicit in sustaining and furthering a system in which politicians are given the power and ability to make such executive decisions without the knowledge or explicit approval of citizens. Remember that I argued in section 6.2.2., following Smith (1983, p. 544), that one of the ways in which an agent can be culpable for their own ignorance is by preventing herself at an earlier point from subsequently discovering the relevant information. This phenomenon has been called by Luban “contrived ignorance” (1998) and I want to argue that citizens are guilty of it. Luban’s argument focusses on the case of lawyers, but I think that the phenomenon can be extended to citizens as well. When it comes to the measures that our politicians take to protect us, we are often happy not to ask too many questions. Luban argues that this is because “deniability

is the key to succeeding at the world's work, which is often dirty, while keeping a clean conscience – or at least a serviceable facsimile of a clean conscience” (1998, p. 959). There are different motivations for contriving one's ignorance. Luban uses the picture of the fox and the ostrich (1998, p. 968) to show why we may want to shield ourselves from knowledge. The fox is fully intent on committing wrong and, in order to avoid responsibility and liability, ensures that they will be ignorant of the details of that future wrongdoing. The ostrich, on the other hand, is too scared of being confronted with potential wrongdoing and of having to take a stance on it, and so the ostrich would rather put their head in the sand and live in ignorance. There are two types of ostrich, one who would have opposed the wrongdoing if they had taken their head out of the sand, and one who would not have had the resolve to do so even if they had taken their head out of the sand. It is unclear, both to outsiders and most likely the ostrich herself, which of these two types she is. We would probably judge the fox to be more blameworthy than the ostrich because their intention was set on wrongdoing from the outset.⁷¹ I think that many citizens are like the ostriches described by Luban, though we will never know which of the two types we are. I do not think that most citizens prefer not to know exactly what their politicians do as a result of them intentionally wanting to promote certain forms of wrongdoing. Instead it is a way for them to keep up the illusion of living in a morally faultless democracy, even though they know on some level that such a thing does not exist. Contrived ignorance is “a strategy for postponing the moment of truth, for sparing ourselves the test of our resolve” (1998, p. 968).

This stance also seems to be reflected in at least some of the writing on democratic dirty hands. Stephen Lukes argues in his paper on torture in liberal democracies that there will always be people that will, “take on the burden of making decisions that we would prefer not to know about. Perhaps in these cases we democratically endorse being non-democratic” (2006, p. 15). If we in fact prefer not to know of certain morally questionable means being used by the politicians we elect and that are said to act in our name and for us, this would call into question whether the fact that we do not explicitly know about these acts implies that we are not morally responsible for them. Richard Bellamy gives the example of secret services: it is clear to most citizens that the operation of secret services can only ever be public to a limited extent, “so we tolerate wire-tapping of terrorists and spying on unfriendly powers, but prefer not to be told” (2010, p. 426). Once, however, we allow for such an

⁷¹ Note that Luban has a slightly different view on this. He argues that we would judge the ostrich who was too scared to face the wrongdoing but who, maybe to their own surprise, would have opposed the wrongdoing once they became aware of its full extent more leniently than the ostrich who was morally too weak to confront the truth and would not have had the resolve to oppose it even if she would have known. It is unclear to me, however, why we judge the former to be less blameworthy than the latter for the wrongdoing. The former may have a slightly better character, but their responsibility for the actual wrongdoing appears to be the same.

institution to exist and to operate beyond our ken, then we cannot exempt ourselves from responsibility for the morally dubious actions that this institution might take without our knowledge. Similar considerations lead David Archard to ascribe a form of “collective bad faith” to the public in these cases, “both knowing and affecting not to know that something bad has been done in its name” (2013, p. 784). Even if we did not know, and could not have known, about a particular dirty-handed action, this does not exempt us from responsibility for that wrong when we are part of a system that enables and, even if only implicitly, approves of giving such executive decision-making power to those that represent us. When we are part of a society in which we give away our own decision-making power to someone else for our own benefit, there also is a corresponding risk that some of the actions taken in the name of that society and in the name of all of its members may be morally objectionable. Agents who are part of that society will simply have to shoulder that risk.

Now we might want to argue that citizens not knowing exactly what their politicians do for them and in their name is actually a necessary part of that society functioning. Bellamy, for example, argues that “political legitimacy, measured by the tolerance of citizens for the government’s dirty tricks, depends on both parties keeping faith with ideal liberal democratic forms and norms even while selectively disregarding them” (2010, p. 426). The idea here seems to be that successful liberal democratic politics requires citizens not to know too much about what their politicians do. Bellamy argues that liberal democratic politics cannot live up to its own ideals of eliminating all conflict and the need for dirty measures, but in as much as it does a better job than other forms of political governance, it is important that we do not become too disillusioned with the system to the extent that it would collapse. If citizens not knowing is so crucial to the system, then should we hold them responsible for contriving their own ignorance? Again, I would like to argue that this is simply a risk that citizens will have to bear in virtue of the advantages they receive by giving up their decision-making power to their leaders and being part of a wider political community. If they participate in or contribute to a liberal democratic system of their own choice in order to gain the benefits of membership in such a system, they will also have to shoulder the risk of what that system does without their knowledge, given that they on some level ought to be aware that dirty means and the secrecy around them will be inevitable. As with the previous two conditions, citizens can obviously satisfy the epistemic criterion to various degrees. Citizens who have had the education to understand democratic processes better and have the time to reflect on their role as a citizen will be more morally responsible than someone who has these things to a lesser extent, while someone who did not have access to basic political education, and is so busy trying to make ends meet that they cannot devote any spare time to reflecting on

what their politicians do and how their role as a citizen contributes to that, ought not be held morally responsible.

The secrecy, lies, and deception that will often be involved in dirty hands can therefore not be used to altogether undermine our moral responsibility in virtue of being democratic citizens. I say here altogether, because we obviously would want to make distinctions among the level of responsibility that different citizens incur in virtue of how easily the information would have been available to them and how much we could have expected them to try and gain that information.

7.3.4. Cognitive Condition

We are still left with a set of individuals who fulfil the first three conditions of moral responsibility to varying degrees, which includes the majority of citizens in a democracy. Of this set of citizens we now have to understand who fulfils the cognitive condition necessary for moral responsibility. We only want to hold those citizens responsible who have the required cognitive abilities to, in principle, understand the nature of democratic politics, their membership in it, and the way in which their actions contribute to sustaining and furthering the political community within which they live. Not everyone living within the bounds of the state will satisfy this condition. Adults with severe learning disabilities and children will not have the required mental capabilities to understand the complex nature and workings of democratic politics. As such we would not want to hold them morally responsible for the actions of politicians. The more difficult case is that of teenagers. There are two related considerations here: firstly, do they have the relevant mental capabilities, and secondly, given the common conception of their mental capabilities, have they been excluded from the democratic process in such a way that we would not want to hold them morally responsible even if they satisfy the cognitive condition after all? It has been argued by cognitive scientists that “adults and adolescents [...] share the same logical competencies, but that age differences in social and emotional factors, such as susceptibility to peer influence or impulse control, lead to age difference in actual decision-making” (Steinberg, 2005, p. 71). The decision-making process of adolescents is distinguished, in particular, by being more receptive to peer pressure, being less risk-averse, and having a focus on short-term rather than long-term goals (Scott, et al., 1995, p. 222). The idea is that, when presenting older adolescents with abstract problems, they have the same cognitive abilities as adults to come to a reasoned conclusion. The problem comes when, in real-life decision-making, their judgement is clouded through, for example, emotional or social factors which, because of the developmental stage of their brain, they cannot yet sufficiently exclude from affecting their rational calculations. This is particularly problematic when it comes to decisions

involving immediate rewards (e.g. drinking, smoking) that are offset by long-term costs, where adolescents are more likely to take considerable risks than adults.

So what can this brief interlude on developmental psychology tell us regarding the moral responsibility of adolescents for the actions of political leaders? In principle, individuals in their mid- to late teens have the cognitive abilities to understand the nature of democratic politics, their role as members within it, and complex decision-making structures in the same way that adults do. One of the factors that is likely to cloud decision-making in adolescents is that they are happy to take greater risks, especially if these might lead to immediate benefits while the costs would only manifest long-term, such as drinking or smoking for example. In general, this makes adolescents less risk-averse than adults. Political action is unlikely to include the kind of short-term gratification involved in drinking or smoking that makes adolescents more likely to ignore the long-term costs of their behaviour, though. As such this is unlikely to cloud their rational decision-making capacity in the case of political participation. What remains is that adolescents are more susceptible to peer pressure. They may be more likely to imitate the political behaviour of their friends or family in order to receive their approval. This is, however, not sufficient to shield them from responsibility for those actions. Adults also often act in ways to ensure that they find acceptance from their peers, and we still want to hold them responsible for what they do as a result. Given that this urge appears to be stronger in adolescents, to the extent that their actions were driven by peer pressure to which they are more prone to succumb, we should be more lenient in our ascription of responsibility to them. This does not, however, mean that their decision-making powers were suspended to such an extent that they can evade moral responsibility entirely. Given their ability of rational decision-making, we should conclude that older adolescents can, in principle, be held morally responsible for the actions of their politicians.

There is one complicating factor, though. Most countries do not make formal channels of political participation available to its citizens until the age of eighteen. The ability of adolescents to contribute to politics is therefore seriously curtailed. This is not enough, however, to eliminate the moral responsibility of adolescents entirely. As I have shown earlier, citizens are causally connected to the actions of their politicians not only through their contribution to elections, but in a wide variety of ways. Adolescents who satisfy the cognitive condition can therefore still be morally responsible in virtue of these other ways of either participating in or contributing to certain political outcomes. Being excluded from formal channels of political participation, however, can lessen the level of responsibility that we want to ascribe to them.

The large majority of citizens, including older teenagers, will satisfy the cognitive condition and can, in principle, be morally responsible for the dirty-handed actions of their political leaders. Some citizens, however, will not have the required mental abilities to understand the complex workings of a democratic state and society and their actions within that system, and as such we should not hold these individuals morally responsible for what their political leaders do. Finally, just as was the case with the previous three criteria, citizens can satisfy the cognitive condition to various degrees. Some individuals may have a better ability than others to understand complex processes such as democratic decision-making and one's role within it. If it was, as a result, very straightforward for a citizen to understand the impact of their participation or contribution they carry more moral responsibility than those for whom it would have been quite difficult to understand this relationship.

7.3.5. The Moral Responsibility of Citizens – Summary

I began by arguing that the majority of citizens will satisfy the causal condition in a variety of ways, either by making a difference to the political outcome individually or as part of a set of citizens, or by being complicit in these actions in virtue of their contribution to the wider political process. Of the set of citizens who satisfied the causal condition, a majority also satisfy the voluntariness condition because we ought to acknowledge their decisions as an exercise of their autonomous agency and ensure that citizens have the power to make these self-determined choices about their lives. Even those who only marginally contributed because they merely happen to live within the boundaries of the state have acted voluntarily in virtue of having quasi-voluntarily committed to their membership within their political community over time. The actions and corresponding responsibilities that come with this membership can therefore be said to have been assumed voluntarily. The only citizens who are completely exempt from this are those that have renounced both in word and in deed their membership in their political community as far as the means available to them allow them to. This can happen either when they physically remove themselves from the state as a public act of resistance, dedicate their life to opposing their state from within, or have exhausted a large proportion of their means in trying to do either of these. Of the set of citizens who have voluntarily participated in or contributed to a given dirty-handed action or the wider democratic process, again a majority will satisfy the epistemic condition, even in cases in which they did not and could not have known about the action in question being taken by their politician. As much as citizens are happy to delegate certain tasks to politicians in order to enable them to live their lives as they please without having to be too worried about some of the measures that have to be taken in order to make this possible, their ignorance is contrived and cannot shield them from moral responsibility. Finally, of the set

of citizens who have voluntarily participated or contributed and who could have or should have known that their action would possibly affect the decision in question, a majority will also satisfy the cognitive condition. Most citizens (from late adolescence onwards) have the required cognitive abilities for ascribing moral responsibility to them for the actions of their political leaders.

While not all citizens are morally responsible and share in the dirt of their political leaders, a majority do. They will, however, do so to varying degrees depending on the extent to which they have satisfied all four of the necessary and sufficient conditions for moral responsibility.

7.4. Responsibility for Dirty Hands

I now want to apply my above account to a particular issue that has been raised regarding the responsibility of citizens for dirty hands in democracies. If citizens share in the moral responsibility for dirty hands, is this going to be similar or different to the moral responsibility of their political leaders? Is there a quantitative or qualitative difference? I now hope to be able to answer this. Note that the accounts that I discuss ignore the differences between citizens and simply talk about the responsibility of the entire public for dirty hands. As I have shown above, there is, however, a huge variation in the level of responsibility of different citizens. When I say that citizens share in the dirt of their politicians I therefore only want to refer to those who have satisfied the four conditions above.

Regarding the distribution of dirt and moral responsibility between politicians and citizens we should distinguish between three different positions in the dirty hands literature among those who argue that citizens share in some sense in the responsibility of their politicians. I will call these the “qualitative difference view”, the “simple quantitative difference view”, and the “mediated quantitative difference view”. I will argue in favour of adopting the latter. While all of them agree that democratic citizens are implicated in the actions of their politicians, they disagree about both the nature and the extent of the moral burden that citizens have to bear. The first position, which we can call the “qualitative difference view”, argues that the nature of our ascriptions of moral responsibility to politicians and citizens differs in kind. Such an account is defended by Miriam Thalos (2018) in a recent paper. Her starting point is that politicians are the authorized agents of citizens. She stipulates that, as long as an agent acts within the bounds of what she has been authorized to do, the responsibility for her actions falls not on herself but on those that authorised her. There are, however, certain phenomenological residues that attach to agents in virtue of the actions they commit as an authorized agent. What they have done, even if they were not acting in their own capacity, will stay with them and affect the kind of person they are. Thalos follows from

these assumptions that “the phenomenology of dirt [...] falls on the authorized individual even though the responsibility [...] falls on the citizenry whose authorization puts the authorized in the position to deploy the resources necessary to act” (2018, p. 176). According to Thalos, politicians get their hands dirty, but citizens ultimately bear the responsibility for this dirt. I call this the qualitative difference view because what we ascribe to politicians and citizens is of a different nature; politicians will feel dirty and morally polluted, while citizens carry the actual moral responsibility but will not feel dirty.

Given what I have argued in both this chapter and the previous one, the qualitative difference view is implausible. Firstly, it wrongly absolves political leaders of moral responsibility. As I showed in the last chapter, politicians cannot shield themselves from moral responsibility because they have significant leeway in their decision-making and as such should be open to be praised and blamed for their actions. Secondly, given that citizens can be said to be complicit in the actions of their political leaders it is unclear why the phenomenology of dirt should not extend to citizens as well. Thalos argues that “the responsibility for the action is deflected [from the politician to citizens], but not the dirt” (2018, p. 176). The latter exclusively sticks to the politician. But this leader dirtied their hands for citizens and in their name; citizens have enabled politicians to take these kinds of decisions, decisions they are happy not to have to make themselves. But I cannot give away this decision-making power and therefore shield myself altogether from the nature of the actions taken for me. In the fourth chapter in which I discussed the inherent as well as instrumental value of experiencing the right emotional and phenomenological response to dirty hands scenarios. If this did not extend to citizens, this would hinder them in their thorough understanding of the nature of the action done for them. That would make it too easy to dissociate themselves from what is done in their best interest and in their name. When our politicians dirty their hands, our hands become dirty as well. So there does not appear to be a qualitative difference with regards to our ascriptions of moral responsibility to politicians and citizens.

The second account argues that we should instead be concerned with the question of whether there is a quantitative difference in our ascriptions of moral responsibility. This comes in two forms. The first I will call, following Archard, the “simple view” (2013, p. 781). It argues that the moral responsibility attaching to politicians and citizens will be quantitatively the same. I think traces of this view can be found in Thompson’s account of democratic dirty hands. He argues that in cases where citizens can be said to democratically approve of their leader’s actions “officials cannot be burdened with any greater responsibility than citizens” (1987, p. 22). He goes on to argue, though, that in a not insignificant number of cases we will not be able to presume such democratic approval (e.g. because the action

was done in secret and citizens did not have the chance to approve), and that in those cases the politician alone will carry all of the moral responsibility. He starts by arguing that we might think that the moral responsibility of citizens and politicians differs because the latter are psychologically closer to the dirty action. The thought might go that “the more psychologically remote one is from the evil deed, the less morally culpable one is” (1987, p. 20). This, however, he judges to be an inadequate assessment, in particular in the realm of politics where those that are furthest away from the action – i.e. political leaders who make the decisions but do not execute them – are those most responsible for the actions. As I have shown in the previous chapters, political leaders who are the ultimate decision-makers will also most likely be the agents who hold the most moral responsibility for a dirty-handed action. If psychological distance cannot ground a difference in ascriptions of moral responsibility, then citizens and politicians will be equally morally responsible. I want to resist this simple view.

Based on the account that I have offered in this chapter we can see that this view does not sufficiently take into consideration the mediated relationship between citizens and the dirty-handed action. In a democratic society, the responsibility of citizens will usually be less than that of the political actors who actually planned and executed the action. Citizens will stand in a more indirect relation to the action and outcome in question and we will judge them less morally responsible than those who actually committed the action with their own hands. We can call this the “mediated quantitative difference view” as opposed to the “simple quantitative difference view” mentioned above. Given how far citizens will often stand away from a particular policy decision, the degree to which we can ultimately blame citizens will be relatively low. While citizens may take part in an election or pay taxes, such actions are relatively far removed from any particular policy decision. Exceptions to this may be referenda or when a sufficiently large protest could directly sway a political leader’s decision. Most of the time, however, the impact that the majority of citizens have on the actual policy-making process is far removed. Additionally, we may want to lessen the responsibility of citizens in as much as it would have been very onerous for them to remove themselves completely from any contribution and as it would have been difficult for them to know how their action would contribute to the dirty-handed decision. Thus, in the case of democratic politics, the principal actor or the co-principal actors in a wrongdoing (i.e. political actors) will carry more moral responsibility than accessories (i.e. citizens) who are merely complicit. Imagine, for example, a bank robbery out of control. A member of the criminal gang loses their temper, and shoots and kills one of the hostages. Clearly we would want to hold that individual agent morally responsible for the death of the hostage. But what about another

member of their criminal network who, while not present at the robbery, supplied the weapons? Surely we would want to hold them morally responsible to some extent. After all, by supplying guns to a criminal organization, they could have and should have known that this may result in innocent people dying; but their responsibility is less than the responsibility of the criminal who shot the hostage in cold blood. I think that our intuitions in the case of the bank robbery should be applied to the case of citizens and political leaders. Yes, we should hold citizens morally responsible for their participation and complicity in the democratic system that confers the power to make dirty-handed decisions onto politicians, but in the end, their causal relation to the action is a complex mediated one and this has to be taken into consideration. Their individual contribution to the democratic process is likely remote and not essential to the dirty-handed action. While their contribution makes them complicit, their actions are likely so far removed from the particular dirty-handed decision in question that we would judge them to be responsible only to a small degree.

Following from this I think that the most accurate account is the “mediated quantitative difference view”. Citizens share in the dirt and moral responsibility of their political leaders, but they do so to a lesser extent. As Christopher Gowans has argued, such actions “are a direct expression of the particular deliberation and choice of the leader” (1994, p. 233). I have shown in the previous chapter that they clearly satisfy the four conditions necessary for moral responsibility. They have the required cognitive abilities and relevant knowledge of the situation, their choice is voluntary and they are clearly causally connected to the action and its outcomes because it is by their hands that the ultimate decision is taken. In contrast, citizens’ connection to the dirty-handed action is mediated through a complex system and this should be reflected in our moral assessment. Democratic citizens share in the dirt and moral responsibility of their political leaders. They do so, however, to a lesser degree than the politicians themselves, and among citizens moral responsibility will vary again in virtue of their participation in and contribution to the democratic system and democratic decision-making process.

7.5. Conclusion

Democratic citizens are to varying degrees morally responsible for the dirty-handed actions of their political leaders. This responsibility is grounded in their voluntary participation in and contribution to democratic society when they should have known that being and acting as a member would likely enable and require politicians to get their hands dirty for them and in their name. The amount of blame we can rightfully ascribe to citizens will usually be rather minimal, though, because their connection to any given dirty-handed act will tend to be remote. The only citizens who are completely exempt from this are those that have

renounced both in word and in deed their membership in their political community as far as the means available to them allow. The fact that those citizens who have voluntarily participated in or contributed to the democratic process will often not have known and even could not have known about a particular instance of dirty hands does not excuse them entirely because citizens are complicit in having erected the very system that enables politicians to operate in secrecy. When citizens have contrived their own ignorance, they cannot escape moral responsibility for dirty-handed actions that they could not have known about at the time. Finally, of the citizens who satisfy the above three conditions, most will have the cognitive abilities necessary to, in principle, understand politics and their role within the political community and can be held responsible for what that political community does. The majority of us, as democratic citizens, are therefore partly morally responsible for the outcomes of the dirty-handed actions committed by our political leaders.

8. Conclusion

8.1. Summing Up

The first part of this thesis aimed to clear up some of the confusions around the notion of dirty hands: dirty hands are a kind of moral conflict that is distinguished by the particular kind of moral remainder that attaches to it. The notion of dirty hands, however, has sometimes been charged with irrationality. The critique goes that understanding dirty hands as a clash between absolute moral values is impossible when rational moral judgement has to be coherent and always uniquely action-guiding. I have argued that we can, however, make sense of dirty hands even on this “consistency view” of rational moral judgement by describing dirty hands conflicts as clashes between pro tanto values. What this shows is that we can make sense of the concept of dirty hands as a conflict of values, whether understood in absolute or pro tanto terms, independent of our pre-conceptions of the nature of rational moral judgement more generally. I then went on to consider whether, once an agent is faced with a dirty hands problem, she could possibly keep her hands clean. Asymmetry positions that hold this to be possible have to conceive of the dirt in dirty hands as something above and beyond the violation of an important moral value. I showed that such views are undesirable because they require the agent to engage in a form of moral compartmentalisation and provide us with unpromising understandings of the notions that are supposed to make an action dirty instead. When an agent is faced with a dirty hands situation, it will be too late for her to keep her hands clean. Ultimately this means that accepting the reality of dirty hands must lead to an acknowledgement of the tragic nature of our moral lives. I then went on to discuss the role that emotions play in dirty hands situations. I argued that emotions have standards of appropriateness that result in emotions being rational and fitting responses to some of the qualities of a given situation. The very fact that people do seem to experience a certain negative emotional response in the wake of a choice situation, even though they did the overall best action they could have performed, then supports the existence of dirty hands problems. I then argued, following de Wijze, that the emotional response appropriate to the moral conflict inherent to dirty hands situations is tragic-remorse. Experiencing tragic-remorse additionally has important implications for the agent. I argued that it exhibits a commitment to the forgone value, aids in her deliberation, and can make her behaviour intelligible to others. Experiencing the appropriate moral emotion during and in the wake of a dirty hands conflict is both inherent and instrumental to being a good moral agent.

To sum up, dirty hands are a special kind of moral conflict in which the agent is forced to violate an important moral value whatever option she chooses. Once confronted with a dirty hands situation there is no way to keep her hands clean. She will experience a weighty moral remainder and tragic-remorse in the wake of her decision.

While such dirty hands decisions can arise in all areas of life, they are particularly pertinent in the realm of politics. The second part examined some of the fundamental issues at stake when considering dirty hands in a democratic setting. Firstly I had to defend the notion of democratic dirty hands against the objection that surely it could never be permissible in a democracy to dirty one's hands. This objection comes in three ways. The first is that getting one's hands dirty is contradictory in principle because we cannot use dirty-handed means to pursue democratic ends. The second argues that it is contradictory in practice to use dirty-handed means because they will always undermine democracy more than they will promote them. Lastly, the final criticism argues that the notion of democratic dirty hands makes no sense because the use of dirty hands signals that democracy has at that point failed. I showed that these objections fail because they are based on flawed conceptions of both democratic politics and dirty hands. Having defended the idea that it can be permissible to dirty one's hands in democratic politics, I then moved on to analyse who actually gets their hands dirty. I briefly noted that both praise for having chosen the lesser evil when doing so was not easy, and blame for having violated an important moral principle will be appropriate third-party reactive attitudes to political actors holding moral responsibility for dirty-handed decisions. Dispelling the myth that dirty hands rely on the notion of a single-handed political leader, I analysed the way in which different political actors fulfil the four conditions (cognitive, epistemic, voluntary, causal) necessary for moral responsibility. Using the example of the Claudy Bombing in Northern Ireland I showed how this analysis can be applied to real life politics. Finally, I turned to the question of whether democratic citizens can be morally responsible for such decisions and therefore also get their hands dirty. In as much as citizens have voluntarily participated in or contributed to the dirty-handed decision in question or the wider democratic process more generally, they can also be said to share the dirt and moral responsibility, although to a lesser extent than their political leaders who were more directly involved in the decision-making process. Even if citizens did not and could not have known about the particular dirty-handed decision, this does not necessarily absolve them of moral responsibility. To the extent that their ignorance was contrived, they will still share in the dirt and the responsibility after all. Dirty hands in democratic politics are then not simply shouldered by a single politician acting alone, but by many of us in the polity.

To sum up, while the appropriateness of dirty-handed measures in democratic politics has been questioned, what I have shown in this thesis is that such objections are misguided. Sometimes using such measures will be permissible even in democratic politics. There is also no reason to think that dirty hands reasoning could not make sense of complex democratic decision-making. In such an environment the dirt will simply be shared to varying degrees between the actors involved in the process. Ultimately, because of the relationship that holds between citizens, their leaders, and the wider democratic process, some of this dirt will also fall back on citizens themselves.

My account of both the nature of dirty hands and its application to the realm of democratic politics is important in order to move on in the dirty hands debate. This thesis has established the grounds on which we can ascribe moral responsibility for dirty hands to agents in democratic society, so that we can now take the next step and consider whether and, if so, how these agents could actually be held liable for these dirty hands.

8.2. Clean Gloves, Liability, and Restitution

At this point I want to indicate areas of enquiry that can be pursued with the help of the arguments developed in this thesis. This section is not intended to provide a thorough discussion but instead aims to highlight some of the existing debates in the literature and show the relevance of the arguments presented in this thesis to these issues.

In chapter four I argued that the agent ought to experience a negative first-person emotional response to her dirty hands. In particular, she ought to experience tragic-remorse. This response is appropriate because it gives credit to the way in which the agent's actions have violated important moral principles and left people worse off as a result. In the case of democratic politicians, though, it has been argued that this is not enough. When politicians dirty their hands in a democracy we require a public and retrospective phase of holding officials with dirty hands accountable in order to uphold the democratic process. Citizens need to have the ability to hold those whom they elect to act in their interests and in their name liable for their actions. If the democratic process is to remain meaningful we therefore might want to argue that politicians are required to reveal their dirty hands to the public. S.L. Sutherland argues that if we do not have this requirement of our politicians, there will exist "an unbridgeable gulf between those who lead and those who are led", turning the public into "a passive collection of individuals" (1995, p. 483) instead of a meaningful political actor; it excludes "the prospect of the reciprocity between citizens and leaders" (1995, p. 486). She adds that to legitimise political actors avoiding this process of accountability would be to disregard the supremacy of constitutionalism that is supposed to ensure the rule of law and

the existence of those checks and balances that the public has to limit the power exercised by the government. She concludes that in cases of dirty hands situations in democratic societies we need to ensure that, “public judgement takes the place of the autonomous phase of self-judgement” (1995, p. 491). Thompson seems to agree with this when he says that “if officials have the discretion to deceive, they also have a duty to disclose the deception” (1987, p. 26).

While a phase of accountability in the sense of giving an explanation for their behaviour seems to be necessary to uphold the democratic process, it might be thought that to actually hold political actors liable would be both counter-productive and immoral. One might think that if the politician is able to explain herself, the need to take any further action and to hold her liable might simply vanish. This line is taken by Neil Levy who argues against holding politicians liable for their dirty hands on both consequentialist and desert-based reasons. He starts by describing the consequentialist reasons which we might think justify holding the dirty-handed politicians liable. Firstly, it seems necessary to ensure that the moral value overridden stands as inviolable after the dirty hands act. Secondly, if politicians are aware that they will be held liable for their actions, it ensures that they are taking those moral values seriously. Levy attacks this idea by arguing that as much as the prospect of liability can ensure that the right decision is taken, it can just as much discourage politicians from doing the lesser evil if they could in one way or another avoid liability by doing so. Additionally, it might even discourage good moral agents from entering politics in the first place. Levy goes on to explain that there can also be a potential desert-based justification for punishment in these cases according to which the politician deserves punishment in proportion to her moral violation. Levy objects to this because “our attitudes are too complex to find expression in punishment” (2007, p. 43). While we might wish to say that the politician did something bad, there is also something praiseworthy about having done the overall right thing in a very difficult situation. Now, Levy tells us, we have to ask ourselves whether there is any form of punishment that articulates both of those attitudes to the politician and society as a whole. He concludes by saying that such a form of punishment simply does not exist.

Because there do not seem to be any obvious ways in which we can justify punishing those with dirty hands on either consequentialist or deontological grounds, Levy tries to solve the issue of whether we should hold them liable by re-iterating the distinction between the bad and the blameworthy that I briefly introduced in section 6.5. It is true, he argues, that in violating a moral value the politician has done something morally bad, but we should not take her to be blameworthy for it. He says that “if dirty-handed actors are blameworthy, then it must be the case that there is some act or omission available to them that would allow

them to avoid blame” (2007, pp. 44-45). Dirty hands situations, however, are characterised by the very fact that there is nothing the agent could have done to avoid violating one moral value or another, so “by the principle of the avoidability of blame they are therefore blameless” (2007, p. 45). And if that was not enough already, Levy continues, there is a further feature that should make us abstain from holding dirty-handed politicians in a democracy liable. The politician dirtied her hands because she was acting on our behalf, and if we agree that this implies that the dirt is shared by us citizens, we do not have any grounds to hold her liable for the fact that she was acting on her obligation to us. Meisels emphasises this point as well; when a politician has dirtied his hands for us and in our names, the act of holding him liable is morally dubious; “punishing him for what we ourselves would have wanted him to do is no longer an irony or a paradox; it is simply wrong” (2008, p. 173). She goes on to say that if a politician can successfully show that she acted under the constraints of necessity (put on her both by the situation as well as by the demands of citizens), she should be excused for her action. Not excusing her and, indeed, punishing her is for Ramsay “analogous to the indefensible case of punishing the innocent” (2008, p. 173). When a politician can give a satisfactory explanation for her dirty hands there is, according to Ramsay, no reason for us to punish her.

What these criticisms should make obvious is that if there are grounds for holding politicians with dirty hands liable, these would differ from those on which we usually justify punishment and the like (these could be either entirely different to the grounds we have in other cases, or they could be simply additional considerations that need to complement our already existing grounds). This would also have to take into account that the dirt is potentially shared by politicians and citizens.

On the one hand, then, we have a position that requires politicians to reveal their dirty hands. It has been argued that this is necessary because a mere personal phase of accountability in the form of the correct emotional response on the side of the politician would not be enough to uphold the democratic process and ensure a reciprocal relationship between citizens and rulers in which the former can hold the latter to account when they take decisions for them and in their name. This position is then further divided into two camps, one which wants to hold the politician liable to punishment while the other opposes such measures. On the other hand, however, there are those who think that a dirty-handed politician should not reveal her actions to the public. These accounts put forward the view that dirty-handed politicians, instead of revealing their guilt, should be wearing “clean gloves” (Bellamy, 2010) in public. To wear clean gloves is not to admit to one’s dirty hands and to keep them secret. Bellamy in his examination for the need to wear these clean gloves argues that “political legitimacy

[...] depends on both parties [i.e. politicians and citizens] keeping faith with ideal liberal democratic forms and norms even while selectively disregarding them. [...] So politicians have good reason to be cautious” (2010, p. 426). Bellamy sees the nature of politics as inherently conflictual and follows from this that democratic practice can never live up fully to the liberal ideals on which it is built. In order for the basis of democratic politics to not be undermined by this, it is therefore important for all the parties involved to keep up the faith in these ideals even though we know that they can never be fully realised. Revealing dirty hands could pose a dangerous disruption to daily politics because the politician is torn between a non-ideal political reality and the idealistic picture of the public that requires the politician not to show anything that is ordinarily conceived of as a vice. The politician is then said to have to embrace a form of hypocrisy.

Tillyris argues that, while the dirty hands tradition prides itself on taking Machiavelli’s lessons about having to learn how not to be good seriously, it fails to appreciate Machiavelli’s core insight that next to the cruelty of the lion, politics also requires the cunning and hypocrisy of the fox. For him, most dirty hands accounts are “paradoxically censorious over the practice of hypocrisy in democratic politics” (2016, p. 2). In contrast to these accounts he wants to argue that hypocrisy actually provides us with the framework for what it means to lead both a virtuous as well as a successful political life. He begins by defining what the cunning and hypocrisy of the fox in politics looks like; hypocrisy, in its essence, is the idea of putting on a public persona to deceive the public about one’s true actions and character, in order to attain certain political goods. Tillyris argues that the reason why hypocrisy is often seen to be an ultimate vice is because next to the fact that it is hard to detect, it also operates in order to conceal the politician’s other vices. This, however, according to Tillyris, makes hypocrisy not the worst of all the vices, but in fact the most necessary one for a political career. He states that “it is this function [...] which holds together a virtuous political life: the preservation of a moral front enables practitioners of politics [...] to cultivate the support necessary for satisfying certain political goods – to marshal on amidst a domain ridden with conflict, in which mutual antipathies, immoralities, betrayals and inconsistencies are inescapable” (2016, p. 5). Tillyris therefore sees no grounds for dirty hands theories to single out hypocrisy as the only vice that never ought to be acted on when faced with a moral conflict. Not only is there no basis on which dirty hands theory could make this distinction, but it would also undermine the politician’s ability to navigate the complexities and inconsistencies of democratic politics.

But not only politicians are faced with potential hypocrisy in dirty hands scenarios. Remember that there are good reasons to think that citizens, at least to a certain degree, share

in the politician's dirty hands. If those citizens were to hold politicians liable for their dirty hands, citizens would create a scapegoat to redirect attention from their own complicity. Bellamy explains "that hypocrisy allows citizens to desert [the politician] and claim the moral high ground" (2010, p. 426). When we talk about the hypocrisy involved in dirty hands, Archard argues, "it is thus not so much a case of the politician getting his hands dirty but being required to wear clean gloves, as one in which he gets his hands dirty as do non-politicians but the latter get to wear the clean gloves" (2013, p. 785). Citizens try to dismiss their own complicity in turning the politician into a scapegoat and in making an example of her.

Assuming that, despite all of these complications, someone ought to be held liable for dirty hands, what form should this liability take? For Thompson, who wants to hold the politician liable, compensatory justice is an additional part of the process of retroactive accountability (1987, p. 22). He does not, however, mention in any form what this compensatory justice is supposed to consist of. Levy, who is against holding politicians accountable for dirty hands, follows from the fact that everyone shares in the responsibility of the dirty actions that society should compensate the wronged in the name of all citizens (2007, p. 50). Like Thompson, he does not focus on this point at any more length. We might think that liability should take the form of giving back to those that have been left off worse through the dirty-handed action. If we accept a certain complicity on the side of the democratic public it would seem that the public therefore acquires at least a shared duty to compensate or pay restitution. What we will have to consider in more detail in order to understand the consequences of dirty hands in democracies is both the potential justification for a duty to compensate or pay restitution on the side of the public, as well as the forms that this should take.

Further enquiries into the issue of democratic dirty hands will have to make sense of the question of whether politicians ought to reveal their dirty hands, whether we ought to hold them liable, and who, if anyone, owes some form of restitution to those left worse off. Providing principled answers to these issues requires us first to have a thorough understanding of what it means to dirty one's hands, how politicians and citizens are connected in a democracy, and how this affects the way in which they share in the dirt. With the help of the answers I have provided in this thesis to the latter issues, we can then move forward and investigate solutions to the former questions.

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