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**Political Accountability
and Moral Pollution: Defending
Democratic Dirty Hands**

It is a testament to the genius of Machiavelli that I am writing and arguing about issues which he first raised on the 500th anniversary of the completion of his path breaking work *The Prince*.¹ As is well known, Machiavelli's views, especially those articulated in *The Prince*, were highly controversial and deeply shocked many of his contemporaries.² His advice to princes, that they avoid ruling according to the values of justice and compassion, but instead employ deceit, cruelty, fear and violence, was seen as the teaching of the Devil. Pope Clement VIII denounced his work, and the term 'Machiavellian' soon came to refer to those who acted immorally and without conscience or humanity. The scholarship on Machiavelli today is vast and his work has been interpreted in many, often contradictory, ways. There have been attempts to rehabilitate Machiavelli so that he is not seen as a 'teacher of evil' (Strauss 1958, 9-10) but rather as a political realist or pragmatist (Croce), or simply an amoralist pointing to the 'facts' of political life without being distracted by normative concerns. Others (Berlin, Hampshire) argue for Machiavelli as the purveyor of a political morality tied to *virtù*—a code of conduct needed for politicians to create and maintain a strong stable state where citizens are free to pursue their valued and desired ends. But however one interprets Machiavelli's work, what is without doubt is that he has inspired generations of philosophers and historians and found his insights central to arguments about warfare, diplomacy, and much else besides. Machiavelli is touted as the first theorist to introduce the modern concept of the state, one stripped of the Aristotelian normative evaluations concerning legitimacy and its relationship to power. In short, many argue that Machiavelli's civic humanist republicanism served as a needed link between the 'ancients' and the 'moderns'. The plethora of different interpretations of his views results from his particular way of trying to bridge these two opposing approaches to understanding the relationships between the effective use of political power and the generic demands of morality.³

¹ My thanks to Beatrice Magni for inviting me to write this paper to read at the "Responsible Politics and Dirty Hands: Machiavellian Insights" workshop which took place at the University of Milan on 18 November 2013. I am also indebted to the two discussants on my paper, Luca Mori and Beatrice Magni, for their insightful comments, and to Eve Garrard who commented on an earlier draft of this paper.

² Although *The Prince* was completed in 1513 it was only published in 1532, five years after Machiavelli's death in 1527.

³ This point is made by Nederman 2009.

In this paper I argue that certain key Machiavellian insights remain germane for democratic societies, and that the central issues that define the problem of dirty hands (hereafter DH) do not change given the particular values that underlie a democratic form of governance. The argument that a democratic form of governance changes (if not demolishes) our understanding of the standard DH scenario are based on a twofold error: (i) the misunderstanding of the necessary conditions for DH and (ii) the ways in which democracy constrains political actions in the face of intractable moral conflicts. I shall argue that Machiavellian insights concerning the relationship between power, political legitimacy, and effective governance, apply equally to democratic societies as they did to medieval princedoms. What does change given our concern with *democratic* dirty hands (hereafter DDH) is the issue of whether political agents ought to be held accountable to democratic citizens for getting dirty hands. There is also the important issue of whether a politician's dirty acts transfer moral pollution to the citizens who elected her. However, in all other respects the DH problem remains as relevant today in democratic societies as it was in the turbulent Florentine political milieu in which Machiavelli wrote *The Prince*. Successful politicians who strive to ensure a viable and enduring state in order to provide the great benefits of peace and stability need to develop *virtù* and take heed of the vicissitudes of *fortuna*. Machiavelli's advice remains as salient as ever and democratic societies ignore it at their peril.

In what follows, I will outline the 'standard' account of DH. I then explore the core claims made about DDH and offer an account of how we can best understand them through the standard model of DH. I then outline and explore two key Machiavellian insights, the notions of *virtù* and *fortuna*, and rebut three main arguments against the very possibility of DDH. Finally I briefly explore two issues where the democratic form of governance does indeed make a difference to our understanding of the DH problem. These two issues concern the specific accountability of democratic politicians to the democratic public, and the extent to which moral pollution devolves onto the citizens in whose names politicians have dirtied their hands.

1. DH – THE STANDARD ACCOUNT

The problem of DH is best understood as a specific kind or type of unavoidable moral wrongdoing.⁴ However, this is a deeply controversial claim that is firmly rejected by a wide range of moral theorists from both the deontological and consequentialist perspectives. Such critics argue that the very notion of unavoidable moral wrongdoing—especially the claim that we must sometimes do wrong in order to do right—indicates, at best, a deep confusion and misunderstanding of moral theory. I shall not engage here with these arguments concerning the conceptual coherence of DH scenarios as I have done

⁴ Gowans (1994) argues that inescapable moral wrongdoing unavoidably occurs when specific and important moral obligations to persons clash with universal principles of a Kantian or Utilitarian kind. This leads to moral tragedy where no matter how one decides to act, there is some moral pollution for so acting. Also see Gardner (2007) where he argues that justifications for wrongdoing do not negate or annul the reasons against so acting. Consequently, justified wrongdoings leave a moral remainder that needs to be acknowledged.

so at length elsewhere (see de Wijze 1994, 1996 and 2005). Rather the focus in this paper is on a different kind of criticism; namely the claim that democratic governance with its specific normative values renders the standard accounts of DH scenarios otiose (see Walzer 1973, Hollis 1982, Stocker 1990 and de Wijze 1994).

However, to assess the notion of DDH we need some sense of the standard account of DH. It is not easy to give a simple and uncontroversial characterization of DH position as the literature offers a number of different albeit overlapping accounts. While all agree that DH scenarios are special kinds of moral conflicts, just why they arise, what form they take, and how to characterize their necessary and sufficient conditions, differ considerably. One well-established view understands the problem of DH as essentially the Machiavellian ‘means/ends problem’ in politics.⁵ Here worthwhile and morally important ends can only be achieved by employing immoral means. Here a special kind of moral conflict arises, as there are two incompatible reasons for action in a particular situation, such that neglecting either consideration is seriously wrong, but they can’t both be acted on. Neither consequentialist nor deontological descriptions of the situation can properly capture this difficult aspect of our moral reality. In DH scenarios politicians face impossible moral demands. Or, to put it differently, political agents are required to make choices in situations of intractable moral conflicts, which sometimes take the form of acute dilemmas. Typically, politicians encounter a tension between acting in accordance with moral principles yet also knowing that to so act may result in terrible or even catastrophic moral costs. Resolving this tension by giving primacy either to principles and duties or to consequentialist reasoning does not eradicate the moral stain whichever action-guiding decision is finally chosen. In such situations there are no morally cost free ways of acting. As Hollis (1982, 388) points out, in politics ‘the best is the enemy of the good’ and a proper concern and balance with respect to both principles and consequences are needed for successful and responsible political agents. Furthermore, advocates of the ‘means/ends problem’ account of DH point to the tension between what is required *qua* politicians given their special duties and obligations and what is prohibited in private life in terms of the generic demands of morality. In short, politicians will at times unavoidably face an irresolvable conflict between the normative demands of their public duties and those of their private lives.⁶

However, the ‘means/ends in politics’ account of DH is just one way of characterizing DH scenarios and why they arise. A related but different approach is to understand the notion of DH as the inevitable clash between consequentialist and deontological moral theories (see Walzer 1973, Nagel 1978 and Nielsen 2000). In this account, DH scenarios occur in both public and private domains (albeit more frequently in the political domain) since what matters is the clash between acting in terms of what is right in contrast to focusing on the consequences of the actions taken. At times, these different approaches require diametrically opposed actions and cannot be reconciled.⁷

⁵ This position is explored most notably by Hampshire 1989, Nagel 1978, Thompson 1987 and Gowans 1994.

⁶ For an extended discussion of this position see Hampshire 1978.

⁷ Some attempts to resolve the tension is found in accounts of ‘threshold deontology’ and ‘Rule Utilitarianism’. However, both of these approaches fail to acknowledge the unavoidable moral residue that results from acting in cases of genuine moral conflicts/dilemmas.

A third way of accounting for DH scenarios is by rejecting a monist account of moral values, which underlie both consequentialist and (some) deontological moral theories (see Hampshire 1989, Williams 1981 and Berlin 2003). A pluralist account of moral value explains why DH scenarios inevitably arise in all domains of our lives. If we cherish different values (such as liberty and equality), and they cannot be hierarchically ordered or subsumed under one supreme value (eg. justice), then intractable conflicts are unavoidable. Similarly, if it is not possible given pluralism to commensurate values in terms of a commonly accepted non-moral good, as Utilitarians for example attempt to do, then moral conflicts become a persistent part of our moral experiences. Any action in such conflict situations will violate a cherished value leaving a moral remainder that needs to be recognized and taken into account.

Finally, a useful way in which to characterize DH scenarios is to use a formal definition. Stocker (1990, 9-10) offers such an account when he contends that DH scenarios involve an action which is at once (1) justified, even obligatory, but also (2) nonetheless somehow wrong and shameful. This formal definition is a useful way to approach the problem of DH as it enables the incorporation of insights from the previous characterizations of DH. By exploring the possible meanings of each of the sub-clauses, and by demonstrating why such scenarios are conceptually possible, we can provide a set of necessary and sufficient conditions for identifying DH scenarios. Consequently, for the purposes of this paper I will employ Stocker's account and set out what I take to be the core aspects common to all cases of DH.

- ① All cases of DH involve situations of unavoidable genuine moral conflict.
- ② There can be no resolution of this moral conflict without a moral remainder.
- ③ All cases of DH involve the justified violation of persons or cherished values.
- ④ Agents with DH are motivated by moral considerations to commit a moral violation.
- ⑤ DH scenarios are those situations where the action taken seeks to bring about the lesser evil.

The above list is not complete and the five claims need much commentary, but this will suffice for our purposes here.⁸ I will remain agnostic on why DH conflicts arise and take no stand on the issue of whether we should endorse value monism or pluralism. I shall also accept that the occurrence of DH scenarios is more frequent in the political domain, but there is nothing in the notion of DH itself that prohibits or prevents its occurrence in private life. DH scenarios, then, are those unfortunate and difficult moral situations where no matter how the agent (committee, government) acts, there can be no avoiding the violation of a cherished moral principle. Genuine DH scenarios, then, lie on a continuum ranging from those involving relatively minor moral infractions to cases where there is the commission of terrible moral crimes. Fortunately, the most serious cases are relatively rare, but they nevertheless dramatically highlight an important part of our moral reality, which is either ignored or rejected by the standard moral theories.

⁸ I have explored in some details the necessary and sufficient conditions for DH in de Wijze 1994, 1996 and 2005. In this article I am not concerned with defending a particular account of DH. Here I have other fish to fry.

My account of DH above, just as the other approaches mentioned, is open to the charge that it ignores the normative influences and requirements of contemporary democratic forms of governance. The *sui generis* moral and political context within which contemporary democratic societies operate makes the standard account (mine and others) deeply problematic undermining any possible justification for such scenarios. These critics insist that democratic governance generates a number of additional duties for both politicians and the citizens which make DH scenarios redundant. At a minimum, and in addition to the usual moral constraints on what can be legitimately done to others, a democracy requires its politicians to act impartially and within the constraints of a constitution and system of public laws. What is more, since politicians act on behalf of their citizens, they become trustees of the public interest and are duty bound to protect the fabric of a democratic society from threats both internal and external. Consequently, they hold a special relationship with the citizens of the state and are duty bound to refrain from acting in ways that would undermine the fundamental principles of democracy. Honesty, openness, accountability to the public, maintenance of the rule of law, enables a fiduciary relationship between citizens and politicians in a democracy where the former confer legitimacy and authority on the activities of the latter. Consequently, democratic politicians are duty bound to provide full disclosure of their future intentions and stand accountable to the general public for their past actions. In short, the additional duties and obligations on democratic politicians raise serious doubts as to whether DH scenarios—where principles are deliberately violated for the public good—are at all possible in a properly functioning democratic society. The thought here is that violating the democratic principles could undermine the very system of democracy and as such could never be the lesser evil.

2. ARE DDH POSSIBLE?

There is not a great deal written on the problem of DDH in the existing literature. The analysis of the DH problem has historically focused on the actions of kings and princes who transgressed the conventional morality of their time for reasons of state (Thompson 1987, 11). More recently the spotlight has shifted to the dramatic problems faced by revolutionaries, typically lone actors or small groups of militants making hard choices in the face of terrible dilemmas in the course of resisting oppression. Literary works such as Sartre's *Dirty Hands*, Camus' *Just Assassins* and Brecht's *The Measures Taken* best illustrate this approach and offer excellent literary analyses that encourage moral philosophers to engage with the problem (see Sartre 1971, Camus 2006 and Brecht 1977). However, as Thompson points out, the focus on the dilemma of revolutionaries tends to overlook what occurs within properly functioning democracies. He argues for the occurrence of DH in democratic societies but he thinks that contemporary theorists 'fail to appreciate the difference that democracy makes' (Thompson 1987, 11). Democratic politicians not only violate conventional morality in the defence of the public good, they also commit a further wrong that involves the willing violation of democratic principles from which they obtain their authority and legitimacy to act on the behalf of citizens. Thompson puts it this way:

Because democratic officials are supposed to act with the consent of citizens, they face a further dilemma. If they gain that consent, they are not uniquely guilty in the way the problem in its traditional form presumes. If they act without that consent, they not only commit a further wrong (a violation of the democratic process), but they also cast doubt on the justifiability of the decision itself. They undermine some of the conditions of moral discourse that are necessary to judge the morality of any decision in a democracy. (Thompson 1987, 11)

By dirtying one's hands in a democracy, Thompson is claiming that the very question of whether one indeed did do wrong in order to do right, becomes very hard, if not impossible, to answer. The violation of the principles underlying the democratic moral discourse (e.g. engaging in deceit and obfuscation) undermines the ability of citizens to assess the moral status of any actions. The reason is that in a democracy the legitimacy and rightfulness of actions are dependent on the democratic will or consent expressed through an open and transparent process. On this view, deceiving the citizenry or undermining the core principles of democratic governance (such as rigging elections) would be self-defeating and never justifiable in service of the public good.⁹

This analysis has been adopted and taken further by others theorists who make the stronger claim that DDH are simply not possible in a properly functioning democracy.¹⁰ Shugarman (2000, 240), for example, insists that the very idea of DDH is oxymoronic, a contradiction in terms such as referring to a 'free slave'.¹¹ A democratic politician who undermines the values within which it is possible to assess the normative status of political actions is doing wrong *simpliciter*. What is more, critics of the very idea of DDH argue that an understanding of DH based on the intentions of a lone agent facing an unavoidable moral conflict distorts the essential nature of democratic politics.¹² It fails to recognize that all democratic political actions ought to occur under a constitution and rule of law. If there is a need for deceit or manipulation, or the use of violence to ensure the common good, then this needs to be agreed to and authorized in advance through democratic procedures. For example, the deception that is used by the police to help apprehend criminals is acceptable as it has been approved beforehand and regulated by appropriate institutions

⁹ Similar views are expressed by theorists who reject the need for, and the justifiability of, immoral actions in a democracy. For example, Bok (1999, 180-181) argues that the only deception that is acceptable in a democracy is that which has been debated and consented to in advance within the appropriate institutions. For example, the deception that is used by the police to apprehend criminals is acceptable as it has been approved beforehand and regulated by appropriate laws endorsed within the democratic society.

¹⁰ Thompson does not reject the possibility of DDH. He rightly points out that it is highly plausible to suppose that conventional politicians in established contemporary democratic societies will face situations and moral conflicts that require them to break the rules of conventional morality. Democratic politicians will get DH when they lie to protect the economy or use manipulation and violence to ensure national security. Consequently, he simply seeks to show how the values and principles of democracy require us to understand the difference this form of governance has on the standard model.

¹¹ Shugarman is specifically referring to Walzer's example of making a deal with corrupt ward bosses in order to win an election. For Shugarman, vote rigging fatally undermines the electoral process that is fundamental to the very possibility of proper democratic governance. Consequently, engaging in such a practice is not a moral paradox, as DH theorists would suggest, but impossible since it involves a contradiction in terms.

¹² This point is forcefully made by Sutherland (2000, 223) and is endorsed by Shugarman.

within the democratic society. Any deception that goes beyond what has been agreed would be morally unjustifiable. Consequently, the idea of a lone actor breaking the laws or committing moral violations for the public good undermines the very essence of democratic governance rendering the notion of DDH incoherent.

As is plain from the above, the possibility or otherwise of DDH rests heavily on a particular understanding of what a properly functioning democratic governance entails, and the more specifically, how the normative values underlying this form of governance place constraints on political action. This is not the place to engage in a detailed account of the meaning of the term ‘democracy’, given the long history and vast literature on the topic. However, whatever form of democracy adopted, be it aggregative or deliberative, representative or direct, procedural or substantive, there are a number of underlying principles that are uncontroversial and definitive of this concept. I contend that for a government to be properly labeled democratic (whatever version or particular manifestation it finally adopts) the following minimal (or necessary) conditions must obtain:

- ① Political authority/power is established in a specific manner. It is transferred from citizens to political agents by some form of voting preferences. This power is always a derived authority given by way of delegation from the citizens. It does not recognize any other basis for political authority other than the will of citizens.
- ② Democratic societies are based on a rule of law, which applies equally to all citizens.
- ③ Since citizens contingently confer political power, politicians always remain ultimately accountable to them for their actions and decisions. In addition, politicians are required to be open and forthcoming about their intentions, plans and views, not least to ensure that citizens can choose their politicians on the basis of accurate information about past actions and future intentions. This enables a fiduciary relationship between citizens and politicians where the former give consent and trust to the latter to use their institutional power in a manner consistent with their stated promises, best judgments, goodwill and integrity.¹³

I take it that the above minimal conditions for a proper democracy, whatever the particular variations concerning electoral process or nature of representative, are uncontroversial.¹⁴ I have deliberately not included the controversial claim that democracy is a good in itself. Further, I have not claimed how, or by what means, politicians are accountable to citizens as this too can be done in a number of ways that are the open to considerable

¹³ I have examined this fiduciary relationship at length in de Wijze 2003. If democratic politicians fail to act with the consent of citizens or deliberately act contrary to their mandate, they do undermine the very rationale of the democratic process.

¹⁴ I should qualify this to say that I mean by uncontroversial here that those who reject the possibility of DDH would accept these necessary conditions for a proper democratic form of governance. My view is that any plausibly functioning democracy would need to accept my three conditions for a genuine democratic mode of government. I am aware that some may think that these conditions are what underlie specifically a *liberal democracy* rather than democracy more widely understood. However, I reject this view since there is nothing in the three conditions which are exclusively liberal notions.

debate.¹⁵ And, most importantly for my concerns here, I have not claimed that democracy demands a particular approach to doing politics, no matter the circumstances. The rejection of DDH, by Shugarman and Sutherland in particular, rests in large part on their strong claim that a healthy functioning democracy must always engage in a certain type of activity which is antithetical to dirty hands practices. It is my contention that this view, combined with a number of misunderstandings about the essence of a DH, leads to their erroneous claim that DDH are not possible.

3. MACHIAVELLIAN INSIGHTS – *VIRTÙ* AND *FORTUNA*

Is it the case that democracies are able, and ought, to engage in a form and method of politics that is substantially different from that of other forms of governance? The answer is both yes and no. When it is possible, and this hopefully should be for the bulk of political action in a democracy, politicians ought to act within the law and publicly disclose their plans, goals and methods for achieving them. However, to acknowledge this is not to exclude another unavoidable aspect of all political activity. Democratic politicians, as do all politicians from every form of government, sometimes face situations that require an urgent response (preventing wide-ranging and open consultation) and where the only effective choices may not be moral (or legal). These situations typically and most dramatically arise when there are serious risks to lives of citizens or when effectively combating ruthless enemies can only be done if violence, deceit, and manipulation are used. In such situations, politicians may need to violate democratic values to successfully combat the serious danger to the state and its citizens and ensure the continuation of the society as a free and fully functioning democracy. Here lies a paradox—it may take undemocratic and immoral actions to protect a system of government that has as its very rationale the goal of upholding the very values that are violated in its defence. It is the first and most important duty of a government, and democratic governments are no exception, to protect its citizens from threats both internal and external. To argue, as Sutherland (2000, 223) does, that when facing such situations, democratic politicians have a higher and prior moral duty to not bypass or corrupt the democratic process of deliberation and disclosure is to seriously misunderstand the nature of politics and some of the challenges that will almost inevitably arise. In short, democratic politicians in certain circumstances may not be able to avoid getting DH.

Here it is useful to return to Machiavelli's work to recall some of his key insights about the relationship between power, morality and politics. His contribution was to strip political agency of any 'extraneous moralizing influences' (Nederman 2009), forcefully pointing out that successful power politics requires agents to exhibit *virtù* in the face of *fortuna*. *Virtù* refers to those qualities required of a successful leader that enable him/her to be flexible, ruthless in the face of enemies, tenacious, and courageous. But most importantly,

¹⁵ Shugarman (2000, 233), for example, claims that a participatory democratic model calls for elected leaders to exhibit transparency and accountability to citizens on an ongoing basis rather than every five years when facing elections. The latter he refers to as the 'elitist view' and the tone of his analysis makes it clear he thinks this approach to accountability is morally deficient and inferior to his participatory model.

he argues that when necessary a politician must learn how not to be good and use this to ensure a strong and stable state that is the precondition for enabling the great human achievements of science and art. Hampshire, echoing Machiavelli's insight, argues that politics is where we routinely experience shabby compromises, necessary disownings, deceit, ruthless manipulation and violence. This is a world that has lost its innocence. The political world is a place of 'experience', a domain that is characterized by the

idea of guilty knowledge and the expectation of unavoidable squalor and imperfection, of necessary disappointments and mixed results, of half success and half failure. A person of experience comes to expect that her usual choice will be the lesser of two or more evils. (Hampshire 1989, 170)

Virtù is needed to effectively and successfully engage with *fortuna*, which for Machiavelli is the blind, 'malevolent and uncompromising fount of human misery, affliction and disaster' (Nederman 2009). In contemporary terms, political experience is characterized by sudden turns of events¹⁶ where decisions of great moment are made in situations of uncertainty and where the goal is to choose the lesser evil in order to 'prevent the greater misery and the worse injustice' (Hampshire 1989, 172).

Machiavelli's problem, the ends/means problem in politics, arises because moral innocence and purity are often incompatible with the effective use of political power. The virtues of democracy are considerable but they are not always sustainable and protected by acting in accordance with them.¹⁷ For this reason, DDH are sometimes unavoidable and getting one's hands dirty is the right thing to do in the circumstances.

The scholarship concerned with DDH is small and can be divided into two groups. The first group are critics (Shugarman and Sutherland) who reject the very possibility of DDH. The second group (Archard, Bellamy and Thompson¹⁸) accept the possibility of DDH scenarios but believe that the democratic context makes a difference to our way of understanding the concept itself, specifically with regard to the issues of political accountability and the extent and scope of moral pollution that occurs. I consider the first group in section 4 and turn to the second in section 5 below.

4. REJECTING DDH – THREE ERRONEOUS ARGUMENTS

Shugarman and Sutherland object to the possibility of the notion of DDH. Collectively they offer three reasons for their position:

¹⁶ The comment 'events dear boy, events' attributed to Harold Macmillan sums up the unpredictable and most difficult aspect of daily politics.

¹⁷ Karl Popper (1945) famously referred to the 'paradox of democracy' where it is possible that a majority could vote for a tyrant who would then destroy the very system by which he was elected. Democratic governance needs to be alert to the different ways in which it is vulnerable and could be subverted. Sometimes, the defence of democracy paradoxically requires the breaking of cherished democratic principles. Provided this is a rare event and the violations cease as soon as the danger has been eradicated, such actions protect rather than undermine the democratic system.

¹⁸ See Archard 2013, Bellamy 2010 and Thompson 1987.

- ① DH erroneously seen as the *staple of politics*.
- ② Democracy as *a new form of politics* makes DH scenarios redundant.
- ③ DH scenarios erroneously based on heroic *lone actor* assumption.

4.1. DH scenarios as the ‘staple of politics’

Both Sutherland and Shugarman claim that those who argue for the possibility of DH hold to the view that such scenarios are ‘the staple of politics’ (Shugarman 2000, 230) or that they capture the ‘important aspects, or the heart, of politics’ (Sutherland 2000, 208). If this is correct, then DH scenarios have no purchase in democratic societies since the staple of politics will be public accountability, adherence to a rule of law. In the place of violence and conflict we find negotiations and compromise. However, this claim is based on an erroneous understanding of what constitutes proper DH scenarios. As shown in section 1 above, there is nothing in the definition of DH or the nature of politics itself that entails that the former are the staple of politics—democratic or otherwise. DH theorists certainly do not claim that such scenarios are the staple or the core of political activity. Indeed, to think that this is the case is to deeply misunderstand the idea of DH—one form of unavoidable moral wrongdoing—and its place in our moral lives.

Why is this? Firstly, it is worth noting that DH scenarios are not tied or limited to the political. We face such scenarios in our private lives. What is also clear, and which may be the source of confusion, is that DH cases arise much more frequently in the political domain because the *sui generis* nature of politics. Political activity, even in the most pacific regions of the world, is much more likely to throw up conflicts of interest and moral dilemmas than we will face in our private lives. But this is emphatically not to say that DH scenarios are all that there is to politics, or even that they will dominate or be the core of political life. In fact, the number of genuine cases of DH in politics should be relatively infrequent in a fully functioning democracy. There is nothing about DH itself that makes such scenarios the key focus of political life.

4.2. Democracy heralds a new kind of politics

The second reason why Sutherland and Shugarman want to reject the very idea of DDH is because of the unique way in which democracy ‘does politics’. While they rightly imbue democracy with special and unique values, they incorrectly conclude:

- i) that these values create a *wholly different* kind of politics and
- ii) that, consequently, the Machiavellian insights concerning *virtù* and *fortuna* are rendered obsolete.

Shugarman is explicit on this. He chides DH theorists¹⁹ for treating ‘politics as if it has changed little from the lawless, embattled atmosphere of Machiavelli’s Italy’ (Shugarman 2000, 231). As a result, they ‘slide easily and disturbingly back and forth between conditions and principles of authoritarian rule on the one hand and democracy on the other’. What is more, Shugarman contends that the version of democracy DH theorists have in mind is elitist with a very restrictive understanding of the nature of citizenship and the

¹⁹ He refers to DH advocates as ‘moral Machiavellians’ to distinguish them from the commonly held view that Machiavellians reject all talk of morality.

relationship between politicians and citizens (Shugarman 2000, 232). This narrow understanding leads to the erroneous view that DH and democracy are compatible.

However, Shugarman's rejection of the elitist view presupposes that a proper democratic society must be based on something like a deliberative model and that, if this were the case, all political problems that arise could be resolved by persuasion and deliberation. Of course, where this is possible, deliberation, persuasion and compromise are preferable to coercion. But to claim that this preferred method of doing politics can and must always be the way that democracies operate is unsustainable and naïve in the face of overwhelming empirical evidence to the contrary. Part of Machiavelli's profound influence over the last 500 years is due to his debunking of a normative form of politics that fails to properly understand the relationship between successful politics and ethical constraints. By claiming that DDH is a contradiction in terms, Shugarman (and Sutherland) seem to reject any possibility of situations arising where there will be irresolvable moral conflicts; and furthermore, if such scenarios do arise, they still see no reason to dirty our hands. They reject, in essence, the tragic view of politics that Machiavelli highlights with his claims about the need for *virtù* in the face of *fortuna*.

What is particularly odd with Shugarman and Sutherland's views here, if I have characterized them correctly, is that they do acknowledge that politics can throw up situations that require immoral and drastic action. Shugarman backtracks on his assertion that DDH is a contradiction in terms when he admits that there are cases of what he calls 'defensible DH' in extreme situations. Shugarman thinks of such extreme situations as occurring 'when democracy is denied, or democratic processes are subverted, or when it is a matter of self-defence or the defence of others under attack, or when all other avenues have been exhausted—but only then'. Given this list, it seems that Shugarman has no problems with the definition of DH I set out in section 1 and he does not think under certain circumstances that getting our hands dirty is a contradiction in terms. It seems that Shugarman's real concern is not with DDH but rather with its misuse and abuse by the unscrupulous. With this I heartily concur (Shugarman 2000, 246).²⁰

It is worth stressing again that there is nothing intrinsic to the concepts of DH or democracy as a particular form of political governance that requires ineffective (or no) action in the face of dire threats to its very existence. The conditions for democratic governance set out in section 2 do not in principle exclude DH scenarios and for good reason. Democratic governance is not a suicide pact between citizens and their leaders. When necessary, democratic politicians must employ whatever means are required to defend the system and ensure its future continuation. Unless we hold an entirely unrealistic view that democracies will always be able to prevent situations where politicians will face irresolvable moral conflicts, getting DDH is inevitable, justifiable and necessary.

²⁰ Sutherland (2000, 233) also admits that conflicts can arise which makes democratic politics a problem. But she equivocates here and insists that this is where political institutions matter and that the processes of a democratic society must be engaged. It is not clear if she thinks that 'engaging democratic society' would be effective in every situation. In short, she does not properly address the salient issue of DH in the face of irresolvable moral conflicts that leave no morally cost free course of action.

4.3. DH scenarios are predicated on the actions of a 'lone actor'

Both Shugarman and Sutherland argue that there is a third intrinsic problem with the very idea of DDH. The problem is this: DH scenarios focus invariably on the lone politician trapped in a moral dilemma making difficult, wise, and heroic choices for the public good. This emphasis on the intentions of solitary agents is deeply problematic for two reasons. Firstly, it pays insufficient heed to the fact that democracies operate within a constitution and rule of law and not at the whim or discretion of a solitary leader. Secondly, the 'lone actor' offers an illusion that a wise and good politician is able to make sound judgments about when to violate moral principles (including the very principles of democracy) to bring about a lesser evil. With the latter point, Sutherland argues that lone actors are unlikely to bring about the desired 'lowest-cost sacrifices' since individual judgment is often unreliable, especially in situations where there is a need to make quick decisions often under conditions of considerable uncertainty. A better way of achieving good choices is to ensure that politicians adhere to normative constraints created by democratic 'retrospective-deliberative processes', those that set out the appropriate kinds of responses to challenges politicians may face in the future. As Sutherland (2000, 223) puts it, 'political institutions matter' and political responsibility must always be situated in public structures and processes of the political framework. When this happens, public judgment properly substitutes for the problematic self-judgment of the lone actor.

However, this claim that DH focuses on lone actors arises from the error of taking specific examples used by influential DH theorists and generalizing them to all cases. The focus on Walzer's lone politician making deals with a corrupt ward boss or deciding to order torture in a 'ticking bomb scenario' seem to be taken as definitive and exhaustive of what constitutes a DH situation (Walzer 1973, 164-168). However, it is an error to assume that because such examples have been widely used, they properly define the limits or boundaries of DH or exclude other possibilities besides lone actors. DH theorists use the model of the lone actor to simplify the analysis of the agent's intentions and also for assessing the possible moral emotions that result from the moral pollution for having so acted. What is more, in a democracy, as in any other political system, there is usually a person or small committee who are charged to make the most difficult decisions in situations of emergency. So when examining DH scenarios it is natural to offer examples where there is a lone actor agonising over which action ought to be taken. What is indeed different for a democracy is that such decisions must then retrospectively be justified to the public. Citizens ultimately pass judgement on these actions through the ballot box and in extreme cases can punish politicians for acting as they did. But there is no reason in principle to restrict DH scenarios to the actions of individuals or single agents. DH scenarios occur when, in the face of moral conflicts, hard decisions are made in democratic societies by small groups of people or larger committees or even legislative bodies. Even entire electorates could theoretically make such decisions, such as voting to engage in humanitarian intervention knowing that this will result in heavy casualties and suffering for many innocent people.

What is more, the claim that public judgment is a better and more reliable way of ensuring good choices may be correct when dealing with normal political activity. But the very nature of DH scenarios makes this approach very difficult and often impossible. Moral conflicts that leave two unpalatable options combined with a scarcity of relevant

information and the need to take quick and decisive action, leave the ‘retrospective-deliberative process’ unfit for purpose.

Overall, the three reasons for rejecting the notion of DDH as a contradiction in terms are based on a set of claims that commit the ‘Strawman Fallacy’. The way in which DH is understood is either too simplistic or based on unwarranted assumptions about its essential characteristics. As I have tried to show, a more sophisticated understanding of the necessary and sufficient conditions for DH in no way rules out the existence of such scenarios in democratic societies. Politicians, whether as individuals acting alone or as members of a committee or legislative body, will face DH situations in properly functioning liberal democratic societies. It is only by positing a Strawman version that the critics of DDH can make their objections seem *prima facie* strong. However, if we accept that DDH situations are possible and unavoidable, there are some interesting implications that arise because of the fiduciary relationship between the citizens and their politicians. In the following section I briefly outline and remark on some of these issues.

5. DDH – ACCOUNTABILITY AND MORAL POLLUTION

Recently there has been a growing body of work (see Thompson 1987 and 1993, Bellamy 2010 and Archard 2012) that explores the implications of DDH given the special fundamental values inherent in democratic governance and the unique relationship that this constitutes between citizens and politicians. As political legitimacy and political power are derived ultimately from citizens, this creates a fundamentally different normative context from that which characterises the political world of a Machiavellian prince.²¹ This raises two issues which need to be addressed. Firstly, how and to what extent are democratic politicians accountable to those who elected them?²² Secondly, given that politicians act with the authority and on the behalf of their citizens, does their moral dirt transfer onto citizens?

5.1. *Accountability*

It seems clear that if politicians are ultimately chosen and authorized by citizens to act on their behalf, this sets up a special relationship of accountability that is unique to democratic societies. To my knowledge, no one disputes this claim but what proves difficult in DH

²¹ This normative context takes us beyond Machiavelli’s key insights about the relationships obtaining between legitimacy, morality and power. The accountability and moral pollution issues in DDH situations raise normative issues that Machiavelli would not have considered pertinent to the exercise of political power.

²² Mendus (2009) concludes her essay entitled “Democratic Dirty Hands” stating that the conflicting answers we get regarding how we are to think about political leaders that do moral wrong is due to an equivocation over what we mean by ‘democracy’. More specifically, this concerns what we mean by ‘accountability of our democratically elected politicians’. Mendus argues that the confusion arises because accountability for actions ‘might pull in both directions at once—that is to say, how it might prompt *both* the thought that wrongdoing is unjustifiable in political leaders *and* the thought that it is justifiable’. To resolve this problem we need to clear up the confusion over the concept of democracy. But unfortunately, Mendus does not offer more than this and leaves the reader pondering what kind of confusion about accountability might make us reject the idea of DDH.

situations is establishing when and how this accountability is exercised. Politicians often dirty their hands in situations where there is either a need for secrecy and/or there is no prior opportunity to consult with the electorate for permission to so act. What is more, as Bellamy, Hollis and others have argued, to be effective and succeed in politics, and this is what the electorate empower politicians to do, it may be necessary to get dirty hands but also deny having done so.

There are two separate issues here and I briefly comment on each in turn. Firstly, when ought politicians to be accountable to citizens for dirtying their hands? If it is possible to consult *before* acting, then this is clearly the preferred option. But this raises two further issues itself. Firstly, if politicians act with the knowledge and express authority of citizens to violate moral principles, this cannot then be DDH in the sense that they have undermined cherished democratic values. It may then be a case of DH in that the act violated the generic demands of morality (those, for example, which are adhered to in private life) but the very feature that generates the problem of DDH has been eliminated.²³ At any rate, in politics it is never quite this simple. Here again Machiavellian insights are instructive. Politicians sometimes cannot practice the virtues of honesty and integrity without betraying the interests of citizens. Politicians, and democrats are no exception, are required to act in a world full of ‘snares’ and ‘wolves’ and to succeed it is necessary to use cunning and guile (Machiavelli 1995, 53). Consequently, very often, to achieve the desired result, a justified dirty political act needs to be done with the pretense that it is virtuous and above suspicion, and that no moral violation took place. The politician needs to get dirty hands but wear clean gloves.²⁴ So to be clear, even if there were sufficient time to consult citizens on a particular DH action, it might be counter-productive to do so. As Hollis eloquently puts it, politics

is an arena where the best is the enemy of the good, where we license our agents to pursue the good and where they can succeed, only if they operate partly beyond our ken and our control. (Hollis 1982, 398)

What of accountability at the time of acting or in the future? Even if we put aside the ‘clean gloves’ issue, both time periods for enabling adequate accountability pose severe

²³ There is also the issue that if moral acceptability or otherwise in a democracy arises solely through the normative discourse within the democracy, then it might be argued that the politician has done no wrong at all *qua* politician. Newey goes still further by arguing that, in certain circumstances, political lies in a democracy are not only justified but obligatory. Politicians in a democratic society have an obligation to lie to citizens who have ‘a legitimate expectation that they be lied to’ (Newey 1997, 112).

²⁴ This point is made by Hollis 1982 and Bellamy 2010. Bellamy raises this issue when discussing the inability of many liberal theorists of justice to recognise the true nature of politics. As he succinctly points out, with the phenomenon of dirty hands ‘we have the two aspects of real politics that liberal idealists tend to ignore—the uses of violence, on the one hand, and the need for dissimulation, on the other. Yet, throughout his analysis Machiavelli (and following him, Weber) offers two politically motivated reasons for restraint. The first is a loose notion of proportionality—princes should be ‘bad’ to the extent necessary to deal with wolves and traps and no further. The second is the importance of appearing all the while to be good. In each case the need for such limits is the same: politics may employ force and guile but neither can substitute for some degree of willing consent on the part of the ruled—a requirement that is all the more important in a democracy. *Thus, a democratic Prince may have dirty hands, but must wear clean gloves.*’ (Bellamy 2010, 424-425, my emphasis).

problems. The turmoil of day-to-day politics and the need more often than not for quick decisive action (especially in the face of imminent danger) makes seeking public approval for such acts impossible. Consequently, the only realistic possibility is to be accountable for actions *post hoc*. This can be done in a number of ways, for example, by the politician facing a select committee to justify past actions, facing a criminal trial, or by revealing what was done and then standing for re-election.²⁵ However, whether politicians must be retrospectively praised or criticized for dirtying their hands is very difficult to assess even if the principles of how to do this are clear. The reason is that the judgments made about a politician's actions must ultimately be based on many factors that make up the overall context within which the action took place. Those evaluating the claim of DH need to understand the nature of the threat faced, the severity of the violation committed, the extent to which democracy has been undermined, the intention of the politician at the time action was taken, as well as the actual effects of the actions taken. Into this mix it is important to add the character of the politician and his specific duties given his/her institutional role. These evaluations will need to take place within specific institutional structures, which will then pass judgment on the moral (and legal) status of the action and decide how the society ought to respond to it. Getting this process right will depend on our ability to gather all the relevant details needed to make a proper judgment. There are no easy and simple rules for doing this and at times those guilty of immoral actions will be let off while those who get genuine DH will face unfair punishment. This unavoidable state of affairs is partly what gives the problem of DH a tragic dimension.²⁶

5.2. *Moral pollution*

The standard account of DH captures a particular paradoxical aspect of our moral reality that the standard moral theories refuse to acknowledge as a genuine problem. They argue that claiming it is possible to do wrong in order to do right is a serious confusion in our moral thinking. When agents are faced with what appear to be impossible oughts, either the action taken was the right thing to do all things considered, or it was unequivocally wrong and should not have been done. There is no middle ground where it is possible to commit a justified, even obligatory wrong in order to bring about a lesser evil. However, DH theorists argue that what is unique about DH scenarios is that not only is it possible to do wrong to do right, but that there is a moral cost to having so acted and this ought to be properly acknowledged by the agent. Those who dirty their hands ought

²⁵ There have been some attempts to set out what could be done to ensure that politicians are retrospectively held to account for their actions. See de Wijze 2003, 40-41. Also see Thompson's notion of 'mediated corruption' (Thompson 1993, 377). This is a notion that differs from conventional corruption in that the gain the politician seeks is political and not personal. While the method of achieving this benefit is improper (involves an immoral action), the benefits citizens receive are not. And finally the motive for obtaining this benefit is not corrupt but based on seeking the public good. If a politician can reasonably demonstrate that he/she is guilty of mediated corruption rather than the conventional kind, this would allow for a retrospective endorsement of his/her actions by the public.

²⁶ This leads to another vexed issue. If politicians are found to have genuinely and properly dirtied their hands, ought they to be punished for so doing and what should such a punishment be in these unusual circumstances? For a discussion of whether we ought to punish those with DH see de Wijze 2013.

to feel the moral stain for having violated (albeit for the right reasons) a profoundly important moral principle.

With DDH the same moral pollution arises but there is an added twist because of the special and unique relationship between politicians and the public. Recall that in a democracy political power and legitimacy are derived from the explicit and continual consent of the citizens who elect their representatives. We (the public) empower politicians to act, so when politicians commit moral violations they do so in our name. If they get DH, then so do we.²⁷ Archard puts it this way:

... if we have authorized our politicians to act in our name then their actions are also and in the last analysis our own. We do not thereby escape getting our hands dirty, even if they are not as dirty. The inauthentic donning of clean gloves should not disguise our complicity. (Archard 2013, 785)

What then is the level of complicity that the public have in DH decisions made by their politicians? The simple view (offered by Hollis) is that the public's hands are as dirty as the politician's who acted in their name. However, there are a number of reasons to think that this is not a defensible position. Archard, in my view correctly, points to a number of factors that enable the public to 'escape full but not all complicity in what is done' (Archard 2013, 784). He argues that there is a moral division of political labour such that politicians dirty their hands to a greater extent than the public even though the type of dirt is the same. Put another way, the responsibility for DH differs quantitatively by not qualitatively. The reason for the quantitative difference is that politicians are autonomous and closer to the immoral act (they choose to so act and can make errors of judgment) such that they have a greater amount of dirt on their hands albeit the same kind of dirt that devolves to the general public.

I am inclined to agree with Archard's position concerning the extent and reasons for the complicity of the public when politicians get DDH. It does open up a set of new questions that need to be addressed but which cannot be adequately dealt with here. Does public complicity require some form of public restitution and if so what? Are all citizens equally dirty even those who explicitly reject authorising DH scenarios? Again, echoing Archard, are there any specific dangers to democratic governance if politicians are given the discretion to violate democratic principles when they judge fit? And if there are too many cases of DDH will these affect the integrity of democratic politicians who then may become fatally compromised? (Archard 2013, 788).

²⁷ It is important to point out that if politicians commit crimes, citizens are then under a clear and unambiguous moral obligation to remove them and see them punished. With DH scenarios the issue is complicated since the immoral act was done to bring about the lesser evil and for our benefit. While we abhor the moral violation we praise the politician for acting in the public good and bringing about the lesser evil. The table below sets out five dimensions that illustrate the differences (and similarities) between immoral and DH actions.

Contrasting immoral actions with DH cases – Five dimensions

	<i>Moral pollution</i>	<i>Justified?</i>	<i>Public complicity</i>	<i>Remove politician from power</i>	<i>Punish politician</i>
<i>Straightforward immoral action</i>	Yes	No	No	Yes	Yes
<i>DH action</i>	Yes	Yes	Yes	No (?)	Yes (?)

CONCLUSION

I have argued that DDH are not only possible but also an unavoidable part of our moral reality. Politicians in a democracy face serious moral dilemmas that cannot always be resolved without the violation of a fundamental moral principle. The Machiavellian insight that successful and effective politicians need to learn how not to be good applies to democratic as much as any other form of political governance. Attempts by critics to argue that DDH scenarios are incoherent are unpersuasive and based on an erroneous understanding of both the conditions for getting DH and a controversial and overly substantive account of democracy. What does change with DDH is that politicians are accountable to the democratic public for their decisions and that the moral pollution that results from so acting applies both to the politicians and the public. However, teasing out the implications of these changes is difficult and complicated and I leave a detailed analysis of these issues for another article.

REFERENCES

- Archard D. (2013), "Dirty Hands and Complicity of the Democratic Public", *Ethical Theory and Moral Practice*, 16, 4, pp. 777-790
- Bellamy R. (2010), "Dirty Hands and Clean Gloves: Liberal Ideals and Real Politics", *European Journal of Political Theory*, 9, 4, pp. 412-430
- Berlin I. (2003), "The Pursuit of the Ideal", in H. Hardy (ed.), *The Crooked Timber of Humanity: Chapters in the History of Ideas by Isaiah Berlin*, London, Pimlico
- Bok S. (1999), *Lying: Moral Choice in Public and Private Life*, New York, Vintage Books
- Brecht B. (1977), *The Measures Taken and Other Lehrstucke*, trad. Stefan Brecht, London, Eyre Methuen
- Camus A. (2006), "The Just", trans. H. Jones, in *Caligula and Other Plays*, London, Penguin Books
- de Wijze S. (1994), "Dirty Hands – Doing Wrong to Do Right", *South African Journal of Philosophy*, 13, 1, pp. 27-33
- (1996), "The Real Issues Concerning Dirty Hands – A Response to Kai Nielsen", *South African Journal of Philosophy*, 15, 4, pp. 149-151
- (2003), "Democracy, Trust and the Problem of Dirty Hands", *Philosophy in the Contemporary World*, 10, 1, pp. 37-42
- (2005), "Tragic-Remorse – The Anguish of Dirty Hands", *Ethical Theory and Moral Practice*, 7, 5, pp. 453-471
- (2013), "Punishing Dirty Hands – Three Justifications", *Ethical Theory and Moral Practice*, 16, 4, pp. 879-897
- Gardner J. (2007), *Offences and Defences: Selected Essays in the Philosophy of Criminal Law*, Oxford, Oxford University Press
- Gowans C.W. (1994), *Innocence Lost: An Examination of Inescapable Moral Wrongdoing*, Oxford, Oxford University Press

- Hampshire S. (1978, ed.), *Public and Private Morality*, Cambridge, Cambridge University Press
- (1989), *Innocence and Experience*, Cambridge, Harvard University Press
- Hollis M. (1982), “Dirty Hands”, *British Journal of Political Science*, 12, 4, pp. 385-398
- Machiavelli N. (1995), *The Prince*, ed. and trans. D. Wootton, Indianapolis, Hackett
- Mendus S. (2009), “Democratic Dirty Hands”, paper given at University of York Philosophy Society. Copy on file with author
- Nagel T. (1978), “Ruthlessness in Public Life”, in S. Hampshire (ed.), *Public and Private Morality*, Cambridge, Cambridge University Press
- Nederman C. (2009), “Niccolò Machiavelli”, in E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/fall2009/entries/machiavelli/>
- Newey G. (1997), “Political Lying: A Defense”, *Public Affairs Quarterly*, 11, 2, pp. 93-116
- Nielsen K. (2000), “There is No Dilemma of Dirty Hands”, in P. Rynard and D.P. Shugarman (eds), *Cruelty & Deception: The Controversy Over Dirty Hands in Politics*, Peterborough, Broadview Press
- Popper K.R. (1945), *The Open Society and Its Enemies*, London, Routledge
- Sartre J.-P. (1971), *Les mains sales: pièce en sept tableaux*, Paris, Folio
- Shugarman D.P. (2000), “Democratic Dirty Hands?”, in P. Rynard and D.P. Shugarman (eds), *Cruelty & Deception: The Controversy Over Dirty Hands in Politics*, Peterborough, Broadview Press
- Stocker M. (1990), *Plural and Conflicting Values*, Oxford, Clarendon Press
- Strauss L. (1958), *Thoughts on Machiavelli*, Glencoe, Free Press
- Sutherland S.L. (2000), “Retrospection and Democracy: Bringing Political Conduct Under the Constitution”, in P. Rynard and D.P. Shugarman (eds), *Cruelty & Deception: The Controversy Over Dirty Hands in Politics*, Peterborough, Broadview Press
- Thompson D. (1987), *Political Ethics and Public Office*, Cambridge, Harvard University Press
- (1993), “Mediated Corruption: The Case of the Keating Five”, *American Political Science Review*, 87, pp. 369-381
- Walzer M. (1973), “Political Action: The Problem of Dirty Hands”, *Philosophy & Public Affairs*, 2, 2, pp. 160-180
- Williams B. (1981), “Politics and Moral Character”, in *Moral Luck*, Cambridge, Cambridge University Press