

Bellamy on Dirty Hands and Lesser Evils: A Response

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Abstract: This paper responds to Alex Bellamy's paper 'Dirty Hands and Lesser Evils in the War on Terror'. It outlines Bellamy's deep errors in his claims about 'dirty hands' and 'lesser evils'. Essentially, this error results from his failure to grapple with the complexity of dirty hands theory, coupled to his uncritical acceptance that dirty hands scenarios are essentially defined as a clash between a public and private morality. Furthermore, Bellamy's distinction between 'dirty hands' and 'lesser evils' is a spurious one since all dirty hands cases require a choice between lesser evils. We also reject Bellamy's claim that dirty hands makes no political sense. For illustrative purposes, we then briefly examine one problematic philosophical issue that needs attention if the notion of dirty hands is to be taken seriously. Finally, we demonstrate the usefulness of the concept of dirty hands by applying it to the issue of torture in the so-called 'War on Terror'.

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In the article ‘Dirty Hands and Lesser Evils in the War on Terror’ in your pages (BJPIR, 2007, 9(3): 509-526), Bellamy makes a number of claims and distinctions which we believe to be erroneous. This leads him to false conclusions about the usefulness of a ‘dirty hands’ (DHs) analysis for evaluating the normative aspect of morally complex political actions. These are serious errors and in this response, we explain why Bellamy’s account of DHs is deeply problematic. For example, counter to Bellamy’s claims, we demonstrate that the notion of a ‘lesser evil’ (LE) is an integral, rather than a separate and competing, idea to a proper understanding of the notion of DHs. Furthermore, where the idea of DHs theory does face serious difficulty is not, as Bellamy insists, that it makes ‘little political sense’ (511). Rather, advocates of DHs need to offer a coherent and persuasive response to some deep and trenchant philosophical problems: in particular, the charge that the very idea of DHs - doing wrong to do right - is at best incoherent and confused. In short, the difficulty is how to demonstrate that within ethical theory there is the conceptual or theoretical space to claim that it is possible (even laudatory) to do the right thing yet, nevertheless, at the same time also be guilty of a serious wrongdoing.

We begin this response by outlining what we take to be Bellamy’s deep errors in his claims about ‘dirty hands’ and ‘lesser evils’. Essentially, it is a failure to grapple with the complexity of DHs theory and to assert without argument that DHs are essentially a clash between a public and private morality. Furthermore, as mentioned above, his distinction between DHs and LE is a spurious one since all DHs cases require a choice between lesser evils. For illustrative purposes, we then briefly examine one problematic philosophical issue that needs attention if the notion of DHs is to be taken seriously. Finally, we briefly demonstrate the usefulness of the concept of DHs by applying it to the issue of torture in the so-called ‘war on terror’.

1. Defining DHs and the LE

Bellamy begins his paper by setting up an interesting problem faced by those who accept the ‘doctrine of national partiality’. This commonly accepted doctrine maintains that political leaders have a moral (and legal) duty to place the security and wellbeing of their citizen’s above those of others. This means that at times, the duty to protect one’s own citizens overrides ‘all other obligations to law and morality’ (509). Now whilst this doctrine poses little problem for ‘realists’¹ it does raise considerable difficulties for those whom Bellamy refers to as ‘liberals’ – theorists such as Michael Walzer and Michael Ignatieff. These difficulties arise because liberals adhere to universal norms which can only be overridden (and for some never at all) in the most extreme circumstances and even then with much regret. What is more, fulfilling one’s duty by overriding embedded norms in order to ensure the survival of the community or state leaves those overridden values still pertinent in shaping moral judgments. Or to put it differently, when circumstances make it necessary to violate much cherished universal moral norms, those who fulfil this primary duty of protecting their citizens also, paradoxically, incur moral guilt for acting wrongly in some important sense. So far so good and with these claims we are in agreement with Bellamy. However, it is from this point on that Bellamy goes badly wrong. In considering this tension between the doctrine of national partiality and universal norms (that is, the question of when commonly established rules can be overridden) Bellamy asserts that there are two different approaches which seek to resolve this moral difficulty for liberals: firstly the case of DHs and the second the case of LE.

¹ Following the famous Realist Morgenthau, Bellamy notes that Realists accept that ‘political choices are made in the context of a particular society’s interests and values and are to be evaluated as such’ (510). When certain dangerous or dire situations obtain and threaten the wellbeing of citizens, normally operative universal norms must take a back seat.

How does Bellamy distinguish these two approaches? He claims that while both the notion of DHs and LE ‘articulate the view that rules are important but may be overridden to serve a greater good in emergencies’ (511), they differ in that DHs refers to the clash between public and private morality, whereas the LE refers to the consequentialist imperative to choose between least bad alternatives.² Furthermore:

According to the former [DHs], political leaders may be obliged to violate private morality in pursuit of the public good. As public acts, however, such decisions should not be thought wrong. According to the lesser evil doctrine, however, a wrongful act remains wrong even if it produces the least worst of the range of possible consequences (514).

Whilst it is true that some commentators do characterise DHs as a clash between public and private morality, this is a very narrow and much contested way of describing the problem.³ There is, in fact, a wealth of literature on DHs which reveals it to be a far more complex and nuanced problem for which Bellamy gives it credit. And, as we argue, Bellamy’s simplistic approach results in making an erroneous distinction between DHs and LE, rather than seeing that a choice between lesser evils is integral to any coherent idea of DHs.

The debate concerning the nature of the DHs problem has gained considerable interests over the last thirty years since the publication of Walzer’s (1973) seminal article ‘Political Action: The Problem of Dirty Hands’.⁴ The term itself derives from John Paul Sartre’s (1948) play of that name, but the debate surrounding the problem is hardly a new one. Perhaps the best known image is that of Pontius Pilate washing his hands of Christ’s crucifixion. In terms of the normative concerns on which DHs focuses, thinkers as far back as the ancient Greeks were the first to ponder these

² Bellamy evokes the work of Machiavelli to support his claims about DHs and that of Ignatieff for his views of the LE. See Machiavelli (1997) and Ignatieff (2004).

³ For a discussion of the different ways in which DHs is characterised, see de Wijze (2005).

⁴ See Rynard & Shugarman (2000) and Primoratz (2007) for recent articles focusing on the DHs problem.

problems (de Wijze 2005, 454). Famously, Walzer's contention is that we may, sometimes, have to engage in acts which are on the one hand right, yet also somehow wrong (1973, 161). Similar arguments have been made by Thomas Nagel (1972) and Bernard Williams (1973a) and more recently by Michael Stocker (1990) and Stephen de Wijze (1994). Walzer argues that although one cannot expect to govern innocently, this is not to say that one cannot do the right thing whilst governing: 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). Among the examples that Walzer uses to illustrate his points is the (in)famous ticking bomb scenario (166-168). Here he imagines a politician who, on coming to power, inherits a bloody colonial war. While opening negotiations with the rebels, his capital city is the target of a terrorist bombing campaign. As a result, his first decision as the new leader is an unenviable one. He is asked

'to authorise the torture of a captured rebel leader who knows or probably knows the location of a number of bombs hidden in apartment buildings around the city, set to go off within the next twenty-four hours' (167).

The politician is faced with two terrible options. If he decides to authorise the torture he commits a terrible wrong, yet failure to do so violates his primary duty to protect citizens from harm. It is not enough that he should feel bad about the choice he makes (whatever it is), for either way he commits a moral wrong for which he becomes, in some sense, a guilty person.⁵

The political sphere clearly provides a fertile ground for DHs scenarios. As Bernard Williams puts it:

⁵ See Walzer (1973, 168) for elaboration on this point.

it is a predictable and probable hazard of public life that there will be situations in which something morally disagreeable is clearly required (1981, 60).

Walzer goes further still, by drawing our attention to some conventional wisdom that politicians are a good deal morally worse than ordinary people because

... the dilemma of dirty hands is a central feature of political life, that arises not merely as an occasional crisis in the career of this or that unlucky politician but systematically and frequently (1973, 162).

However, it is important not to slip into a commonly held error that simply because cases of DHs occur more frequently and dramatically in politics (and, more generally, in public life) this means that this clash between the public and private values is the defining feature of the DHs problem. It isn't and we can see this from examples of DHs scenarios we can and do face in our private capacities. Consider Williams example of 'Jim and the Indians'⁶. Here an individual with no institutional affiliation or political role is given the unenviable choice of either killing one presumably innocent person to let nine others free, or to refuse and thereby condemn all ten to death. Here we have a DHs scenario, but without a clash between public and private values. Thus, we contend that the necessary and sufficient conditions for DHs are not embedded in the roles of political or public life, but lie elsewhere.

What then are the conditions for getting DHs? By adopting and adding to the claims of Stocker (1990, 19-26), we argue that DHs scenarios involve the following necessary and sufficient conditions:

- (i) A justifiable betrayal of persons, values or principles
- (ii) The agent is moved by moral considerations to commit moral violations

⁶ See Williams (1973a, 98-99).

- (iii) The agent participates in or is part of the casual link which furthers the evils projects of others.

There is space here only to offer the briefest of exposition on these 3 conditions, but it should suffice to point out that a betrayal of persons, values or principles, can only be justifiable if such actions **bring about the lesser of two evils** and that the moral considerations one is moved by must be made in good faith. The immoral or evil action committed, must be compared with the immorality or evil actions and/or consequences that will be prevented. In short, it is necessary to have a good reason to believe that adopting a particular course of action does indeed bring about (or seriously attempts to bring about) the lesser evil. All DHs scenarios necessarily have this aspect to them.⁷ Thus, the way in which Bellamy's uses the distinction between DHs and the LE is misleading at best. The choice between lesser evils is one of the key components of any DHs scenario. What is more, DHs acts involve elements of both right and wrong. Put differently, they require an agent to do wrong in order to do right. This concept, while politically coherent, is deeply problematic, philosophically speaking. Politicians have long understood that it is sometimes necessary to use dubious and immoral means to achieve worthwhile ends. This is perhaps the primary lesson we ought to take from Machiavelli's work. We need, says Machiavelli, to learn to not be good in order that we can develop and sustain a strong and glorious state in which great human achievements such as science and art are possible.⁸

However, critics of DHs theory rightly point out that to claim that an action can be morally justified, even obligatory, yet nevertheless somehow also morally wrong

⁷ Although it is difficult to be precise here, one might agree, for example, that the assassination of a political leader *in the hope* that his death will bring about certain desirable changes is simply immoral. Whereas, the assassination of a leader who is carrying out genocide, and whose death would lead to the cessation or marked reduction of that genocide, would become an action that might properly be classified as a DHs act.

⁸ See Machiavelli (1997, 59-60). Also see Weber (1948) and Hampshire (1989, 161-189).

seems, at best, incoherent and confused. Hence, contrary to Bellamy's contention that DHs theory makes 'good philosophical sense' (509), the real and someone vexing problem is to find the conceptual or philosophical space to enable a coherent and persuasive account of how DHs are indeed possible at all.

2. The Philosophical Problem with 'Dirty Hands'

It is worth briefly highlighting and exploring the charge of conceptual confusion to illustrate the seriousness of the conceptual criticisms raised against DHs theory. Many critics⁹ argue that when faced with an apparent or supposed DHs scenario, it is an error to think that one does wrong to do right. Although this might appear to be the case, once the problem is properly understood through the critical lens of a deontological or consequentialist moral theory, it will become clear that there is a right choice to be made and no wrongdoing occurs when acting in this way. To maintain therefore (in the light of this critical assessment) that it is possible to have an action that is morally justified yet nevertheless also morally wrong is at best conceptual confusion. Whereas an agent may, understandably, feel as if she has done wrong, this is quite different from actually doing wrong. Richard Hare acknowledges that if we have been 'well brought up', when we are faced with hard moral choices we will, of course, experience a feeling of 'compunction' (a psychological state that makes us feel as if we ought to have done what the opposing abandoned claim would have had us do). However, he insists that this compunction has no bearing on whether we have actually done wrong and to claim that we can do wrong and right with the same action is simply nonsense (1978, 173-174). Thus, if we refer back to the 'ticking bomb' scenario, for example, Hare might

⁹ See Rynard and Shugarman, Part 2 'Rejecting Dirty Hands' (2000, 135-250) for a flavour of the kind of criticisms raised against the very possibility of getting DHs.

agree that (given the appropriate utilitarian calculations) the politician should order the torture of the rebel leader. What is more, Hare would also acknowledge the appropriateness of a feeling of compunction for ordering this action - after all, most persons are brought up to believe that torture is an abominable act. However for Hare, this would, morally speaking, be the end of the matter. In this situation, to order the torture of the rebel leader was the right thing to do and therefore in moral terms, at least, this would be all there is to say; morally speaking the case is closed.

Similarly, Kai Nielsen utilises his version of weak consequentialism to reach the same conclusion. In response to the 'ticking-bomb' scenario, he argues that 'to feel guilty is not necessarily to be guilty'. His rationale for this is that 'we do not do wrong by doing the lesser evil'. Rather, when we must choose between the lesser of two evils, we do what is right, all things considered. In other words, we do 'the thing we ought – through and through ought – in this circumstance, to do' (1996, 140-141).

It is not just consequentialists of all stripes that hold such a view. This position would also be compatible with a range of deontological theorists, from Kant (1998) to W.D. Ross (1930), albeit for different reasons. Ross, for example, evokes the notion of *prima facie* duties since we have many different and conflicting obligations, such as keeping promises, duties not to lie, and so on. Sometimes these duties conflict and when they do, we have a situation of *prima facie* conflict that is resolved when we decide which is our 'duty proper' – the duty that is in the end the action-guiding one. Just like Hare, Ross notes that *prima facie* conflict does generate feelings such as compunction, but this feeling does not translate into any kind of actual wrongdoing. In short, Ross denies that one's actions can ever be right yet also somehow wrong.

Consequently, the task for those who advocate DHs is to establish why the charge of conceptual confusion is mistaken. Attempts to do just this can be found in the

philosophical literature. For example, Michael Stocker argues that the perception of DHs as conceptually problematic stems from certain ‘serious errors made by our ethical theories’: namely, that they ‘over-concentrate on overall, action-guiding act evaluations’ and ‘misunderstand both what they over-concentrate on and other large portions of our evaluative world’ (1990, 10). As a result, the standard moral theories fail to acknowledge the existence of ‘impossible oughts’. These are oughts we are unable to obey because they violate our deep sense of integrity and moral worth. In the ‘ticking-bomb’ scenario, for example, although the torture is ‘justifiable’, even ‘obligatory’, given the duties of the politician, the act of torturing nonetheless leaves the agent morally polluted for so acting. Therefore, cases of DHs involve more than just the issue of how are we to act in such circumstances. Those values which have been overridden retain their moral relevance even if they are not action-guiding. In the ‘ticking-bomb’ scenario, the disvalue of the torture is not only taken into account ‘in determining the overall value of authorizing it, it remains as a disvalue even within that justified, perhaps obligatory, whole’ (1990, 12-13). The standard moral theories neglect this possibility because they are focused entirely on the **action-guiding aspect** of moral claims. As a result, they fail to realise that when a much cherished moral value does not guide our practical reason, this does not entirely eliminate their influence on what we are, or have become, by acting as we did.¹⁰

Yet another way of supporting the moral relevance of ‘impossible oughts’ is to consider, more precisely, the kind of wrongness that is involved in DHs acts. DHs scenarios often involve the violation of what Christopher Gowans refers to as the value of responsibility to persons (1994, 117-154). At base, our moral responsibilities stem

¹⁰ The kind of moral conflicts involved in DHs acts are therefore similar to conflicts of desires, as opposed to a conflict of beliefs. An overridden desire does not simply fall away as would an overridden belief. In the moral case we do not usually think in terms of banishing error. Instead, we tend to think ‘in terms of acting for the best, and this is a frame of mind that acknowledges the presence of both the two ought’s’ (Williams 1973b, 172).

from the perception that every person has intrinsic and unique value.¹¹ Put differently, we have a responsibility to all persons to respect their unique and intrinsic worth. Thus, in the ‘ticking-bomb’ scenario, there are at least two important moral duties here.

Firstly, there is a responsibility towards the innocent civilians to save them from being murdered and secondly there is a responsibility never to engage in torture. Torture is one of those practices which is morally forbidden under any circumstances. It is never morally acceptable even if justifiable in order to prevent a terrible evil. This sounds incoherent but it acknowledges the moral reality we sometimes face – a situation where whatever we choose to do, we violate a much cherished moral principle. Although we might agree on the right course of action (the politician should order the torture in order to save many thousands of lives) this fails to extinguish the non-action-guiding responsibility (to not order torture) which the politician violates as a result of his actions. It is this violated responsibility which therefore forms the basis of the ‘impossible ought’ here.

Thus to recap, contrary to Bellamy’s assertion that DHs differ from the LE, we have argued that the latter is a necessary condition of the former. Furthermore, DHs scenarios involve the claim that it is necessary to do wrong in order to do right. This puzzling claim means that in order to make conceptual space for the very possibility of DHs, it is necessary to address some very challenging philosophical issues. The brief arguments discussed above are not an attempt to offer a comprehensive answer to these

¹¹ Our understanding of intrinsic value is similar to Kant’s concept of persons as *ends in themselves* (1998, 19-51). It is, however, closer to Gowans, who argues that general view of all human beings as ends in themselves should be ‘determined inductively from particular cases’, rather than as a result of ‘an a priori apprehension of rational nature’ as Kant argues. For more on this distinction, see Gowans (1994, 123). The notion of unique value is more contentious again. In both Kantian and utilitarian perspectives, the unique particularity of a person’s value to others tends to be regarded as morally insignificant. (Both traditions believe that persons are of equal value, albeit for different reasons.) As an alternative to this position, however, Gowans claims that persons are ‘uniquely valuable’. In other words everybody has value, but in a way that is distinctive and different from everybody else’s. He regards this value as incommensurable in that for any two persons, we should not judge whether one is worth more than another or that they are worth the same amount. This feature of our moral reality is perhaps expressed most poignantly in our attitudes towards the death of a loved one: their death constitutes an irreplaceable loss which cannot be fully replaced by another person or anything else (1994, p. 124).

problems (which is clearly beyond the scope of this reply) but rather to indicate the rich debate that exists and is ongoing in the philosophical literature on DHs theory.

3. The Political Sense of ‘Dirty Hands’

What are we to make of Bellamy’s claim that DHs and LE scenarios make sense of the moral conflicts that political leaders face in emergencies, yet make little *political* sense? What worries Bellamy here is that the core insight of DHs theory (that an action can be both right and wrong at the same time) is politically useless. He insists, without much comment or argument, that societies do not judge political decisions as ‘(morally) wrong yet the right thing to do’(511). Bellamy insists that this way of thinking might be done by historians and philosophers (and this is presumably why he thinks that the notion of DHs and LE make good philosophical sense) but it is not done by political communities facing emergencies. We return to whether Bellamy is right to make this claim below, but here we must note here that his solution to this political problem is to turn to Clark’s (2005) notion of legitimacy - a notion that intermingles three sets of norms: morality, legality and constitutionalism or political sensibilities¹². Bellamy insists that moral principles or values are not the only aspect, or even the dominant part, of the ‘normative currency of politics’ (511). Rather, legitimate political behaviour rejects morality as its sole or main guide and with it DHs and LE debates. These debates occur at secondary level of norms and by themselves do not settle the issue of whether a particular action is legitimate or not. While it is possible to have actions that violate cherished moral principles, they might still be politically legitimate.

¹² Constitutionality or political sensibilities ‘refers to the interplay of politics, power and interests’. Following Clark, Bellamy understands the essence of political sensibilities to be about ‘what can be properly done, and how affairs should be conducted’ (519).

This position, Bellamy claims, is not the same as the core idea of what it is to get DHs - a morally *sui generis* aspect of our moral reality. The reason for this, Bellamy maintains, is that even if a particular act was and remains wrong despite being legitimate, this has insignificant 'political meaning because most other actors believed the act to be legitimate and framed their reactions accordingly'(519). What is more, such judgments about legitimacy are more or less indeterminate depending on public opinion and a host of other factors, among which, but not exclusive to, are our general moral principles and legal constraints.

What then is the role, if any, of DHs and LE scenarios in Bellamy's understanding of how political decisions are made in situations such as the 'ticking bomb' scenario, or when faced with the question of whether to torture a person to obtain crucial information? Bellamy argues that, in practice, they are attempts to legitimise actions that would ordinarily be considered immoral and/or illegal (519). This legitimisation occurs by either

'invoking one set of moral values (based on consequences) over another (based on deontology), by invoking moral values to overcome legal prescription or by mobilising political sensibilities to override both morality and legality, or a combination of the three. They do not invoke 'necessity' to override 'right', but employ a broader, political, conception of 'right' embedded in legitimacy' (519).

Now even if we overlook Bellamy's erroneous understanding of DHs scenarios pointed out in the earlier sections of this response, what are we to make of his characterisation of the role of DHs and LE scenarios outlined above?

Firstly, Bellamy's claim that societies do not judge actions to be right and wrong at the same time is simply false. Citizens do understand that at times and in rare but specific circumstances, politicians need to lie, use violence, make shabby compromises and generally behave in a manner that would be morally reprehensible and probably

illegal if done under different situations. Sir Stafford Cripps,¹³ the British Chancellor of the Exchequer, lied to Parliament to protect the interests of the British people and while very few would think that lying to Parliament is either morally or legally acceptable, they would understand that he did wrong in order to do right. He got dirty hands because the circumstances he found himself in prevented any uncomplicated and unambiguous right action. Similarly, in cases such as the ‘ticking bomb’ scenario, most citizens and politicians understand that although the decision to torture is justified as it seeks to protect lives, it still remains a morally abominable and illegal action. This understanding is a political one in that both politicians and citizens know and understand that *certain role specific judgments* (in this case *qua* politician with special and unique duties and responsibilities) can be both the right thing to do, yet are also morally (and sometimes legally) reprehensible. It is the unenviable, yet inevitable, problem of how to do only good in the world when the evil actions and projects of others make this impossible. The political choice that faces politicians is between lesser evils with no unambiguously right way of acting. Their actions are political, since politicians do not have the luxury here of judging how to act purely in terms of their own private moral beliefs. With power come specific responsibilities to others which, contrary to what Bellamy claims, are always essentially political.

Secondly, it is not clear whether Bellamy’s adoption of Clark’s notion of legitimacy places him in the realist camp and whether he is, therefore, uninterested in the liberal (as he puts it) concern with when it is necessary to override universal embedded norms. Recall that for realists such as Morgenthau, ethical concerns may be made

¹³ Sir Stafford Cripps, the British Chancellor of the Exchequer from 1947-1950, lied to Parliament when asked if it was the intention to take the Pound off the Gold Standard. He stated that he had no intention to do so when in fact it had already decided to do so by the end of the week. Cripps was unable to tell the truth, or evade the question, as this would have precipitated a financial crisis severely undermining any benefits that the move away from the Gold Standard would have achieved. Most persons would agree here that while lying to Parliament is wrong and should never be done, here was a situation where lying was justified, even obligatory, given Cripps responsibilities and role as chancellor. The claim that the wrong of lying is cancelled (as Utilitarians would argue) won’t do since Cripps’ action undermined the cherished principle that in a democracy, lying to Parliament is never acceptable since it makes proper decision making by representatives impossible. This example is reported in Fleishman et al. (1981, 74).

subordinate in order to realise political goals. What is more, ‘political choices are made in the context of a particular society’s interests and values and are to be evaluated as such’ (510). This position seems little different from the legitimacy claims Bellamy makes where there is an interplay between morality, legality and political sensibilities (or constitutionalism). Politicians on this understanding decide on the right course of action when they judge the action to be *legitimate*. What makes an action legitimate depends on the court of public opinion, the accepted moral and legal constraints and a calculation of the costs and benefits of engaging in such an action. Once a politician makes a judgment about an action’s legitimacy (and these judgments can never be absolute) then the notion that an action can be morally justified but also somehow morally wrong makes no political sense. The appropriate question in politics is always about legitimacy, which according to Bellamy is the more sophisticated normative currency of politics. This does sound very much like a quasi-realist position (perhaps better described as quasi-pragmatic position) and its genesis lies in the assumption that moral and legal constraints on political action are defeasible in the face of other political concerns. To put it in Kantian terms, moral principles are hypothetical rather than categorical imperatives, and as such, can be rightly subordinated to a range of other non-moral considerations.

It is puzzling then why Bellamy constructs his paper as if he is offering an examination of a liberal position which involves the use of DHs. Realists, as Bellamy knows, dismiss this approach as both muddled and politically naïve and hence spend little time seeking to examine its place in political decision-making. But leaving this aside, Bellamy’s position is also somewhat alarming, especially when we consider how he uses his understanding of legitimacy to analyse the use of torture in the so-called ‘War on Terror’.

In this context, Bellamy notes that the issue of whether US government agencies such as the FBI, CIA, Army etc. can use torture on suspected terrorists boils down to the following:

‘The question for American policy-makers is whether the costs associated with this perceived illegitimacy [of the use of torture] outweighs the potential benefits. Whether or not the use of torture in the war on terror can plausibly be viewed as a lesser evil depends very much on its consequences. *At present* [our italic], the arguments against it seem to outweigh those supporting it’ (523).

So it seems that for Bellamy, the issue of whether or not to torture is based, in the final analysis, on whether its benefits outweigh its costs. Translating this view into recent events in Iraq, Bellamy seems to be saying that the decision of the American soldiers to torture Iraqi prisoners at Abu Ghraib were illegitimate because the costs outweighed the benefits. If they had not, then the implication is that such immoral behaviour would have been legitimate.¹⁴ This is a thoroughly discredited notion of how to decide when torture is justified (if ever). Does Bellamy really contend that if the US public had had no concerns about the use of torture, then the moral and legal restraints could and should be ignored? In the quote above he insists that the use of torture in the War on Terror is illegitimate because, in the end, its costs are higher than its benefits. But this is, as he makes clear, only the case at present and presumably if this calculation changed in the minds of politicians and was supported¹⁵ by the court of public opinion in the USA and around the world, then torture becomes legitimate. However, civilised nations and civilised people do not engage in torture and this has nothing to do with the court of public opinion.

¹⁴ Bellamy also seems committed to the even more awful claim that when Abu Ghraib was used by Saddam’s torturers, their actions were politically legitimate as long as the benefit to Saddam’s regime outweighed the costs.

¹⁵ This raises the issue of how much support is needed. Would a majority of 2/3rds be sufficient for example?

This is isn't the place to offer a critique of this realist position,¹⁶ but it is worth illustrating how a proper understanding of DHs theory explains when it is justified to use torture as well as the moral consequences for doing so.¹⁷ Torture is, and should always remain, both legally and morally prohibited everywhere in the world. Along with slavery and genocide, it is an activity that is never morally or legally acceptable, even in situations of emergency. However, a DHs scenario recognises that under some rare and special circumstances, it might be a politician's duty to use torture to save many lives. So a politician authorises torture and then pays the moral and legal price. DHs theory does not try to wash away the immorality or illegality of using torture under the guise of utilitarian calculation, Clark's notion of legitimacy, or anything else. Rather, it faces head on the paradoxical situation where politicians are sometimes required to do wrong in order to do right. And in so doing, they become morally polluted and 'tragic heroes'.¹⁸ When this happens, we admire and praise those who acted in this way and we also acknowledge that they must bear the moral pollution that such acts bring with them. By so acting, they have compromised their moral integrity and it ought to affect how we think of these persons and what they think of themselves, for what they have become. They ought not just to feel regret, since this would trivialise terrible actions and undermine the moral horror at the harms done. However, neither can they feel properly remorse, the emotion appropriate to immoral behaviour with no justification or redeeming factors. Rather, as de Wijze has argued elsewhere, they ought to feel 'tragic-remorse' - the appropriate way of characterising the moral emotion that arises from getting DHs.¹⁹

¹⁶ For a sustained and persuasive argument against the realist position, see Walzer (1992).

¹⁷ For a more detailed discussion on this point, see de Wijze (2006).

¹⁸ This is Walzer's label for Weber's politicians who act in terms of an ethic of responsibility. See Walzer (Walzer 1973, 176). For a detailed discussion of what the ethic of responsibility requires and what it does, morally speaking, to the politician, see Weber's *Politics as a Vocation* (1948, 77-129).

¹⁹ See de Wijze (2005, 453-471).

In concluding, what then does a proper DHs analysis add to political decision making? It improves on the standard analyses by adding at least four separate but related levels of assessment to situations of unavoidable moral conflict. *Firstly*, it does this by stressing that in situations structured by ‘a complex immorality’, there is no morally cost-free course of action. All possible actions, and indeed failures to act, carry significant moral costs that must be recognised, understood and accepted by agents. *Secondly*, a DHs analysis warns against forcing an exclusively deontological or consequentialist, or any other moral template, on cases of intractable moral conflict. This awareness helps temper the enthusiasm of both deontologists and consequentialists, whose exclusive focuses fail to properly consider *both* the violation of principles and the consequences. *Thirdly*, a DHs analysis influences judgment concerning how we ought to act by providing a further layer of considerations beyond the usual concerns of moral and pragmatic considerations. This focus on the moral costs of getting DHs (for which an agent may be punished) cautions that any such actions ought to be undertaken very rarely and very reluctantly. This reluctance increases the threshold against acting precipitously, since in such matters ‘a habit of reluctance is an essential obstacle against the happy acceptance of the intolerable’. It is only those who are ‘reluctant or disinclined to do the morally disagreeable when it is really necessary’ who ‘have much chance of not doing it when it is not necessary’.²⁰ *Fourthly*, a DHs analysis enables the correct characterisation of the moral phenomenology of getting DHs, that is, how we ought to *feel* about the necessary dirty actions undertaken. This enables a better perception of the moral costs to others and to ourselves of so acting and points to ‘tragic remorse’ as the appropriate emotional response. In these circumstances, regret would be inappropriate and callous, yet ordinary remorse fails to capture the paradoxical nature of doing wrong in order to do right. All in all, a DHs analysis better captures our moral

²⁰ The last two quotes are taken from Williams (1981, 62-63) ‘Politics and moral character’ in *Moral Luck*.

reality in the face of intractable moral conflicts in a way that Clark's notion of legitimacy fails to do.

Bellamy is right to ask to what extent political leaders are entitled to violate embedded moral and legal norms in response to national emergencies. This is an important question that needs to be addressed by philosophers and politicians. However, his assessment of what he calls the prominent liberal approaches is flawed. His belief that DHs explanations make no political sense is incorrect. The reason he makes this error is that he fundamentally misunderstands what it is to get DHs and as a result he looks elsewhere for a solution to his question. This leads him towards an unpalatable and somewhat worrying quasi-realist position with rather unpleasant conclusions when applied to the question of whether or not to use torture in the so-called War on Terror. Hopefully we have shown that his position is not persuasive and, with the proper understanding of what it means to get DHs, not necessary at all.

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