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In Defence of Democratic Dirty Hands

Abstract

This paper considers three arguments by David Shugarman (2000) and Maureen Ramsay (2000a) for why dirty hands cannot be democratic. The first argues that it is contradictory, in principle, to use undemocratic means to pursue democratic ends. There is a conceptual connection between means and ends such that getting one's hands dirty is incompatible with acting in accordance with democratic ends. The second claims that using dirty-handed means, in practice, will undermine democracy more than it promotes it and therefore cannot be justified. The final criticism states that politicians with dirty hands are a sign that politics is no longer meeting the criteria necessary to be called democratic. The paper shows that such rejections of democratic dirty hands are based on misunderstandings of the nature of dirty hands and democratic politics.

Keywords: democracy, dirty hands, means and ends, moral conflict, pluralism

Introduction

Can politicians lying, deceiving, and even ordering the torture or killing of another human being be compatible with democratic politics? Advocates of dirty hands (from here on referred to as DH) 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 (from here on referred to as DDH). Dirty-handed means are incompatible with the democratic ends supposedly used to justify them and the use of DH is a sign that political action is no longer democratic. The aim of this paper is to defend the concept of DDH.[i] I will begin by outlining the background assumptions that these critics make about the nature of both democracy and DH. Next, I will extract three arguments for the

claim that DH 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 DH are a sign that politics is no longer meeting the criteria necessary to be called democratic. The paper goes on to argue that the rejections of the notion of DDH are based on some fundamental misunderstandings of the nature of DH and democratic politics. In order to do so, it takes at its starting point the insight that the nature of DH conflicts can be conceived of as a clash between plural and conflicting values. It then considers the implications that value pluralism has on the existence and maybe even inevitability of conflict in democratic politics. If we take value pluralism seriously, this calls into doubt the argument that there is no such thing as DDH.

Before doing so, it will be useful to clarify exactly what criticism of DH in democracies I am concerned with in this paper. 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 paper is to refute the latter. The exegetical worry holds that if DH are not understood properly by philosophers, politicians, and citizens, then DH talk will have a corrupting effect on democratic practices. Some ways of talking about DH need to be urgently revisited as a result in order to safeguard democratic politics. While this worry is not opposed to the idea of DDH in principle, it argues that our current understanding of the phenomenon in the literature prevents it from being democratic. Such 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 DH 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 DH 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: 504). DH could be made democratic if they honour the retrospective phase of deliberation and justice. This criticism is different to the substantive worry that I want to consider in this paper, though. I am concerned with the more serious criticism that DH, by their very nature, could never be compatible with democratic politics. While this worry does not deny the existence and necessity of DH more generally, it denies the existence of genuine DDH. 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.[ii] Both Shugarman's and Ramsay's treatment of dirty hands have received little attention in the dirty hands literature so far, but I think there are good reasons to start taking them seriously now. While the DH literature in general is steadily growing, papers that specifically focus on the issue of DDH, and criticisms thereof, are still limited. Shugarman and Ramsay provide some of the few critiques of the notion of DDH to date, so we ought to take them seriously before moving on with the debate. In a recent paper on the issues of complicity and responsibility in cases of DDH, de Wijze (2018) begins by briefly responding to the challenges by Shugarman. This discussion, however, is limited to some of the discrepancies in the understanding of dirty hands in Shugarman's criticisms and does not provide a sufficient response to his underlying concerns. To understand these we require a more in-depth analysis of his idea of democratic politics and its connection to the DH problem. Given that Shugarman's argument has been taken up recently, albeit only in passing, it is time to examine some of his major claims properly. As I will show in the following, this analysis yields obvious similarities to the underlying worries found in Ramsay's discussion of the issue of DDH. This suggests that philosophers who hold a given set of assumptions about

both democratic politics and DH will likely be led to oppose the notion of DDH. It is therefore important to make clear what these assumptions are and how they are mistaken or misleading. Additionally, Shugarman has recently published a new chapter (Young & Shugarman, 2017) that applies his earlier criticism of DDH to a variety of real-life case studies. Seeing these same arguments reused and applied to politics shows that we should not ignore these criticisms and make sure that we have a solid defence of the notion of DDH available to us. This paper will respond to these two critics and argue that, in fact, there can be genuine DDH.

Background Assumptions

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

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: 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 them' (1987: 218). The aim of democracy is two-fold: to produce the full development of individuals as well as overall societal well-being. 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: 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: 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 to which she subscribes. She does, however, identify four core features of a well-functioning democracy: consent, participation, representation, and accountability (2000a: 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: 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: 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: 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: 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: 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.

Dirty Hands

When these pictures of democratic politics are combined with the critics' particular understanding of DH it will become clear why they oppose the concept of DDH. I contend that the critics take their understanding of DH 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 DH debate is indebted.[iii]

Walzer begins by characterising the conflict inherent in DH as a clash between deontological and consequentialist morality. He says that 'a 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: 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, […] it arises not merely as an occasional crisis in the career of this or that unlucky politician but systematically and frequently' (1973: 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: 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 due punishment. 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: 178). The politician, induced by her guilt, will ensure that she undergoes the appropriate form of punishment.

This characterization of DH is taken for granted and is then, in the eyes of the critics of DDH, given an inherently anti-democratic flavour by tracing this tradition back to Machiavelli's treatment of politics.[iv] 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' (2000a: 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' (2000b: 37). As a result order and security 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: 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: 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 this is possible, and should the constraints of human nature and politics necessitate the use of measures that contravene it, the good results do not negate the fact that the means employed to pursue them were themselves immoral. 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: 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: 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: 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 DH 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 DH 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 DH 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 DDH. The second

criticism argues that, in practice, we cannot find a justification for DH in democracies. Ramsay starts by setting out DH as a clash between consequentialist and deontological morality. She continues that it is not possible, however, to make a successful consequentialist case for DH in democratic politics because dirty-handed means in practice would always undermine democracy. There is then no such thing as DDH. Thirdly, Shugarman and Ramsay also criticise the idea of DDH 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 met. Where justified DH begin, democracy has ended. I will argue in the following that these critics have misread the nature of DH and democratic politics and that, if properly conceived, the concept of DDH does not fall prey to any of their objections.[v]

It's contradictory in principle to use undemocratic means for democratic ends

The first criticism of DDH 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: 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 seek' and 'that it is wrong to use immoral means to attain moral ends' (King, cited in Shugarman, 2000: 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: 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: 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: 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 for pursuing 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' (2000:242-243). This picture is aggravated by the supposed feature of DH that 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: 243).[vi] 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 DH 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. DH, 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 DH language is, after all, the acknowledgement of moral remainders that result when values are violated. The second strategy to drive 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 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.[vii] Toward the end of the civil war he was concerned that he would have to pass the thirteenth Amendment before the Confederate states could defeat it once the union had been 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 should this not prolong the war. In order to secure the vote of the latter part 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 than they have undermined them.[viii] 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.[ix] 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 it does not undermine the end; on the contrary, it actually promotes it. There is therefore no reason to think that politicians cannot have genuine DDH.

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 whether we can, in practice, find a justification for

DH 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 DH as originating from a clash between deontological and consequentialist reasoning. She argues that while DH 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 DH.[x]

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 DH reasoning and the minimal conditions stipulated by just war theory; the justifiability of DH '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: 29). None of these conditions, according to her, can be satisfied by DH 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 DH. Politicians also face too many barriers such as 'distorted judgements, discrimination, ideological bias, error and self-deception' (2000a: 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: 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 DH is the result of consequentialist reasons prevailing over deontological constraints, then there will not be any justification for DH in democracies at all because the use of dirty-handed means is going to undermine democratic values more than it 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 DH. While her underlying worry can be restated in terms that are in line with a more accurate understanding of DH, I will show that this version suffers from internal flaws because of which we ought to reject her criticism.

Firstly, we need to question the major assumption that DH are best described as a clash between deontology and consequentialism. In the following I want to argue that this is a serious mischaracterisation of the phenomenon. Ramsay's (as well as Shugarman's) conception of DH 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 DH. Consider for example a politician who 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 DH could not make sense of such a case. Insisting that DH are always a result of a clash between deontology and consequentialism would therefore unduly limit the concept.

What the example above about the choice between cultural heritage and justice shows us is that the conflict that causes DH is best understood as a clash between plural and conflicting values. Michael Stocker (1990), for example, defines the problem in this way. He argues that when plural values clash, whatever option we choose we will inevitably have to violate one of the values. While we might decide that one of the values takes precedence given the particulars of the scenario, this does not negate the moral relevance of the value not chosen. Instead, the value not chosen becomes a moral remainder that attaches to the agent and results in a particular negative emotional response. Not only does a pluralist understanding of DH account better for the kind of cases we would want to include, it can also explain the phenomenology and experience of DH.

Stating that DH 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 DH. It might be re-framed in the following way: it is never worthwhile to engage in DH because using such

means will always be counterproductive and ultimately undermine democratic values more than it promotes them.

The overall problem with this argument is that, once we understand DH 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. Imagine you are in charge of overseeing ballot boxes in the 1932 German elections when you are being approached by an organisation that 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 lead 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 DDH.

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 DDH. 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 DH begin, democracy ends and therefore politicians cannot have genuine DDH.

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' (200: 236). For him, the claim 'that dirty hands and politics are inextricably linked such that […] you can't have one without the other' (2000: 230) is misguided. He wants to deny that DH can tell us something about the nature of democratic politics. Shugarman compares holding such a view of DH to the notions that hard cases make bad law and not taking the exception to be the rule. While they acknowledge the existence of DH, they argue 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/DH connection is only sustainable given a highly truncated, narrow, elitist version of democracy' (2000: 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: 40). She argues, pace Walzer, that DH situations in which 'politicians must choose a lesser evil in order to avoid political catastrophe are not a standard ingredient of political life' (2000a: 38). The only circumstances under which DH might be justifiable are in a Machiavellian international order or when individuals within a state are powerless, 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: 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: 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 DH 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 DH 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 DH 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: 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: 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: 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: 423). If we take the idea of value pluralism seriously, 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: 412). If we acknowledge the complexity and conflictual nature of democratic politics, then we can see that DH 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 and the ways in which this 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 insights from 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: 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: 33); in the end 'conflict is perpetual' (2000: 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' (de Wijze, 2018: 6). 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 DDH.

Conclusion

In this paper I have defended the possibility of DDH. 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 DH cannot be justified in democracies in practice. I firstly argued that her argument as initially presented is beside the point because her understanding of DH falsely assumes that the conflict arises as a result of a clash of consequentialism and deontology. I argued that DH 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 it undermines them. Lastly, I showed why DH 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 DH should be a sign of politics no longer being democratic. Politicians may have genuine DDH.

Author Biography

Christina Nick is a Lecturer and Digital Education Specialist at the Inter-Disciplinary Ethics Applied Centre at the University of Leeds. She holds an undergraduate degree in Philosophy and Politics from the University of Manchester and a Masters degree in Political Theory from Pembroke College, University of Oxford. She is currently finishing her PhD at the University of Leeds on the problem of democratic dirty hands. Email: C.Nick@leeds.ac.uk.

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[i] Throughout this paper 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 paper I will put this complication aside and simply use the term "democratic dirty hands".

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

[iii] 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 in this paper, 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.

[iv] 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 is possible (e.g. Machiavelli, 2003a: 53-54).

[v] It is worth pointing out that their criticism of democratic dirty hands can only work on a view of dirty hands that holds that, once confronted with such a conflict, we could keep our hands clean. Many writers, however, understand such situations in a way in which a clean outcome is simply impossible and we dirty our hands no

matter what. On such a view, democratic politicians simply couldn't avoid getting their hands dirty. I argue that we should favour the latter position in a work-in-progress paper.

[vi] 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: 11-39).

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

[viii] 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. While it is beyond this paper to go into further detail, I think 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. For a discussion on the instantiation of values see: (Stocker, 1990: 247-248) and (Hurka, 1996: 563-564).

[ix] 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.

[x] 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' (2000: 38). She thinks that democratic institutions can 'undercut and replace arguments for the inevitability and necessity of fraud, force, lies and violence' (2000: 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.