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Dusting Off Dirty Hands

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Dusting Off Dirty Hands

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Abstract

Dusting Off Dirty Hands

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Abstract: This paper revisits one of the more frequented stops at the crossroads of politics and morality in contemporary ethical theory, Michael Walzer's essay "Political Action: The Problem of Dirty Hands." The aim is to provide a fresh assessment of Walzer's project, and to evaluate the tenability of its core notion of "dirty hands." In pursuit of this aim, the effort is made to reopen the paths which take Walzer to his celebrated impasse, from two directions. The first of these resituates Walzer's analysis in the context of the debate within Anglo-American ethical theory in which it is originally expounded. The second route seeks to recapture the trail of thinkers who guide Walzer to his conclusions from more remote locations in intellectual history, in order to determine the reliability of his intriguing constellation of Machiavelli, Weber and Camus as lodestars. Writing thirty years later, one of Walzer's friendliest interpreters, Jean Elshtain, in the midst of her enthusiasm for 'dirty hands,' renews doubts about his recommendation of "casuistry." Hints from throughout Walzer's essay, incompletely elaborated there, are parceled together into closing suggestions as to an alternative approach to so-called 'dirty hands' situations.

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Dusting Off Dirty Hands

Introduction

“Dirty hands,” as employed by Michael Walzer, is less a concept than the placeholder for an irremovable conceptual gap. It marks an impasse where the ground of morals might seamlessly abut the realm of politics, but instead an unfathomable breach plunges below. ‘Dirty hands’ labels a makeshift signpost in front of a notoriously treacherous region of theoretical fragility. Walzer raises this placard as a warning to the unsuspecting who may yet stumble onto the perimeter of the domain it sets off. From a backward glance, its dire cautions also extend consolation, of a sort, to the shaken souls who have somehow managed to stagger out the other side: there was no easier way.

Early on in “Political Action: The Problem of Dirty Hands,” Michael Walzer stipulates that the disturbing question he broaches is “not merely a philosopher’s question.”¹ And on this, at the very least, he is no doubt correct. For starters, by dint of the sources upon which he draws, Walzer implies that social theorists and playwrights may have critical purchase on the matter. The enduring currency of “dirty hands” within the lexicon of philosophical catch-phrases in recent decades, however, surely owes more to this 1973 essay of Walzer than to the 1948 play of Jean Paul Sartre from which its subtitle is taken.²

Interrupting a high-toned Oxbridge dialogue on ethical theory in the pages of *Philosophy & Public Affairs*, Michael Walzer attacks the subject in a distinctly more

¹ Michael Walzer, “Political Action: The Problem of Dirty Hands,” in *Philosophy & Public Affairs* 2, no. 2 (Winter, 1973), 161.

² I. Abel’s English translation of Sartre’s 1948 *Les Mains sales* is available in Vintage International’s *No Exit and Three Other Plays*. (NY: Vintage, 1989), 125 – 241.

down-to-earth, almost conversational idiom. Walzer's contribution takes up essentially the same topics the preceding discussants had tossed back and forth, while bringing to the foreground an issue the others had held as peripheral. If the prose in this compact and elliptical essay of Walzer unfolds with comparative ease, however, its thoughts advance toward a point of ever more unrelieved unease. And its substantive assertions are bordered by flashes of wit dark enough to augment the unsettling nature of Walzer's reflections, though it never descends to cynicism. The staying power of the central construct of "dirtyhands" is likely owed, at least in part, to the rhetorical bravado of Walzer's original statement, including the novelistic detail of its test-case scenarios, the surprising diversity of its source material, and, perhaps most importantly, thanks to the provocation of the argument's unabashedly searching and unfinished quality.

Walzer's most direct definition of 'dirty hands' frames it as "a particular act of government [which] may be *exactly the right thing to do in utilitarian terms* and yet leave a man who does it guilty of a moral wrong."³ Even apart from the glaring paradox which makes "doing the right thing" overlap with committing "moral wrong," this formulation begs the question regarding our ability to determine "exactly the right thing to do"-- by means of utilitarianism or any other sure-fire methodology. Insofar as he finds the dominant contemporary discourses of both deontology and utilitarianism wanting, Walzer does eventually venture farther afield -- quite a bit farther, it turns out, when he takes us to the origins of modern political philosophy. Pursuing his quest for a more tenable interpretation of 'dirty hands' in greater earnest in the distinctive fifth and final section of

³ Walzer, "Political Action," 161, emphasis added.

“Political Action,” leaving deontology and utilitarianism far underfoot, Walzer sets off on a whirlwind tour through five centuries of political theory, wherein he rediscovers his problematic in three distinct incarnations.

To re-evaluate what Walzer is able to do in “Political Action,” it first seems appropriate to re-trace Walzer’s own steps – and this is not always easy, given his agility in deftly hopping from one paradigm to another before hinting at his own conclusions. But Walzer’s project also seems to invite at least a few stabs at evaluation on the plane of practical endeavor to which his ruminations here, as elsewhere in his work, closely hew. As in Walzer’s book-length studies, the argument of this small essay is developed through formulations redolent of historical truth and rich in practical exemplification rather than merely through abstract deductions. The looming proximity of the realm of political action itself to Walzer’s argument, not to mention the imposing historical sweep of its few brief pages, magnify the complexity of the challenge, but also raise the stakes for untangling its logic. Looking forward and behind, it seems impossible to avoid the question: How differently might the ideas of Walzer’s “Political Action” encourage political actors to act? The author cannot intend his reflections to be irrelevant to this derived inquiry, speculation about which seems germane to a reasonable critique.

Thus, perhaps fair light is reflected on the viability of Walzer’s position by taking stock of some of the wide influence it has enjoyed. In particular, one of Walzer’s most fervent admirers, Jean Elshtain, has claimed to find inspiration in his ‘dirty hands’ framework for some notable interventions in leading public controversies of the twenty-first century, as well as for the theoretical projects that have supported her activism in the

same period. Taking Walzer's ruminations even further from the chalkboard than had he, Elshtain uses them as a platform for a series of highly combustible polemics. That Walzer himself sometimes weighed in on the same controversies, with equal passion, does not in itself do much to settle the question of the legitimacy of Elshtain's claim regarding the derivation of her thinking from that of Walzer in "Political Action." To the extent that Elshtain is credible as an interpreter of Walzer's 'dirty hands' theory, what do her advertised attempts to apply that theory do, if anything, to make that theory either more or less appealing?

Walzer's theory of 'dirty hands' contemplated a context of war at its inception. Thus, when the arrival of an actual situation of international conflict grabbed not only headlines but the attention of well-informed authorities on the ethics of warfare, this awful turn of events might at least seem an opportune moment to observe the most self-conscious of 'dirty hands' take hold of reality. Despite Walzer's distinctive appreciation for the ineradicable place of guilt in noble leadership, in the event that the judgments a 'dirty hands' perspective have been taken to underwrite for someone like Jean Elshtain are found suspect, it is hoped that a test of Walzer's theory in "Political Action" against the vaunted applications of one of its leading sympathizers can amount to more than an exercise in guilt by association. It is with the partial aim of laying a firmer basis for this ultimate comparison that some deeper excavation of the main lines of influence on Walzer's theory, and a reconstituting of it from a fuller understanding of its original component parts, is pursued in the following pages. And if even this patient effort at reconstruction is not found capable of making Walzer's theory fully persuasive,

Elsthtain's apparent stumbles as a political thinker and social critic amid an actual fog of war may draw a darker cloud over Walzer's deliberately grey area than his theory can live with.

I The Dilemma Posed: Nagel & Hare

Writing at the height of U.S. involvement in the war in Indochina, Thomas Nagel searches for a theoretical basis upon which tactics such as aerial bombardment of villages, indiscriminate antipersonnel weapons, massive dislocation of populations, torture of prisoners, use of napalm, slaughter of hostages, biological weapons, and inducement of mass starvation can be placed totally out of the legitimate reach of nations at war. This search is spawned in part by doubts that a typically utilitarian focus on outcomes can adequately limit war-time measures. “Once the door is opened to calculations of utility and national interest,” Nagel fears, “the usual speculations about the future of freedom, peace, and economic prosperity can be brought to bear to ease the consciences of those responsible for a certain number of charred babies.”⁴ In “War and Massacre,” Nagel takes for his topic, “the most general moral problem raised by the conduct of warfare: the problem of means and ends.” Careful reflection on this problem invariably runs aground, he finds, at a point of “conflict between two disparate categories of moral reason.” As Nagel defines them: “Utilitarianism gives primacy to a concern with what will *happen*. Absolutism gives primacy to a concern with what one is *doing*.”⁵

Because for an absolutist, according to Thomas Nagel, “it is not allowable to do certain things” -- such as, for instance, deliberately executing hostages and indiscriminately killing non-combatants, “we cannot deliberate on whether such measures are justified by the fact that they will avert still greater evils, for as intentional measures

⁴ Thomas Nagel, “War and Massacre,” *Philosophy & Public Affairs* 1, no. 2 (Winter, 1972), 129.

⁵ *Ibid.*, 124.

they cannot be justified in terms of any consequences whatever,” and this will remain true even under circumstances of warfare.⁶ But this may serve to accentuate the tension:

The fact remains that when an absolutist knows or believes that the utilitarian cost of refusing to adopt a prohibited course will be very high, he may hold to his refusal to adopt it, but he will find it difficult to feel that a moral dilemma has been satisfactorily resolved. The same may be true of someone who rejects an absolutist requirement and adopts instead the course yielding the most acceptable consequences. In either case, it is possible to feel that one has acted for reasons insufficient to justify violation of the opposing principle.⁷

Ultimately, Nagel is led to “a somewhat qualified defense of absolutism.”⁸

Prohibitions on evils such as the deliberate killing of noncombatants -- no matter the consequences -- will be restored; however, they will operate “as a limitation on utilitarian reasoning, not a substitute for it.” Nagel’s “qualified absolutist,” in other words, “can be expected to try to maximize good and minimize evil, so long as this does not require him to transgress an absolute prohibition like that against murder.”⁹

After searching earnestly for clarity he cannot find in utilitarianism, Nagel thus stops short of fleeing all the way into the arms of deontology, which would posit absolute rights. In fact, he leaves off on a note of haunting ambiguity, gesturing toward the possibility of eventually hitting “a moral blind alley.” He fixes the coordinates of this impasse so: “a previously innocent person” is faced with “a choice between morally abominable courses of action.”¹⁰ A general example might be “a case in which someone is bound to die, but who it is will depend on what one does,” and “nothing one could do

⁶ Nagel, “War and Massacre,” 128.

⁷ Ibid., 143.

⁸ Ibid., 126.

⁹ Ibid., 128.

¹⁰ Ibid., 143.

would be morally permissible.”¹¹ For Nagel, “to say that someone can do X and not do X, and that for him to take either course would be wrong ... is not in itself a contradiction.” Indeed, “it is naïve to suppose that there is a solution to every moral problem with which the world can face us.”¹²

Two replies to Nagel appear in the same 1972 issue of *Philosophy & Public Affairs*. These initial responses both work from the premise that Nagel’s concerns can be resolved by enlarging utilitarianism instead of searching for an external corrective to it.¹³ Rom Hare insists that the incoherent relationship in which Nagel leaves utilitarianism and absolutism cannot be allowed to stand -- nor need it, under the right view of maximizing benefits, or a position he names “specific rule utilitarianism.”¹⁴ By applying specific rule utilitarianism, we can develop “good general principles” for use in moral education, thus in turn enabling us to evaluate the results of their acceptance in future states of affairs. For example, adequate inhibitions regarding conduct that ought to be foresworn in war-time can be inculcated through proper military training, and some time later we can make sure this policy has fixed the problem.

Hare allows that his answer of making use of specific rule utilitarianism may not fully succeed in eclipsing situations when it may be difficult to know whether one needs to come up with a new general principle or simply apply one previously established -- or, in other words, tell us what to do when “sticking to one of the general principles” rather

¹¹ Ibid., 129 – 130.

¹² Ibid., 144.

¹³ The first reply, passed over here in preference of a concentration on Hare, was R.B. Brandt’s “Utilitarianism and the Rules of War,” *Philosophy & Public Affairs* 1, no. 2 (Winter 1972): 145 – 165.

¹⁴ Rom Hare, “Rules of War and Moral Reasoning,” *Philosophy & Public Affairs* 1, no.2 (Winter 1972): 166 -181.

than “engaging in more specific reasoning” seems “unlikely to be for the best. In any case, Hare deems the occasions when the problem might turn out to be “too rigid adherence” to good general principles “very rare.”¹⁵

In short, Hare contends that rather than remaining frozen on the battlefield, Nagel could have solved his problem by retreating to higher ground. Nagel’s supposed “blind alleys” are, from Hare’s point-of-view, pseudo-problems averted by an enhanced understanding of utilitarianism, making needless any new limitations, additions or replacements to its calculi. Even conjuring “blind alleys” hypothetically bespeaks a superficial point of view, according to Hare. And, the wrong sort of theorizing bears immediate practical hazards in Hare’s estimation. He worries that such mental exercises may in themselves be dangerous “because many people will think that, if there is no way of escaping guilt, only the neurotic will worry about it.”¹⁶ Since he need not fall prey to the kind of “pharisaism” which holds our moral principles “epistemologically sacrosanct,” and does not confuse “moral integrity and peace of mind,” the utilitarian can keep his general principles holstered as “indispensable practical guides.” Hare’s parting words for the quavering deontologist: “the best advice is to grow a thick skin.”¹⁷

¹⁵ Ibid.

¹⁶ Ibid., 179.

¹⁷ Ibid., 179-180.

II The Dilemma Deflected: Walzer with Machiavelli

The fourth and final entry in the colloquium in which Nagel and Hare participated, “Political Action: The Problem of Dirty Hands” by Michael Walzer, did not appear until the following year, and took a different tack, spreading out a larger canvass as backdrop for the problem. Though Hare can only shake his head when Nagel backs himself into a blind alley, by the point of “Political Action: The Problem of ‘Dirty Hands,’” Michael Walzer chooses to linger in this trap and explore its full dimensions for the duration of his own piece.¹⁸ Such places of impasse name for Walzer a starting point rather than a dead-end. Defying Hare’s insistence that a safe alternative route by-passing the shadowy realm of moral blind alleys could easily be mapped out, Walzer begins by suggesting these constitute a larger region than any of the preceding papers have acknowledged, and proceeds from the conviction that this twilight realm where justification stalls out and normal principles cannot light the way ahead is worthy of more than an afterthought. Walzer takes ownership of the problem Nagel had introduced as “blind alleys,” amplifying its political echoes by borrowing the title of a Sartre play to rename it: “dirty hands.”¹⁹ Walzer suggests that the problem Nagel spied on fields of military battle is endemic to politics itself.

Any within earshot of loose talk of “moral blind alleys,” Hare reckons, would be liable to leap to the conclusion that “if there is no way of escaping guilt, only the neurotic

¹⁸ Michael Walzer, “Political Action: The Problem of ‘Dirty Hands,’” in *Philosophy & Public Affairs* 2, no. 2 (Winter, 1973), 160 – 180.

¹⁹ I. Abel’s English translation of Sartre’s 1948 *Les Mains sales* is available in Vintage International’s *No Exit and Three Other Plays*. (NY: Vintage, 1989), 125 – 241.

will worry about it.”²⁰ Surely, Hare reasons, such blithe dismissals will cause moral deliberation prior to action itself to be too lightly regarded. Walzer proceeds from the conviction that in political life there are indeed particular and inevitable situations in which there will be found to be “no way of escaping guilt.” But, *contra* Hare, he also sees there as being eminently good reasons for the political person to worry about it.

‘Dirty hands’ designates the loci for “a way of maneuvering between two very different and characteristically opposed understandings of morality.”²¹ The initial significance of ‘dirty hands’ within the context of the *Philosophy & Public Affairs* colloquium is that Walzer is able to posit a juncture where the dueling theories of deontology and utilitarianism might collide, and where one would have to give ground to the other. Key to establishing the concept of a special subset of political decisions that fit the definition of what Walzer calls ‘dirty hands,’ hence, is the hypothesis of a moment where exigent circumstances of a certain magnitude and nature force a leader to shift gears from deontology to utilitarianism (or vice versa). But whichever perspective is found subordinate to the other at this juncture is presumed willing to step aside for the moment – and, in so doing, not required to surrender claims as to its overall validity.

In short, the very idea embodied in Walzer’s notion of ‘dirty hands’ needs to somehow sustain the validity of both the philosophy of consequentialist utilitarianism and that of rights-based deontology – each in its proper quarter. “Both of these moral

²⁰ *Ibid.*, 179.

²¹ Michael Walzer, “Emergency Ethics,” in *Arguing About War* (New Haven: Yale University Press, 2004), 35.

understandings have claims upon us, and yet they pull us in different directions.”²²

Useful as it is in advancing his argument, Walzer’s imagination of a political mentality in which both utilitarianism and deontology can cohabit in some larger, pluralistic sense, patiently waiting for the other to complete its work across an amicable division of responsibility, is highly problematic. The implied attempt to glibly split the difference between deontology and utilitarianism by curtailing the totalizing aspirations of the paradigm in question can occur only with the help of a conceptually cloudy description of the nature of decision-making in a certain type of crisis situation.

By starting from an assumption that either utilitarianism or deontology can kick in at just the point where the other ceases to be relevant -- without negating the other’s insights or swallowing them whole -- Walzer needs to implicitly construct a moral default position in which each of these respective theory stands at the ready, waiting for the moment when the politician decides to fetch the accoutrement from whichever end of his intellectual mantelpiece seems to offer the best ammunition for addressing the crisis presently unfolding in his realm. But a politician who finds himself deciding to override a deontological obligation in order to achieve what he deems a more pressing consequentialist end will have trouble explaining why the obligation overridden was ever a valid concern – or might be again in other circumstances. Nevertheless, in ‘Political Action,’ Walzer accepts no obligation to demarcate the threshold for shifting to a preference for outcomes over duties, and never promises a true reconciliation between the rival assumptions of deontology and utilitarianism. Instead, his account posits some

²² Ibid., 35.

pivot-point for moving from one model to the other the nature of which it does little to illuminate.

But purists of neither outlook would ever so freely deign to partake of the assumptions of its rival, given that each insists on a status of mutual incompatibility – while, at the same time, asserting its power to colonize all outliers.. These perennial antagonists would agree that either one has a claim on us which invalidates the claims of its opposite, or it has no pull on us at all. What neither ‘deontology’ nor ‘utilitarianism’ strictly speaking can abide is the contemplation of some arrangement (of the sort implied by both Walzer and Nagel) in which someone could be a deontologist in some circumstances and a utilitarian in others, as if trading hats – or a utilitarian to a certain point, and a deontologist thereafter.

On one level, ‘dirty hands,’ as presented by Walzer, is a proposal to resolve a consequentialist/absolutist stalemate, by at first by seeming to split the difference. But neither of the combatants between whom he attempts to mediate would accept either the terms of his mediation, or even the need for it. For the same set of reasons, even to locate ‘dirty hands’ at a posited point of intersection between utilitarianism and deontology conjures a problem the very prospect of which thoroughgoing adherents of neither utilitarianism nor deontology can acknowledge. It is in this sense that Walzer’s notion of ‘dirty hands’ does not cover a situation of true dilemma: it does not present a choice between contradictory obligations to the same principle, or even to two principles equally weighted in every philosophically relevant sense. Rather, it somehow posits the need for a practical choice between contradictory principles.

For their part, loyalists on either side aspire to a synoptic vantage, rejecting the notion that there could be such a thing as genuine moral tragedy, and are thus prone to seeking to explain away the so-called problem of something like a “moral blind alley” on some ostensibly higher plane of analysis than any within which it could even appear. Rom Hare’s reaction to Thomas Nagel’s ‘blind alleys’ is representative in this sense of the reactions typical of most orthodox proponents of both utilitarianism and deontology to the rival they perceive in one another. With his reformulated principle of “specific rule utilitarianism,” Hare claims he can subsume all possible rival positions without addition or remainder.²³ Even without seeing a necessity to reach quite as far as the sophistication of Hare’s ‘specific rule utilitarianism,’ many utilitarians maintain they have found a way to preempt deontological objections by according rights violations adequate weight in moral calculation, as net additions to suffering. When it comes their turn, many deontologists also submerge the polarity, proposing to bring classic utilitarian considerations back in under a properly deontological rubric like ‘the right to life.’

To facilitate partisan theoretical victory, deontology and utilitarianism both have their respective stockpiles of casuistry at the ready. Granted, to any outsider, the sharpest differences may ultimately resemble little more than a contest of highly technical vernaculars – where it may even seem to evaporate. To wit: Rom Hare’s formula for “specific rule utilitarianism” sets it up as the all-purpose “microscope,” through the impeccable lens of which “we judge the morality of a particular act by assessing the utility of universal observance of the highly specific principle which requires acts of just

²³ Hare, “Rules,” 177.

this sort in just this sort of circumstances.”²⁴ In the stratosphere of such abstractions, utilitarianism can be seen, at the apex of its sophistication, landing within parodic proximity to the formalisms of higher Kantianism; the extremes meet. As Bernard Williams notes from the obverse angle: “Kantianism can be made instantly into a kind of consequentialism – a kind which identifies the states of affairs that have intrinsic value as those which consist of actions being performed for duty’s sake.”²⁵

Even if, incredibly, in the outcome Walzer needs, one pole on the compass of contemporary ethical study suddenly concedes that, by itself, it is not able to offer adequate guidance in all situations, and settles for a somehow brokered arrangement of timely alternation with its counterpart – there is still a void at the interstices: How does one determine that such a point has arrived, since to survey it within the scope of either deontology or utilitarianism itself would beg the question?

Walzer seems to realize that the only way to finesse the immediate and formidable difficulties presented by his desire to have it both ways as regards deontology and utilitarianism in a way neither camp would find acceptable is to change the subject. But this he adroitly proceeds to do. No sooner is his initial proposal advanced than Walzer seems to soar beyond the field of conflict where it had emerged, surpassing both of the frameworks that had clashed there.

As soon as he has given his best efforts to convincing those drawn to either utilitarianism or absolutism that ‘dirty hands’ is a real problem, without declaring victory,

²⁴ Hare, “Rules,” 177.

²⁵ Williams, “A Critique of Utilitarianism,” 85. As far as Kant himself as a casuist, there has been lively debate for decades: W.I. Matson, “Kant as Casuist,” *The Journal of Philosophy*, 51, no. 25 (1954): 855 – 860. H.D. Kittsteiner, “Kant and Casuistry,” in *Conscience and Casuistry in Early Modern Europe*, ed. Edmund Leites (Cambridge: Cambridge University Press, 1988), 188 – 213.

Walzer simply departs the scene of the initial skirmish. He then begins to cast about for a suppler moral framework to accommodate the phenomenon in a way neither deontology nor utilitarianism can manage. He wonders whether any backdrop unafraid to leave the inherent incongruity of 'dirty hands' exposed might be preferable. Leaving aside for the time being, then, Walzer's problematic construction of compatibility between deontology and utilitarianism, we attempt to follow his gaze toward the stars of his enlarged firmament.

Thus does Walzer's project transition into an effort to chart some possible vantage points from which the politician who has already resigned herself to 'dirty hands' can reflect back on her actions in terms of a morality which is suited to politics, as precisely opposed to being merely what Hare had termed "neurotic" -- if by 'neurotic' here we allude to some generalized, disabling anxiety with an endogenous root (something perhaps akin to what confessors once might have identified as the sin of 'scrupulosity'). This is to say, Walzer's explicit aim is not to furnish the terms for public justification of action which brings on 'dirty hands' -- adhering to the notion that such is in principle unavailable -- so much as to explore ways for the dirty-handed politician to understand herself. To this extent, Walzer's theoretical aims could be characterized as therapeutic in nature.

The teachings of Niccolo Machiavelli, Max Weber and Albert Camus are briskly mined in turn for building blocks of Walzer's own theory of 'dirty hands.' The implication is given that each of these alternative perspectives has an element to add, though none by itself, or even in combination, can be made to comprise an impervious

edifice. But Walzer makes no strong exegetical to justify his use of the individual names he brandishes or the labels he attaches to his paraphrases of the associated positions. Rather, these titles and figures appeal to him as convenient short-hand for general lines of reasoning which help him elaborate his own thinking. Despite this limit to his ambition, Walzer manages to telescope impressively wide vistas of thought within a remarkably acute set of angles.

The precursors from whom Walzer seeks his inheritance are a quite disparate lot, and the fact that these antecedents cannot be aligned according to any single methodology complicates Walzer's project of blending them together into an alternative to such clear-cut doctrines as those from which he initially sets out. But Walzer has little choice but to develop his argument in a piecemeal rather than a systematic fashion. He assembles an admittedly provisional bric-a-brac model from the shards left behind by the troika Machiavelli, Weber and Camus. But by claiming such a distinguished pedigree for the argument he slyly advances in the second half of his article, we are left to feel that each of strands of thinking upon which Walzer proceeds to draw is worthy of further unspooling.

Walzer begins his quest for more illuminating beacons in seeing our way through 'dirty hands' dilemmas with reference to what he calls "the literature of political action." In the first instance, he apparently means by this works of theatre.²⁶ It soon becomes clear that he is also turning back to the classical literature of political theory. Walzer

²⁸ Ibid., 174. This "literature" for Walzer obviously includes the plays of Sartre and Camus. In "Marxism and Dirty Hands," Steven Lukes also makes good use of Bertold Brecht. Steven Lukes, *Moral Conflict and Politics* (Oxford: Clarendon Press, 1991), 189 – 193.

takes Niccolo Machiavelli as his first model, and indeed the Florentine continues to hover like an unholy patron saint over the remainder of Walzer's enterprise. By marking the transition from a first section which glosses the preceding discussion by contemporaries Nagel, Brandt, and Hare, the unannounced arrival of Machiavelli in the second section of "Political Action" invites the classification of Walzer's notion of 'dirty hands' itself as a 'Machiavellian problem' – if it does not count as *the* Machiavellian problem. Walzer reaches even further toward a Machiavellian sweep in his own re-statement on 'dirty hands' fifteen years later, by positing circumstances of "supreme emergency" during which "morality itself is devalued."²⁷

"How men live is so different from how they should live that a ruler who does not do what is generally done, but persists in doing what ought to be done, will undermine his power rather than maintain it," writes Machiavelli in Chapter 16 of *The Prince*.

"Therefore, a ruler who wishes to maintain his power must be prepared to act immorally when this becomes necessary."²⁸ The redoubtable staying-power of *The Prince* is to an inestimable degree owed to the exceptional openness of the text to a variety of interpretations. Though this may have enabled many to find in its pages the advice they most needed at the time they most needed it in pursuit of virtuous tasks of self-government, it has also been taken to reinforce the vicious complacency of tyrants. The studied ambiguity of its brilliant epigrams has enabled those words to decorate banners

²⁷ Walzer, "Emergency Ethics," 40.

²⁸ Niccolo Machiavelli, *The Prince*, trans. Russell Price (NY: Cambridge University Press, 1998), 54 – 55. In Chapter 41 of the *Discourses on the First Ten Books of Titus Livy*, Book III, we also find Machiavelli saying: "For when the safety of one's country wholly depends on the decision to be taken, no attention should be paid either to justice or injustice, to kindness or cruelty, or to its being praiseworthy or ignominious. On the contrary, every other consideration being set aside, that alternative should be wholeheartedly adopted which will save the life and preserve the freedom of one's country?" Niccolo Machiavelli, *The Discourses*, trans. Leslie Walker, S.J., (London: Penguin, 1970), 514.

hoisted above all manner of villainy.²⁹ Knowledge of this legacy of Machiavellian interpretations intensifies our own responsibilities as readers of Machiavelli, rather than lightening them. But fulfilling those responsibilities would take us well beyond our own ambitions here. As unfair as it might in some sense be to leave off with paraphrase in this instance, Walzer has a point in suggesting that, to the extent that the portrait is filled-in, to something like the same extent it thereby becomes less Machiavellian.

The significance of the Machiavellian teaching in the second section of “Political Action” is that Machiavelli never says what makes the “good man” who needs lessons in “how not to be good” good. As readers of Machiavelli, Walzer suggests we are left free to more or less fill in the blank. It does not matter how one comes to decide that something like murder or deceit is wrong. Any good politician will have already done so. The point is: whatever the source of their moral qualms, political actors need to realize that at times these qualms must be set aside.

In the fifth section of “Political Action” to which we will hereafter pay most careful attention, Machiavelli makes an encore as the spokesperson for what Walzer at this point calls the *neoclassical* position. “Neoclassicism” here denotes an emphasis on the necessity of prudentially favoring consequentialism over morality in all cases of political judgment. As consistent with the earlier gloss on Machiavelli, the neo-classical position is committed to the paradox of presupposing moral limits even though it endorses no particular set. Even though such standards are presumed to have force for

²⁹ To review only part of the record of only the twentieth century we might begin with: E.A. Rees, *Political Thought from Machiavelli to Stalin: Revolutionary Machiavellianism*. (NY: Palgrave Macmillan, 2004). And Joseph Femia, “Machiavelli and Italian Fascism,” *History of Political Thought* 25, no. 1 (2004): 1 – 15.

the good man to whom Machiavelli's discourse is directed, the main purpose of that discourse is to enjoin that man to prepare to set aside whatever moral norms he has internalized or the sake of the power and glory which attend successful defense of a republic. This paradox defines the neoclassical position on 'dirty hands' according to Walzer. And though this position also might be seen to comprise the backdrop for Walzer's analysis overall, it fails to satisfy him. Thus, he proceeds to consider two additional ways of taking up the problem.

Next Walzer turns to what he calls the "Protestant" view, which he derives from Max Weber's lecture on politics. This turns out to be a posture not of traditional faith so much a *tragic heroism*. And finally, Walzer's story comes to rest with what he calls the "Catholic" view, finding it best embodied by the violent radicals depicted in Camus's *The Just Assassins*.³⁰ Walzer does not suppress his own lingering dissatisfaction even by the conclusion of "Political Action." Conceding that each of the points-of-view he has traced probably captures an essential aspect of what is by its nature a multi-faceted phenomenon, Walzer frankly admits his own inability to "put together the compound view that might be wholly right."³¹ Nevertheless, having turned over three partial answers plucked from the canon, Walzer does call that he which he has ascribed to Camus "the most attractive."³² This view is recommended by its openness to what Walzer calls "casuistry."

³⁰ Stuart Gilbert's English translation of Camus' 1950 play *Les Justes* is published in *Caligula & Three Other Plays* (NY: Vintage Books, 1958), 233 – 302.

³¹ Walzer, "Political Action," 175.

³² *Ibid.*, 179.

In his most explicit revisit to the milieu of “Political Action,” fifteen years later, Walzer presents himself as leery of opening the door too wide to “utilitarian calculation,” and professes to favor “rights normality” over “the utilitarianism of extremity.” The danger such an opening would represent to Walzer is that, by giving too much ground to “the utilitarianism of extremity,” we will gradually allow this preference to close out other options, and thus be led over time to “imitate our worst enemies.”³³ By the time of his 1988 restatement, “Emergency Ethics,” Walzer takes pains to emphasize that “the human world is a world of limitation, and moral limits are never suspended.”

But there are moments when the rules can be and perhaps have to be overridden. They have to be overridden precisely because they have not been suspended. And overriding the rules leaves guilt behind, as a recognition of the enormity of what we have done and a commitment not to make our actions into an easy precedent for the future.³⁴

The main question: If, in the end, moral limits can indeed never be suspended, how can moments when they are “overridden” be distinguished from those in which they are simply ignored? “Morality is not negotiable. Innocence is inviolable,” Walzer declares near the beginning of “Emergency Ethics.”³⁵ But his argument is damaged by his contemplation of the possibility that, in certain situations, “morality itself” might be “devalued” – without saying more about what this would mean. Even the strictest Machiavellian Walzer can countenance “depends upon the general stability of the standards” and needs “reasons for his reluctance” to override them.³⁶ But the

³³ Ibid., 37, 40, 47.

³⁴ Michael Walzer, “Emergency Ethics,” in *Arguing About War* (New Haven: Yale University Press, 2006), 34.

³⁵ Ibid., 36.

³⁶ Ibid., 175; 166.

Machiavellian aspect of Walzer's project in "Political Action" exacerbates worries about its vagueness at such key points, insofar as it commits him to the proposition that it makes no difference where one's system of moral and restraints is acquired. For without an account which more clearly elaborates sources for the derivation of rights, speculation about a point where rights could legitimately be abrogated seems problematic at best. Walzer writes that "it is only by reflecting on the meaning of innocence and on the rights of the innocent that we can decide where in fact to stop."³⁷ But he never offers adequate clues as to where such reflection can begin.

Moreover, Walzer's decision to abruptly conclude his search for an answer to 'dirty hands' so close to his cursory introduction the notion of "casuistry" intensifies rather than resolving the challenges of his account. Patly defining "casuistry" as the fixing of "a determinate penalty for a determinate crime" in no way does justice to the complex meanings the term has inherited over time. Nor can the bare-bones formulation Walzer leaves us with satisfy our need to understand what Walzer needs the concept to do for his argument with adequate precision. Why Walzer expects readers to settle for his gesture of doing little more than tossing out the term "casuistry" before trailing off in his analysis is beyond mysterious. This abiding mystery leaves us with two alternatives to fill out Walzer's account in a manner in keeping with its spirit. One is to probe more deeply the source Walzer himself cites: Albert Camus. The other is to turn back to other sources for understanding "casuistry" available in uses of the term beyond whatever

³⁷ Ibid., 39.

sense Walzer can extract from a single reference to a literary he concedes might be found “a little bizarre.”³⁸

Obviously, it is by conscious design that the concept of “casuistry” is left, at best, in no more than skeletal form even by the end of “Political Action.” Walzer is surely at peace with the deliberately heterodox nature of his proposal to rehabilitate given the resounding ill repute in which the very term has, by common knowledge, languished for centuries. But Walzer’s plan to resurrect casuistry as the best available response to ‘dirty hands,’ if it is to be taken seriously at all, demands fleshing out by a more extended and historically informed discussion of the casuistic style of reasoning, both as an institution of religious moralizing and as a secularized ethical and legal practice, than, relying solely on the questionable assistance of Camus, Walzer himself begins to provide.³⁹

Preliminary to this investigation, it might be found that Walzer’s two initial “traditions of explanation” do not work so much at cross-purposes as he implies.

³⁸ Walzer, “Political Action,” 178.

³⁹ Stephen Toulmin and Albert Jonsen’s *The Abuse of Casuistry: A History of Moral Reasoning*. (Berkeley, CA: University of California Press, 1988) is by far the most impressive attempt to rehabilitate casuistry since Pascal.

III The Dilemma Deepened: Weber

The “Vocation Lectures” find Max Weber operating in a distinctly, if uncharacteristically Machiavellian mode – that is to say, giving advice. In “Politics as a Vocation,” in particular, Weber, speaking in Munich in 1919, recommends an orientation toward action to the youth of a nation riven by the deepest strife. To the extent that his conception of the rationality of power is instrumental, Weber is certainly not *anti-Machiavellian*. Political action is to be evaluated according to Weber in terms of “success.”⁴⁰ But the Walzer’s contrast between Weber’s position and the preceding sketch may be overdrawn. Machiavelli and Weber fundamentally agree in seeing morality as a set of pieties that must be promptly discarded by an effective leader at the right moment. And the ideal image of a beautiful political action for Weber himself is drawn from the correspondence of the Machiavelli who advises Vettori: “If you decide on war ... go to it like mad, for desperation often finds remedies which choice has been unable to discover.”⁴¹ Weber’s leader would seem, if anything, even more hard-hearted and prone to violence than Machiavelli’s Prince. Granted, to a much greater degree than Machiavelli, however, Weber seems haunted by absolutes, as he peers into “a polar night of icy darkness and harshness.”⁴² Moreover, Weber has arrived at a recognition of the hollowness of mere efficiency.

Despite his obsession with the necessity of a stout gaze into the abyss, the legitimacy of norms to guide decision remains a pressing concern for Weber -- ever the

⁴⁰ Max Weber, *The Vocation Lectures*, trans. Rodney Livingston, 84. (Indianapolis, IN: Hackett Publishing, 2004).

⁴¹ Machiavelli’s April 17, 1527 letter is mistakenly attributed by Weber to the *History of Florence*. Weber, *Ibid.*, 91. Machiavelli, *The Prince and Other Works*, trans. Allan Gilbert. (Chicago: Packard and Company, 1941), 270.

⁴² *Ibid.*, 93.

more so now that the illusion of transcendental support for any given set of norms has evaporated; “longing and waiting ... for new prophets and saviors ... is not enough.”⁴³ Someone must act. The Weberian leader must resolve to impose his will in a twilight realm in which metaphysical certainties persist under marks of erasure. “At this point we find ourselves caught up in a conflict of ultimate worldviews, and it falls to us to *choose* between them.”⁴⁴ To be a Machiavellian founder of a republic begins to seem a modest feat compared to the task of a modern leader as understood by Weber – for it is the latter’s charge to found a world-view.

Like the utilitarian, Weber cannot abide “an absolutist ethic” which “refuses to inquire about ‘consequences.’”⁴⁵ The politician is properly concerned with “the future and our responsibility for the future.”⁴⁶ Excavating the roots of the utilitarian premise, however, Weber references the “elder Mill” (this would be James, the father of John Stuart) with the added disclaimer: “whose philosophy I do not otherwise admire,” and observes that this grandfather of utilitarianism was already “right on this one point when he said that if you take pure experience as your starting point, you will end up in polytheism.”⁴⁷ Thus does the German sage put in the mouth of the patriarch of English ethics an acknowledgement of the radical relativism Weber spies at end of the line for consistent adherence to the bland nostrums of utilitarianism. This subversive interception and extrapolation from Mill’s inheritance is turned into an endorsement of Weber’s far

⁴³ Ibid., 31.

⁴⁴ Ibid., 79.

⁴⁵ Ibid., 83, 88.

⁴⁶ Ibid., 80.

⁴⁷ Ibid., 22.

greater pessimism about the morals of politics: there being left no alternative to the said “polytheism” – and, given Weber’s obvious agnosticism, we wonder if the cited theological category does not serve as a metaphorical euphemism for nihilism.

“Conscience” or “commitment” for Weber refer to nothing more than a personal god or a demon, and each individual has to decide for himself “which one is the devil and which the god for him.”⁴⁸ But for Weber, everyone who enters politics must share a point of view which has made peace “with power and violence as a means.” To this extent, “whoever becomes involved in politics ... has made a pact with satanic powers.”⁴⁹ If there is a “conscience” appropriate to *politics* as a vocation, that is, if any gods can be heard, none but a demon can be obeyed. “The genius, or the demon, of politics lives in an inner tension with the God of love as well as with the Christian God as institutionalized in the Christian churches.”⁵⁰

Violence is absolutely unavoidable in politics, Weber insists repeatedly --- at least as a latent threat upholding order. But the most violent political agent, he suggests, will be “the man who fights for his faith, whether religious or revolutionary.”⁵¹ Those transfixed by “a pseudoethical feeling of self-righteousness” who hypocritically “repudiate every action that makes use of morally suspect means,” but propose to usher in a reign of perfect justice on earth, “a situation in which *all* violence will have been destroyed,” eventually turn into “chiliastic prophets ” capable of inspiring even more extreme violence through the “apparatus” of their followers with the inevitable encounter

⁴⁸ Ibid., 23.

⁴⁹ Ibid., 86.

⁵⁰ Ibid., 90

⁵¹ Ibid., 89.

of worldly resistance to their other-worldly convictions.⁵² Weber proceeds to enumerate one Judeo-Christian maxim after another, only to unblushingly explain why it would need to be laid aside in the context of political action. The Bolsheviks and Spartacists are credited by Weber with more valid insight into the ethic of politics than the Sermon on the Mount, with its “unworldly imperatives.”⁵³ For example, the injunction of Matthew 19, 21: “resist not him that is evil with violence.” Lo, “the politician,” Weber unhesitatingly counters, “must abide by the opposite commandment: “You *shall* use force to resist evil, for otherwise you will be *responsible* for its running amok.”⁵⁴ The practical implications of Weber’s radically polytheistic ethic for politics are said (by Weber) to be such that “Machiavelli’s *Prince* is harmless in comparison.”⁵⁵

Thus, contrary to what Walzer’s “Protestant” appellation might connote, Weber elaborates at some length in both of his “Vocation” lectures a political ethic which can never be reconciled to any theodicy – unless it be that of the Hindu. Indeed, Weber explicitly derives the very notion of a “vocation” as he employs from the *dharma* of a caste as taught in the Vedas. Weber pulls from the *Bhagavad Gita* the nostrum that doing whatever work is necessary, even according to the duties of a warrior, “does not detract from religious salvation but contributes to it.”⁵⁶ But this superficially encouraging reference, likely offered to temporarily cushion the impact of Weber’s uncompromising

⁵² Ibid., 89, 85.

⁵³ Ibid., 81.

⁵⁴ Ibid., 82.

⁵⁵ Ibid., 88.

⁵⁶ Ibid., 87.

heresies on his audience, seems clearly more than this detached surveyor of all religious phenomena can himself believe.

No traditional martyrdom is in the offing for the Weberian leader as he rescues a disenchanted world. His salvific deed is precisely *not* redeemed by its consequences. Despite what may be the tremendous benefits of his actions, they remain damnable for him. There is no way around this. And, what is worse, he knows this going in. As Walzer points out, “His choices are hard and painful, and he pays the price not only while making them but forever after.”⁵⁷ Machiavelli could profess to Vettori that “I love my native land more than my soul,” this could be read as simply a particularly exuberant effusion of civic humanist pride.⁵⁸ But when Weber describes his leader as having made “a satanic pact” with a “demon of politics” who “lives in an inner tension with the God of love,” clearly his leader is striking some bargains that are unlikely to leave his rest undisturbed. The compromises made by the Weberian leader are completely Faustian – if indeed heroic, that is, only tragically so.

In the final paragraphs of Weber’s address a tonal shift becomes palpable. He who would be a leader in the world of Weber must also be *a hero* who can “arm themselves with that staunchness of heart that refuses to be daunted by the collapse of all their hopes.”⁵⁹ Even while reaching out to “to grasp the spokes of the wheel of history,” the Weberian leader must maintain “an inner calm and composure,” and “forge a unity

⁵⁷ Walzer, “Political Action,” 177.

⁵⁸ Machiavelli, “Letter,” 270.

⁵⁹ Weber, “Politics as a Vocation,” 93.

between hot passion and a cool sense of proportion.”⁶⁰ Above all, Weber’s heroic leader must remain clear-eyed as “to the tragedy in which all action is ensnared, political action above all.”⁶¹ At this emotional climax of the lecture, it seems the lonely plight of the dutiful Weberian leader has earned a measure of pity. Weber divulges his personal admiration for those who accept a political vocation, mindful of its demands, without suffering “an inner collapse.” At the moment of accepting responsibility for the consequences of his actions, and bearing this responsibility “with his entire soul,” Weber asserts that such “authentically human” courage “cannot fail to move us.”⁶²

A little more Weberian anguish would not ill-suit the Machiavellian magistrate for Walzer’s sensibility; the poignant ethical “self-awareness” on the part of leaders Weber is found to evoke is said by Walzer to be “obviously of great value”⁶³ But it is not enough. In fact, insofar as Machiavelli ultimately relies solely on the personal prudence of leaders, between he and Weber is a distinction without a real difference. That Machiavelli’s advice has been subject to abuse hardly seems to require demonstration. Walzer does not concur that “prudential control” can substitute for “explicit reference back to the moral code.”⁶⁴ And Weber adds little more than that the leader will “scrutinize the realities of life ruthlessly” and “measure up to them inwardly.”⁶⁵ Thus, Weber’s “suffering servant,” for all we are able to know, may prove a ruthless Ahab-like obsessive, who has real trouble distinguishing to objects of personal zeal from the goals

⁶⁰ Ibid, 91-92, 76-77.

⁶¹ Ibid., 79

⁶² Ibid., 78, 92.

⁶³ Ibid., 177.

⁶⁴ Walzer, “Political Action,” 179.

⁶⁵ Ibid., 91.

of common welfare. By drawing the curtain on his tragic hero at a peak of suspense on the scene of his protagonist's agonized brooding in the lonely citadel of power, Weber's own portrait proves leaves far too many questions in the minds of his audience. Walzer remains uncomfortable counting solely on the Faustian probity of the leader in moments of crisis.

What Walzer finds unsatisfactory about both the heroic Weberian approach to 'dirty hands' and the Machiavellian approach is that they leave the dirty-handed leader himself to "fix the price" for his own wrongdoing.⁶⁶ In sum, Machiavelli's Prince "has no inwardness," while Weber's tragic hero has too little besides inwardness. The one is content to "bask in his glory," whereas the other leaves behind "a record of his anguish."⁶⁷ Given he realizes that the nobility of his leader's intentions is not all that matters, but that his effectiveness and sense of proportion in adjusting often unpalatable means to whatever ends necessity requires are at least equally vital, Walzer's analysis finds a need for some way notion such proportion can be measured. Neither the "Protestant" nor the "neoclassical" tradition can, to Walzer's satisfaction, account for a simultaneous recognition by the leader who commits 'dirty hands' of the rule he has violated. Thus incapable of resting content with the abeyance of rules, Walzer's thinking about 'dirty hands' in "Political Action" circles back to the essential question: to what rule is the exception in 'dirty hands' decisions an exception? Walzer proceeds to bear down on the tricky distinction so critical to his argument between "overriding" and all

⁶⁶ Ibid., 177.

⁶⁷ Ibid., 176.

other forms of violation. His dissatisfaction with the other two models for dealing with 'dirty hands' leads Walzer, by the end of "Political Action," into speculation about adjudicating 'dirty hands,' and here is where he finds "casuistry" the best alternative.

IV The Dilemma Refused: Camus

Enter Albert Camus stage left. And there does he loiter, dead center in Walzer's argument. Arriving in trench-coated garb, Camus would at once seem the most aptly attired for our stake-out of blind alleys. But Walzer's election, from among centuries of eligible moralists, of Albert Camus as his exclusive representative of casuistry and the "Catholic" perspective seems doubly odd, in that Camus was neither a practicing Catholic nor in any obvious way inclined to what might be conventionally known as "casuistry." If the main sense of "casuistry" upon which Walzer relies turns centrally on excuse-making, it is hard to imagine a moralist with less patience for excuses than Camus. "When excuses are made," Camus asks, "are they not also incalculable errors since they may justify the very crimes we want to fight?"⁶⁸ Apart from the curiosity of even invoking the name of Camus in relation to the project of "Political Action," Walzer's highly selective reading of the single work of Camus he cites is easily the most eccentric component of his essay as a whole. And yet Walzer merely reiterates the same citation, with no greater elaboration, fifteen years later in "Emergency Ethics," adducing no further analogies at the pivotal juncture.⁶⁹

Walzer states the advantage of the "casuistry" he attributes to Camus as its ability to require "us at least to imagine a punishment or a penance that fits the crime and so to examine more closely the nature of the crime."⁷⁰ Walzer's own examination of the nature of the crime committed in *Les Justes* itself, however, is cursory at best. Regarding

⁶⁸ Camus, "Preface to Algerian Reports," in *Resistance, Rebellion and Death*, trans. Justin O'Brien. (NY: Vintage International, 1960) 114.

⁶⁹ Walzer, "Political Action," 178. Walzer, "Emergency Ethics," 45.

⁷⁰ Walzer, "Political Action," 179.

Les Justes, Walzer only quotes the preface, but takes its sublime mockery at face value. But it is Walzer's assimilation of the attitude of Hoerderer in *Les Mains sales* with that of Camus himself which constitutes the greatest interpretive atrocity. To be sure, parallels between the ideas of Hoerderer (and to some degree Sartre himself) and those of a character like Stepan in *Les Justes* are very much present. Indeed, this is precisely the point. But Walzer's seeming failure to notice that Camus' play is a scathing riposte to the Stalinist casuistry of Sartre and his set, growing contempt for which finally severed the famous bond of friendship between the playwrights, is nearly criminal.⁷¹

Fatigued by the polemics and counter-polemics of the post-war French intelligentsia, Camus peeled back behind Marxism to the radicalism of a different era, focusing his studies on the Russian nineteenth century. But this search for historical analogies and antecedents was not antiquarian in intent.⁷² Sergei Nechaev "carried the Utilitarian component of 'rational egoism' to its farthest extreme by advocating a total Machiavellianism – on which included, not only deception and falsity against one's enemies, but also against friends and allies if this became necessary for the cause."⁷³ Dostoevsky's *Demons* fictionalized a murder committed by a young university student in 1869 under the influence of Nechaev. Camus admired Dostoyevsky's novel enough to author his own stage adaptation in 1959. Camus quotes Bakunin's take on Nechaev in

⁷¹ Though by 1949 their amity had already reached its definitive rupture, de Beauvoir reports in her memoirs that a clearly fatigued Camus summoned the graciousness to warmly greet Sartre, in the spirit of old times, when the playwright ran into his former mentor in the lobby of the theatre in which what turned out to be Camus' final production had just premiered. A still more awkward surprise arrived moments later when a woman approached Camus, oblivious in her enthusiasm that Sartre was within earshot, to report that she much preferred *Les Justes* to *Les Mains sales*. Smirking back in the direction of Sartre, Camus was quick to wryly seize on the potential for a *coup de grace*: "Two birds with one stone," he quipped. The satirical attack found its target, theatrically and also in the flesh, with lacerating accuracy. Herbert R. Lottman, *Albert Camus: A Biography* (NY: Doubleday, 1979), 475.

⁷² Most fully dissected in Chapter 3 of *L'Homme Révolté*. Albert Camus, *The Rebel*, trans. Anthony Bower (London: Hamish Hamilton, 1953), 78-215.

⁷³ Joseph Frank, "Introduction," Fyodor Dostoevsky, *Demons*, trans. Richard Pevear and Larissa Volokhosky (NY: Knopf, 1994), xv.

The Rebel: “He has gradually come to the conclusion that to found an indestructible society, it must be based on the politics of Machiavelli and the methods of the Jesuits: for the body, only violence, for the soul, deception.”⁷⁴ Very much on the model of *Demons*, *Les Justes* lightly fictionalizes a factual episode from Russian history, the story of the assassination of Grand Duke Sergei Alexandrovitch. Camus was taken by the narrative of this event in the memoirs of one of the members of the combat wing of the Russian Socialist party who helped carry it out.⁷⁵ So closely did Camus follow the first-person account of this co-conspirator that he even kept the name of the actual bomb-thrower, Yanek Kalieyav.

The main characters of *Les Justes* come across as somewhat cloddish amateurs in the mold of the wily and charismatic party boss Hoerderer of *Les Mains sales*. Much of the drama’s rising arc consists of pedantic speechifying exchanged by the members of a cell as they strive to stoke each other’s courage to carry out an assassination they see as essential to the social change they are determined to bring about -- regardless of how many innocents thereby perish: “Not until the day comes when we stop sentimentalizing about children will the revolution triumph, and we be masters of the world.”⁷⁶ As the curtain rises on the second act, a shamed initiate returns from his failure to carry out his assigned part on a fateful day. He could not bring himself to throw the bomb at the Grand Duke as planned, because he noticed the Grand Duchess and her niece and nephew in his company. Kaliayev is, to this point, a failed revolutionary, because he is still in love with

⁷⁴ Albert Camus, *The Rebel*, trans. Anthony Bower (London: Hamish Hamilton, 1953), 163.

⁷⁵ Boris Savinkov *Memoirs of a Terrorist*, trans. Joseph Shaplen (New York, A. & C. Boni, 1931).

⁷⁶ Camus, *Les Justes*, 256.

things like life, beauty and happiness. He sees his fight to overthrow despotism as a “revolution for the sake of life,” intended to extend the enjoyment of such values to all mankind.⁷⁷

Stepan, his more doctrinaire comrade, answers Kaliayev that the true revolutionary must rank justice higher than life, because, by his acts of destruction he is building up “a world in which there will be no more killing,” and by his criminality he is making it possible that “at last the innocent, and only they, will inherit the earth.”⁷⁸ Stepan urges Kaliayev to shut his eyes to innocence – “and to shut others’ eyes to it, for the time being – so that one day it may have a world-wide meaning.”⁷⁹ A third comrade, Dora, wavers even more than Kaliayev, wondering if “Even in destruction there’s a right way and a wrong way – and there are limits.”⁸⁰ Camus’ message relies on the darkly comic hollowness and self-deception of these justifications, not their self-regarding valor. Many lines of the play might lend themselves to being declaimed with the inflections of arch melodrama.

As our story resumes: initially unwilling to follow through on his assigned task in the assassination, due to the coincident danger he spots just as he is about to do so to three innocent bystanders, two of them children, Kaliayev, after being subjected to the recriminations of his cohort for what they see as his lack of resolve, and much pondering of his mission, at last summons the courage to kill the Grand Duke -- and succeeds in doing so on a second outing. He is then arrested and sent to prison. While in prison,

⁷⁷ Ibid., 259.

⁷⁸ Ibid., 244-45.

⁷⁹ Ibid., 259.

⁸⁰ Ibid., 258.

Kaliayev is visited by Skouratov, the chief of police. Skouratov applies to Kaliayev, psychological pressure from successive angles. No one questions that Kaliayev killed the Grand Duke. But Skouratov offers a pardon to Kaliayev – on the sole condition that he will confess that he committed an act of “murder,” not an act of “revolution.” Since they are talking about the same thing, Skouratov offers to give Kaliayev back his life if only he will cooperate with this small piece of casuistry. What is the point of hanging on something which is “just a word about which one might wrangle endlessly?” the interrogator inquires, sounding reasonable enough.⁸¹ The moral reality of killing another person will remain unchanged; the proposal is to simply call murder what it is.

But Kaliayev refuses the police chief’s offer, proudly clinging to moral purity according to the logic of his own radicalism. Only revolution is justified murder, according to the steadfast convictions of Kaliayev, because only parties and ideas have the right to kill, not individuals. Kaliayev stubbornly adheres to this thesis as the only possible vindication available to him, refusing the terms of Skouratov’s pardon, and even withstanding a subsequent threat that he will be posthumously slandered to his comrades as a traitor despite the true fidelity about which they will be kept in the dark as retaliation. In short, despite the life-saving mercy he showed three strangers at a critical moment, Kaliayev remains the prisoner of a death-dealing instrumental morality at the grim conclusion of *Les Justes*, and receives no mercy from his jailers or himself ... finally heading willingly and defiantly to his own death. Suddenly liberated from her previous reservations by news of Kaliayev’s death, Dora, for her part, is catapulted into terrorist

⁸¹ Ibid., 282.

ecstasy, proclaiming on behalf of her fellow revolutionaries “the day of our justification.” Kaliayev’s calm march to the scaffold was all it took, says Dora, “to plunge him back into the carefree joy of childhood.”⁸²

The playwright hastens to clear up misunderstandings he feels many have brought to the play in his “Author’s Preface.” It would be incautious, however, to receive these sly didactic notes as if they are in fact as straightforwardly helpful as the artist pretends – rather than constituting his seizure of one final opportunity to twist the knife of provocation. There are limits to action, Camus declares flatly. But “our world today seems loathsome for the reason that it is made by men who grant themselves the right to go beyond those limits.” “Justice,” states Camus, “serves as an alibi, throughout the world, for the assassins of all justice.” Action can be “good and just” according to Camus, when it either “recognizes those limits,” or, “if it must go beyond them, at least accepts death.” This would suggest that, like Dora, Camus himself sees something redemptive in Kaliayev’s death – though for a different reason. Taking Camus’ analysis literally, suicide compensates for murder; the problem is those who go beyond the limit which prohibits killing “without dying themselves.”⁸³

But the action of Camus’ play in no way bears out the soothing homily of his ventriloquism as stage manager. Kaliayev’s death is tragic. Only in the minds of the deluded (like the grief-stricken Dora) does it miraculously usher in the wordly reign of justice and innocence they and their confederates would sacrifice anything – and kill

⁸²Ibid., 301

⁸³ Albert Camus, “Author’s Preface,” *Les Justes*, x.

anyone – to achieve. The core mistake of Walzer’s interpretation of *Les Justes* is to take the ironic sentence Camus pronounces against those who, in their own minds are “just assassins” with a earnestness that is deadly twice over.

Indeed, the irony of Camus’ *The Just Assassins* is embedded in the very title of the work. Such admiration as Camus harbors for his characters is, in all candor, clearly based on not on justice, but his well-known ideal of absurdity. “The absurd man thus catches sight of a burning and frigid, transparent and limited universe in which nothing is possible but everything is given, and beyond which all is collapse and nothingness. He can then decide to accept such a universe and draw from it his strength, his refusal to hope, and the unyielding evidence of a life without consolation.”⁸⁴

Of the so-called heroes of *The Just Assassins*, Walzer says only that “having killed, they are prepared to die – *and will die.*” “Dying,” he continues, “they need to make no excuses.” Kaliayev needs no excuses because, by the astonishingly superficial terms of Walzer’s reading, his self-willed death is an adequate “self-punishment and expiation.”⁸⁵ So falls the curtain. But can anyone in the audience really be satisfied with Walzer’s conclusion? Resting a commendation of casuistry on the outcome of Camus’ play is an exceedingly risky gambit for Walzer’s argument.

While a certain forlorn grandeur might be rescued from the plight of Kaliayev, this verdict could count, at most, as a kind of poetic justice. But this is not what Walzer said he was after. Rather, it was, again, the meeting out of “a determinate penalty” for “a

⁸⁴ Albert Camus, “The Myth of Sisyphus” in *The Myth of Sisyphus and Other Essays*, trans. Justin O’Brien (NY: Random House, 1955), 60.

⁸⁵ *Ibid.*, 178.

determinate offense.” “Casuistry” is linked, both historically and in Walzer’s explicit use of the term, to “questions of degree.”⁸⁶ It is not clear where such questions could find an opening in actions as unqualified as those of Kaliayev. Assassination is infamously the most indeterminate of crimes, given its usually far-reaching and always unforeseeable long-term costs. And though the act of suicide is certainly not uncommonly regarded as a self-inflicted punishment, given, from one point of view, its metaphysical finality, and, from another, its social evasiveness, it can pay for nothing – precisely insofar as it can be willed, by tortured souls, for practically anything. In the extraordinary circumstances faced by Kaliayev, his death sentence does not become less unjust at the point at which he decides to cooperate with it. Common sense would contradict the ironic judgment of Camus which Walzer accepts as if in earnest: the deliberate takers of innocent life do not undo their wrong by taking their own, but only multiply it.

Is the redemption of casuistry, with promised application to high-stakes realms of foreign and domestic policy in modern democracies, so easily obtained by valorizing the madness of a suicidal assassin? At a minimum, although there may be some other interpretive logic whereby Walzer can rehabilitate his argument, it would require a much closer reading of *Les Justes* that he offers in “Political Action.” To validate the slipperiness of casuistry in addressing moral dilemma in politics requires more solid footing than the vortex of this subtle and arresting work of literature can provide Walzer all by itself. If it is possible to find a casuistry which holds the “sensible doctrine” Walzer sees in it, further excavation is in order.

⁸⁶ *Ibid.*, 179.

For in a certain light, it might be difficult to imagine a less auspicious basis for a revived justification of means by ends than Camus' *Les Justes*. The fate of the lead characters in these works is to realize too late the vanity of their plans, and to come to understand that if the means they have so agonizingly chosen is permitted – it is only insofar as the end on which they have staked everything is void.

Explaining his refusal to kill the Arch Duke as planned, Kaliayev asserts:

Killing children is a crime against a man's honor. And if one day the revolution things fit to break with honor, well, I'm through with the revolution. If you decide that I must do it, well and good; I will go to the theatre when they're due to come out – but I'll fling myself under the horses' feet.⁸⁷

But his comrade Stepan heaps scorn on Kaliayev's principles. "It's killing for nothing, sometimes, not to kill enough," he reasons according to a revolutionary casuistry of magnificent concision. "Squeamishness is out of place in work like ours. We're murderers, and we have chosen to be murderers," he states. "Honor," Stepan insists, is "a luxury reserved for people who have carriages-and-pairs." "No," comes the reply from Kaliayev, honor is "the one wealth left to a poor man."

If the protagonist of *Les Justes* experiences a redemptive moment, it is not his melodramatic demise in Act IV – in which his final refusals – to publicly repent, to call murder by its name, to betray his comrades or renounce the dogma to which they are frantically devoted – are all equally futile elements of his downfall. Kaliayev's refusal to kill the innocents in Act II is his sole moment of clarity; the fleeting realization of a non-consequentialist scheme of value.

⁸⁷ Camus, *Les Justes*, 260-61.

Camus himself, speaking as a public intellectual of his time, found occasion to condemn Arab terrorism in the form in which he witnessed it. But he also inveighed against both torture and the death penalty as responses to terror as unqualified abominations, and precisely in terms of an “honor” which renounced all consequentialism:

Torture has perhaps saved some, at the expense of honor, by uncovering thirty bombs, but at the same time it aroused fifty new terrorists who, operating in some other way and in another place, will cause death of even more innocent people. Even when accepted in the interest of realism and efficacy, such a flouting of honor serves no purpose but to degrade our country in her own eyes and abroad.⁸⁸

Much more recently, Jean Bethke Elshtain’s blithely attempts to appropriate the aura of Albert Camus in support of her own *jihad*, taking apparent encouragement from Walzer’s invocations of his name in “Political Action,” and seeks to enlist him in a war in which such passages strongly suggest he would find no common cause. Though all the manifestos of this learned political theorist are worthy of careful re-examination, even apart from their plentiful references to both Walzer and Camus, our reading of them might be chastened at its outset by Camus’ own stated refusal to engage in “a casuistry of blood,” a pastime in which he insisted “an intellectual cannot become involved ... unless he takes up arms himself.”⁸⁹

⁸⁸ Camus, “Algerian Reports,” in *Resistance, Rebellion and Death*, 114-15.

⁸⁹ *Ibid.*, 116.

V The Dilemma Disguised: Casuistry

Proceeding with Walzer through his three models for explaining ‘dirty hands,’ it at first seems that Weber might provide a way for the leader to conceive her own mission in a manner less two-dimensional than can be derived by relying on Machiavelli alone. “A politician with dirty hands needs a soul,” Walzer observes, “and it is best for us all if he has some hope of personal salvation, however that is conceived.”⁹⁰ Although a more thorough reception of Weber’s counsel in “Politics as a Vocation,” immensely complicates the paraphrase Walzer places in Weber’s mouth, it is impossible to approach “Political Action” in its initial presentation of ‘dirty hands’ from any vantage without taking its own unique employment of religious categories seriously. Walzer makes repeated reference to what he takes to be the politically salutary effects of moral guilt, and indeed seems to commit to the view that some capacity for this condition is an essential accompaniment for an adequate reckoning with the ‘dirty hands’ phenomenon. And though he seems deliberately nonchalant about associating this guilt with a variety of perspectives equally capable of producing it in the aftermath of a ‘dirty hands’ crisis (i.e., “however that is conceived”) the echoes of religious worldviews certainly reverberate throughout Walzer’s essay.

What Walzer states to most admire in the “Catholic” view is that dirty handed politicians pay “a determinate penalty” for a determinate crime.⁹¹ But Walzer’s appreciation for corollaries of what he calls “casuistry” is not simply political as opposed

⁹⁰ Walzer, “Political Action,” 178.

⁹¹ Walzer, “Political Action,” 178.

to ethical, because he clearly covets from religion the ability to enforce morality other than by the implements of statutory law. As a good Machiavellian, Walzer seems to presuppose the ability of the good politician who knows how to be bad to subvert the limitations of the constitutional state in service to his noble ends. “Moral rules are not usually enforced against the sort of actor I am considering, largely because he acts in an official capacity.” Thus, Walzer resigns himself to the conclusion that for the sort of rule-breaker he is writing about, “There seems no way to establish or enforce the punishment. Short of the priest and the confessional, there are no authorities to whom we might entrust the task.”⁹² Such statements should alert us to the merits of attempting a reconstruction of Walzer’s argument by probing the history of moral discourse in Western religious history in a way which does not leave his whole invocation of “casuistry” resting on the unsuitably abyssal ground of Camus’ *Les Justes*.

And indeed, the long half-buried tradition known as “casuistry,” if it can be recuperated at all, surely demands a genealogy stretching far before Camus – to the extent, here contested, that it can be said to culminate in his work at all. Walzer touches down in “Political Action” closest to this story’s point of origin in a reference he makes to Augustine’s “melancholy soldier.” The implied footnote is to Chapter 7 of Book XIX of the *City of God*. Even in a necessary war, Augustine states there, a wise man called to fight “reflects with sorrow upon these evils so great, so horrid, and so savage,” and must confess “that he is miserable” – making him for Walzer an ancient model of the

⁹² Walzer, “Political Action,” 179.

conscientious agent who does knowingly does wrong in order to do good.⁹³ Walzer goes on to speculate that “Augustine did not believe that it was wrong to kill in a just war, just sad. . . . But he might have thought it wrong to torture in a just war.”⁹⁴

Walzer’s statement in this connection is misleading on two counts. For one, Walzer stops short of mentioning that for Augustine it might not be wrong even to kill in an unjust war.⁹⁵ The second half of Walzer’s statement (“he might have thought it wrong to torture in a just war”) conveys another questionable interpretation of the primary texts. Though never addressing the wrongfulness of torture in war, Augustine did at some length provide the same cover of sanctification through melancholy for someone who tortures even those whom he knows to be innocent in the routine course of meting out the rather paltry fifth century version of due process. In the chapter of *City of God* just preceding the one to which Walzer makes reference, Augustine zooms in on a man who “hates the necessity of his own actions . . . as a mark of human wretchedness.” This describes the predicament of a typical judge in the courts of Augustine’s times, as he describes it. Not only may the wise judge find it his job to torture “innocent witnesses in a case which is no concern of theirs.” He must regularly face another sort of calamity to be even more loudly bewailed (though accepted as necessary and unhesitatingly

⁹³ Augustine, *Political Writings*, trans Michael W. Tkacz and Douglas Kries. (Indianapolis, IN: Hackett, 1994), 149.

⁹⁴ Walzer, “Political Action,” 167.

⁹⁵ In another work, *Contra Faustum Manichaen*, anticipating the forms of moral reasoning in the Church which come to make innovative use of the logic of probability in coming centuries, Augustine bases his ruling about the morality of the soldier who kills on behalf of an ungodly king on the grounds that “what he is commanded to do is not contrary to the sure precepts of God, or else it is not sure whether it is or not.” Augustine argues that the larger question of the justice or injustice of a war as between states is not determinative of the rightfulness of an individual soldier’s actions. Even a just man, Augustine contends, can kill under orders from “a human king who is sacrilegious” for the sake of civic order – or, in other words, in the course of performing the obligations of his secular vocation.⁹⁵ In contrast with Chapter 7 of *City of God*, this statement of Augustine begins to make remorse seem a more variable condition. Augustine, “Against Faustus the Manichaen XXII, 73-79,” *Political Writings*, trans Michael W. Tkacz and Douglas Kries. (Indianapolis, IN: Hackett, 1994), 223.

performed): torturing a person accused in the very attempt to vindicate the accused, making this individual suffer “for a doubtful crime, a punishment about which there is no shadow of doubt, and not because he is discovered to have committed it, but because it is not certain that he did not commit it.” Such situations make inevitable

the fact that the judge tortures the accused for the sole purpose of avoiding the execution, in ignorance, of an innocent man; while his pitiable lack of knowledge leads him to put to death, tortured and innocent, the very person whom he had tortured to avoid putting the innocent to death. Now if this accused has followed the wisdom of our philosopher friends in choosing to escape from this life rather than endure those tortures any longer, he confesses to a crime he has not committed. Then after his condemnation and execution the judge still does not know whether it was a guilty or an innocent person he has executed, after torturing him to avoid executing the innocent in general.

Augustine can only pine that if only “it were possible,” the personal agony the magistrate feels at the double-bind of this loophole in the reigning systems of legal inquiry would be “washed away by floods of tears.”⁹⁶ But of course, it is not possible for him to withhold any of the physical agony he must apply to the accused; all the torturing and executing Christian judge can do is pray, grit his teeth, and proceed. In this sense, he does offer one of the earliest exemplars for the use of anguished hand-wringing and fretful brooding as the recommended palliative for the many situations of ‘dirty hands,’ where “doing right” will mean a political agent “knows he is doing wrong.”⁹⁷ Thus might Augustine’s weeping judge, more than the melancholy soldier Walzer cites instead, embody the original exemplar for the leader with ‘dirty hands.’

“From its earliest days,” as Peter Sloterdijk recounts, “the message of salvation has been accompanied by an escort of threats predicting the worst for unbelievers. Certainly the gospel speaks of wanting to bring blessings to all sides; but Christian

⁹⁶ Augustine, Book XIX, Chapter 6, *The City of God*, trans. Henry Bettenson (London: Penguin Books, 1972), 859-860.

⁹⁷ Walzer, “Political Action,” 166.

militantism has wished the curse of heaven upon the unconverted from its inception.”⁹⁸ Sloterdijk places particular blame for the sharpest downturn in these developments on the “unflinching theological absolutism” of Augustine, holding “this most influential of all the church fathers” responsible for “the most unfathomable system of terror in the history of religion.”⁹⁹ In his desperation to resist Roman cruelty, Augustine, explains Sloterdijk, overshot the mark, and “inflated the diabolical aspect of God to the point of sacred terrorism.” An epoch of bloodshed and woe through religious wars and persecutions was set in motion by Augustine, explains Sloterdijk: “Because metaphysical terror inevitably translates into psychological, and ultimately also physical, terror, Augustine’s ungracious doctrine of grace contributed to raising the level of cruelty in the Christianized word through the gospel, rather than lowering it.”¹⁰⁰ Lisa Silverman well describes the integral connection between this implacable logic of the legal and the theological doctrine of original sin Augustine did so much to promote: “criminal procedure implied that only by bypassing the will, by eliciting testimony that is not willed, that is not the product of human intent, could pure truth be achieved. Judicial torture therefore sought not only verbal testimony but also bodily evidence that escaped the willful control of the self.”¹⁰¹

As referring to a particular set of techniques, “casuistry,” often misused, could be regarded as an umbrella term for several rhetorical devices. Many dictionaries now simply list “sophistry” as a synonym – though this is certainly a term worthy of an independent etymology. Nevertheless, association with terminological sleight-of-hand,

⁹⁸ Peter Sloterdijk. *God’s Zeal: The Battle of the Three Monotheisms*, trans. Wieland Hoban. (Cambridge: Polity Press, 2009), 58.

⁹⁹ *Ibid.*, 60.

¹⁰⁰ *Ibid.*, 61-62.

¹⁰¹ Lisa Silverman, *Tortured Subjects: Pain, Truth and The Body in Modern France* (Chicago: University of Chicago Press, 2001), 9.

technical parsing, and superficial distinctions enabling misleading definitions seems fair. Generally regarded as enjoying its heyday from the Fourth Lateran Council in 1215 to the Second Vatican Council (1962 – 1965), the roots of casuistry actually go back further. Biblical scholar Albrecht Alt traces casuistry to a distinction essential to comprehension of the law of the ancient Israelites.¹⁰² In contrast to the style of *apodictic* law, which “suggests an unconditional, categorical assertion of right and wrong,” *casuistic* law as found in Hebrew scripture, according to Alt, “defines a specific case, distinguishes it carefully from similar cases, and stipulates the legal consequences.”¹⁰³

In founding the Society of Jesus, the first religious order of Catholic priests constituted as a military organization, Ignatius of Loyola asserted the necessity of accepting the maxim that “What seems to me white, I will believe black if the hierarchical Church so defines it” as an Archimedean point for his organizing mission, and presaged the heyday of casuistry properly speaking.¹⁰⁴ In the hands of the early disciples of Ignatius, casuistry is valued as a means for mitigating obvious evils by measuring their distance from a posited absolute crime. “Heresy” in the sixteenth century included as a charge more than wrong beliefs, and though heresies may never have brought death and destruction to innocents in the empirical terms in which we now measure such things, their perpetrators were viewed by the clerics who pursued and questioned them as responsible for a dreaded and slippery contagion which did endanger

¹⁰² Albrecht Alt. “The Origins of Israelite Law,” in *Essays on Old Testament History and Religion*, trans. R. A. Wilson (Oxford: Basil Blackwell, 1966), 79 – 132. And the genealogy need not stop here. Alt ultimately decides that the casuistic dimension of Hebrew law betrays the influence of indigenous cultures of the Fertile Crescent picked up after resettlement in Canaan.

¹⁰³ Dale Patrick. *Old Testament Law* (Atlanta: John Knox Press, 1985), 21.

¹⁰⁴ from “Rule 13,” Ignatius Loyola, “Rules for Thinking With The Church,” in John C. Olin. *The Catholic Reformation: Savonarola to Ignatius Loyola, Reform in the Church, 1495 – 1540*. (NY: Harper & Row, 1969), 210.

the whole community, not just temporally, of course, but eternally. The Jesuits eventually realized that the scale and complexity, not to mention the stakes, of the war they had undertaken required them to become political, in a way no religious order had been before, and to appeal to secular authorities to aid them in their fight, not for religious reasons, but for the good of the commonwealth. “Heresy in other words was not merely a sin, but a crime with profound political implications, and therefore there was as good (or better) reason for punishing heretics as for punishing murderers, brigands, or forgers.”¹⁰⁵

The origins of modern casuistry lurk in a particularly fertile period in Western political history – that which might be said to mark the transition from the period conventionally described as *medieval* to what we know as *modernity*. Walzer resurrects this term without inspecting its heavy historical baggage the actual historical proximity of torture and casuistry as related cultural phenomena goes apparently unnoticed. The significance of this omission is to elide the fact that fires lit at the feet of pyres to which victims of torture were bound gave rise in time to the smoke of casuistry as well. In bringing back casuistry as applied -- in the second of the two main illustrations provided in “Political Action” -- to torture, Walzer might have recalled that these practices -- one physical and psychological, the other rhetorical and psychological, both religious -- lay cheek by jowl, or, as it were, tongue by coals, on the same continent in the same culture in the same centuries.

¹⁰⁵ Harro Höpfl. *Jesuit Political Thought: The Society of Jesus and the State, c. 1540-1630*. (Cambridge: Cambridge University Press, 2004), 83.

Casuistry has always taken on the hard cases – like whether one could utter a false confession of being a witch to escape excruciating pains of torture without sending one’s soul straight to hell. At precisely the point that it is linked to torture, casuistry also plants roots for the modern right against self-incrimination, a concept slowly reeled in from the dungeons the Inquisition.¹⁰⁶ At this intersection, forming a chord of mercy to cast down to rescue individual penitents languishing in pits of mortal pain, the Jesuits crafted and promoted the ingenious doctrine of “mental reservation.” This doctrine moved down the bar for veracity under interrogation. It rationalized an opening for those being subjected to excruciating pains of torture to make a false confession (otherwise to have counted as a mortal sin against oneself).

In other words, among their other excellent cultural accomplishments, the Jesuits squared the tangled circle of innocence, torture and truth which had left Augustine’s wise judge performing his duty in a “flood of tears,” bemoaning while he does so the “wretchedness of man” -- but embracing his cruelty as an ineluctable necessity. In Walzer’s revisionist appropriation of casuistry, however, its powers actually serve to close off an escape from torture, embroidering a moral shield for interrogators instead, by suggesting how public officials who give the okay to torture can be protected from excessive blame. Granted, this move also is not without precedent: After popularizing the arts of casuistry, the Jesuits established themselves as the confessors of choice for French royalty; this did less, over time, to enhance their popularity than to exacerbate their ignominy.

¹⁰⁶They might refer to: Sven Knebel, “Casuistry and the Early Modern Paradigm Shift in the Notion of Charity,” *Moral Philosophy on the Threshold of Modernity*, eds. Jill Kraye and Risto Saarinen (Dordrecht, the Netherlands: Springer, 2005), 133 – 139.

In terms of their ethical philosophies, however, casuistic tools were initially important to the Jesuits and their allies less in order to rationalize their methods of combating heretics and infidels than to help relieve the pressure of some of the clergy's normal sacerdotal duties. Casuistry generated excuses which helped pastors adjust the magnitude of lesser sins which, judged from an overly rigorous perspective, could sow disunity and discouragement among the ranks of the faithful. By skillfully lowering the bar for repentance and reunion, casuistry prevented a needless preoccupation with minor personal sin which enabled stronger solidarity in cleansing external redoubts of the foe. Theologically, the Jesuits spliced together a missionary dedication to absolute justice and complete orthodoxy with a tolerant appreciation for *degrees* of individual culpability. This movement responded to the pressures of excessive moral rigor, even though it also in time became a cause of scandal within the Church. Most often regarded as a rhetorical art, casuistry could also be seen in the hands of the Jesuits as part of a proto-modern moral science: Though strategically retrieving some of the most ancient notions in the western tradition, of sin as conceived through metaphors of filth and defilement, the Jesuits were cautious about allowing the cure to become worse than the disease, making room for a meliorist moral hygiene.¹⁰⁷

Early modern casuists are often credited with inventing the case-study approach for testing moral rules. In fact, apart from the more remote ancestors excavated by Alt, these early modern casuists were the more immediate inheritors of a vast catalog of cases and doctrines from the reference manuals of scholastic confessors. The case-study

¹⁰⁷ Compare: Paul Ricoeur, *The Symbolism of Evil*, trans. Emerson Buchanan. (Boston: Beacon Press, 1967), 25 – 40; and Höpfl, *Jesuit Political Thought*, 67.

method popularized by the casuists of the early modern period subverted conventions by approaching ethics through a logic as inductive as deductive. The genius of casuistry was to open the possibilities of proceeding from cases back to principles. Casuistry begins with a specific instance of prohibited conduct under a general principle, subjecting this to controversy. Analogies are multiplied with examples of accepted conduct until a revision of the rule just large enough to embrace the initial case seems warranted.

The goal of the most celebrated cohorts of casuists was to take inflexible and abstract principles and translate them into more reasonable guides for human action. The premise was that it is always legitimate for confessors to seek to meet penitents, as it were, half-way – in respect of a stated propensity of the human psyche to grow needlessly and counter-productively discouraged in its journey of moral progress by comparison with an oppressively austere standard of perfection. Special factors for the mitigation of faults were located in considerations of the time, place, motive and intention of sinful acts. A classic example of where casuistry might have gained a solid toehold in the ecclesiastical codes of a growing church: suppose a priest inadvertently substituted one or two words other than those prescribed while performing a baptism? Would the sacrament thereby be rendered invalid? At the point of such quandaries, casuistry, standing ready to rescue orthodoxy and the souls of infants at one stroke, could be called in by the authorities.¹⁰⁸

Early critics identified in casuistry the hazard that a certain fluency with the categories of moral analysis could itself facilitate obfuscation and opportunism rather

¹⁰⁸ “Casuistry,” in *Catholic Dictionary*, eds. Conde B. Pallen and John J. Wynne (New York: Universal Knowledge Foundation, 1929), 175.

than sound judgment. These critics, often baffled by the sophistication of casuist reasoning, denounced the casuists as aiming always at moral laxity, giving license too readily to the heretofore illicit. In general, it was the case-study prong of the casuist tool-kit that came in for the harshest ridicule. More specifically, the method of “probabilism” which became favored by the Jesuits, in which a speculative proposition is driven to a certain conclusion through a kind of appeal to authority, offered too ripe a target for humor through satiric hyperbole for even some fideists to resist. “Probabilism” was actually indexed fifth on a spectrum of six methods for guiding conscience, a list which included (in descending order) the even less well-remembered systems of “absolute tutorism or rigorousness,” “mitigated tutorism,” the not-to-be confused “probabilianism,” “aequiprobabilism,” along with “probabilism” itself, and, finally, “laxism” (of which the proponents of probabilism were, of course, falsely accused). Probabilism, properly speaking, is the manner of evaluating opinions, especially in matters of morals, in which one may accept “the less sure and less probable opinion, provided its probability is true and solid.”¹⁰⁹

Publishing satirical dialogues under a penname (in recognition of the sway the Jesuit faction then held near the throne), Blaise Pascal essentially mounted a rebuttal through *reductio* – taking the process of ever-more-inclusive revision further than had the casuists themselves, resulting in a degree of latitude shockingly at odds with common sense and the received strictures of the gospel – and often quite laughable when inspected

¹⁰⁹ M. Paul Bert, *Gury's Doctrine of the Jesuits* (1879) (NY: Bradbury, 1924), 60 – 61.

closely and with a jaundiced eye, as in the parodic scenes narrated through Pascal's *Provincial Letters*.¹¹⁰

Despite the wretched state into which the reputation of casuistry has since fallen, something along very much the lines of the case-study component of casuistry (at least as divorced from the term which has now degenerated into a pejorative) probably does not appear to most people today as an invalid form of reasoning -- nor should it. Indeed, though its near-total erasure of within the context of its original development is of long-standing, casuistry has survived during the period of its eclipse as a religious practice in modern customs for interpreting secular law. Absent a fuller account of these vicissitudes (toward which this section has offered at best the most cursory sketch-work), Perhaps it would somewhat cleanse the inherently murky waters of casuistry to postulate, at least provisionally, that there could be two casuistries. Let us call them for the time being "casuistry 1" and "casuistry 2." Both forms of casuistry work from the notion of modifying a general rule in terms of the specifics of a given case. Casuistry 1 emphasizes maintenance of the rule by means of treating a particular set of such factors as warranting an exception in the rule's application to the given case. Casuistry 1, in other words, facilitates upholding the rule by a temporary sacrifice of consistency in a given case, but strives to minimize this. Casuistry 2 looks for a way to upend or displace the rule, working back from an exceptional case to a permanent revision of the rule as it applies to all future cases. The difference, like all things about casuistry, may be subtle.

¹¹⁰ Blaise Pascal, *Provincial Letters*, trans. Thomas McCrie (NY: Hurd and Houghton, 1875). The effect was devastating, and the publication of Pascal's *Letters* almost single-handedly, in the course of a few years, succeeded in driving casuistry out of France and mainly underground elsewhere for several centuries.

It was at the end-state of rule-restatement, and extending the logic of this out to a *reductio ad absurdum* for satirical effect, however, that opponents of casuists found the most ammunition for scorn. But fundamentally, casuistry 1 is a form of prudential judgment in application, whereas casuistry 2 amounts to *ad hoc* legislation.

Both what I am calling *casuistry 1* and *casuistry 2* start from an intuition that in a certain situation, insisting on absolute compliance with the most applicable rule, given other factors present in this case, may be a greater source of injustice than finding greater flexibility. One thinks this calls for a new rule, and the other wants to stick with the current rule, but make adjustments in order to keep it viable. The advantage of one is its capacity to dispel needless and paralyzing guilt, while the other carries the cost of potentially abetting the cover-up of genuinely nefarious deeds. One would be the casuistry of excuses, confession and expiation -- while the other would be the casuistry of rationalization.

Which casuistry, then, does Walzer, in "Political Action," intend? Clearly enough, both. And at this fork in the road, he would no doubt be content to rest. His forbearance there is both the glory and the peril of his analysis. Before we can know what is worth taking away from his abruptly inconclusive forbearance, an alternative reaction to 'dirty hands' situations may be woven together from between the lines of the story Walzer tells in "Political Action" which may turn out to have no need for the excuse-making potentials of casuistry after all. But we might appreciate better the need to explore further in this direction after remembering the tale of an overt pursuit of

applied 'dirty hands' -- by one who seems ideally positioned to accurately intuit what Walzer intended with this notion -- may bring the notion to nadir.

VII Casuistry Amok: Elshtain

Nagel, Walzer, Hare and Brandt at least have in common the perception that they are each carving out a distinct answer to essentially the same question; they are having a debate. “Reflection on the Problem of ‘Dirty Hands’” was prepared by Jean Bethke Elshtain in 2004 as a companion piece to Walzer’s essay when both were included, side by side, in an anthology of other, mainly (like Elshtain’s) new works.¹¹¹ By the time Elshtain gets to the issue, it has more or less been settled, and the debate is over -- or so she would make it seem. Walzer, contends Elshtain, basically had it right. Adopting Walzer’s argument as her model, Elshtain does not hold up the analysis of “Political Action” for re-examination. Her purpose, instead, is to apply its cardinal principles to what are said to be new illustrations, thereby demonstrating the continued salience of Walzer’s ideas, and establishing what she finds to be their indispensable value in making sense of contemporary moral dilemmas facing policy-makers and the public. Even while claiming to share Walzer’s preference among “traditions of explanation,” Elshtain credits her “Christian ethical formation” as a necessary supplement for full explanation of how ‘casuistry’ might work in addressing ‘dirty hands.’

Outrage over the conduct of the United States in warfare had lurked palpably in the background Thomas Nagel’s pursuit of clarifications in ethical theory in “War and Massacre.” Over thirty years later, Elshtain is moved to undertake her “Reflection” out of impatience with another war’s critics. In 2004, Elshtain retrieves the notion of ‘dirty hands’ that had been central to Walzer’s response to Nagel in another discussion both

¹¹¹ Jean Bethke Elshtain, “Reflection: on the Problem of ‘Dirty Hands’,” in *Torture: A Collection*, ed. Sanford Levinson (NY: Oxford University Press, 2004), 77 – 89.

topical and theoretical. The central illustration in Elshtain's essay is the case of a terrorist in captivity who might divulge information by means of which thousands of lives could be saved, but only through the use of unusually harsh interrogation tactics – or “what some might call ‘torture.’”¹¹²

After mentioning the positions of both Bentham and Kant, Elshtain writes at the beginning of her essay that she finds herself “standing with neither.”¹¹³ The *pro forma* lip-service of this opening citation of the Kant-Bentham split notwithstanding, by the end of the essay, Elshtain's sympathies have emerged unambiguously on the side of the consequentialists. If the logic of her argument did not ineluctably do so, Elshtain would betray her true colors by invective harsh enough to make the most strident utilitarian blush: speaking of “moralistic ‘code-fetishism,’” “pietistic rigorism,” and “rule-mania.”¹¹⁴ Elshtain's prosecution of the ‘war on terror’ is momentarily interrupted by her lunge toward the specter of “deontology run amok.”¹¹⁵ Thus, Elshtain's ethic unequivocally ranks a notion of the longer-term, greater collective good above a deontological priority on rights. Bemoaning too-stringent rules, Elshtain seems to not notice how close she has slid towards the “rules of thumb” oft-favored by leading utilitarians like Rom Hare and J.C. Smart, an implement which may not inspire everyone whose finger-nails are gripped by pliers to breathe freely.¹¹⁶ When Elshtain turns to Dietrich Bonhoeffer, it is to take

¹¹² Elshtain, “Reflection,” 85.

¹¹³ Elshtain, “Reflection,” 78.

¹¹⁴ *Ibid.*, 86, 87, 83.

¹¹⁵ *Ibid.*, 79.

¹¹⁶ Compare Elshtain's proposal to “work with a rough rule of thumb” in sorting out the ethics of coercive interrogation (*Ibid.*, 87), with J.C. Smart in “An Outline of a System of Utilitarian Ethics,” the statement against which Bernard Williams inveighs between the covers of *Utilitarianism: For and Against*. (Cambridge: Cambridge University Press, 1973), 42: “The act-utilitarian will ... regard these rules as mere rules of thumb, and will use them as rough guides.”

from him the “key question,” which is “*not* ‘What is the right thing for me to do?’ but rather ‘What is to come?’”¹¹⁷ Elshtain presents the foregoing without the slightest indication she notices, though quoting a theologian, that she is citing utilitarianism chapter and verse. She further obscures any distinction between her ‘neighbor-love’ and secular consequentialism by noting Bonhoeffer’s reverence for “Machiavelli and *necessita*.” All in all, Elshtain’s ‘neighbor-love’ turns out to be a version of consequentialism in gauzy disguise.

The necessity of occasional employments of torture is Elshtain’s organizing illustration of the dilemma of ‘dirty hands’ in her “Reflection” piece. “Nowadays,” she whines, “we tend to moralize and to criminalize everything.”¹¹⁸ And this is no time to allow “indiscriminate moralism and legalism” to tie the hands of law enforcement, she continues, by robbing them of “necessary tools in an often violent and dangerous world.”¹¹⁹ Granted, this threat level alert is muted by the fact that Elshtain does not provide us with an example of “indiscriminate” moralism -- or show us what *discriminate* moralism would look like. With or without such clear barometers, Elshtain is writing at what she is strongly convinced is a time to lighten up. It is no season to be depriving ourselves, lest we be disarmed before grave danger. After all, it is only torture we are talking about. Then again, perhaps it is not. In the nick of time, a nifty new term arrives to facilitate relief of our needless scrupulosity, so we can cut back on forbidden activities without giving them up entirely.

¹¹⁷ Ibid., 84.

¹¹⁸ Ibid.

¹¹⁹ Ibid., 75.

Elshtain borrows from reporter Mark Bowden the phrase “torture lite.”¹²⁰ As long as we “disaggregate” sufficiently in our understanding of the ethics of our situation, and prayerfully repent as we feel moved, Elshtain is more than willing to countenance the new interrogation tactics described by Mark Bowden’s reporting.¹²¹ Making a point here she stresses at greater length in her book-length study *Just War Against Terror*, fighting “a deadly and dangerous war against enemies who know no limits,” we must ensure we are not held back by too many of our own.¹²² Never say “never.”¹²³ As with the phenomena of “lite” beverages and edibles on supermarket shelves, however, doubts may linger regarding the actual ingredients of “torture lite.” And one wonders what the effect may be for those on the receiving end of this new product of leaving determination of the criteria for the label “lite” to the discretion of the retailer of interrogation rather than being held to accord with a uniform objective threshold.

To reiterate: Elshtain does not countenance torture in general, only what she also calls “Torture 2”¹²⁴ And even when the okay must be given, she is against having torture “routinized.”¹²⁵ Elshtain’s article reproduces much of the graphic detail turned up by Bowden’s investigation. But Elshtain’s purpose in raising these offenses toward our nostrils is not journalistic but rhetorical. Her enumeration climaxes with description of actions on the part of captors she thinks her readers would be inclined to permit -- under

¹²⁰ Ibid., 85.

¹²¹ Ibid., 85, 83.

¹²² Jean Bethke Elshtain, *Just War Against Terror: The Burden of American Power in a Violent World*, (NY: Basic Books, 2003); Elshtain, “Reflection,” 80.

¹²³ Ibid., 77.

¹²⁴ Ibid., 87.

¹²⁵ Ibid., 84.

the right circumstances. By holding up grotesque example after grotesque example of the most despicable practices, Elshstain expects our revulsion at lesser atrocities to abate.

Does sleep deprivation really rank with a severe beating?

Elshstain chastises “human rights activists” who, she charges, “make mincemeat of the category” of torture by applying it to such actions as shouted insults, slaps in the face, and forms of *merely psychological* inhumane and degrading treatment. With such “legalism,” according to Elshstain, these activists do “a disservice to the complexity of the matter.”¹²⁶ One question Elshstain’s treatments of the topic leaves glaringly unanswered: if indeed, “there is no absolute prohibition to *what some* call torture,” what sort of prohibitions ought to be in force against *what anyone* might call torture? Even accepting the word-play, when does torture stop being truly “lite” and turn toxic? Alternatively, if we are to proceed with torture as necessary, with or without semantic discriminations, how will we then know how much torture is too much? Who is to say what is “an exceptional and truly extreme circumstance” -- when it starts and/or when it ends?¹²⁷ Elshstain draws no bright line. And indeed it might be seen that this blurriness is precisely what makes the concept of “torture lite” useful to her in this essay.

Philosophers should be called to account, Bernard Williams suggests, for the artificiality of the favored devices in their thought experiments. Fictional scenarios can too easily be cooked up, made to order to prove a point. Given that moral reality is seldom if ever so tidy, this ease is deceptive. “The examples are inevitably schematized,” he

¹²⁶ Elshstain, “Reflection,” 86.

¹²⁷ Elshstain, “Reflection,” 85

writes, “and they are open to the objection that they beg as many questions as they illuminate.”¹²⁸ Moreover, such scenarios also confront philosophers who deploy them with two further intrinsic limitations: First, “that, as presented, they arbitrarily cut off and restrict the range of alternative courses of action.” In addition, “they inevitably present one with the situation as a going concern, and cut off questions about how the agent got into it, and correspondingly about moral considerations that might flow from that.”¹²⁹ This self-conscious reflection on and qualification of the practice of philosophically-tailored scenarios could add support to Walzer’s argument, insofar as this move on Williams’ part underscores the areas of ambiguity that recommend a concept like ‘dirty hands.’ At the same time, however, it lays the basis for strong criticism of an argumentative strategy fundamental to defenses of torture as developed not only by both Walzer and Elshain in their articles on ‘dirty hands,’ but by numerous other recent commentators on the ethics of torture as well.

Specifically, a plump target for the charge of scenario abuse on which Williams trains his sights is surely the so-called “ticking time-bomb scenario” which has emerged as a nearly omnipresent staple in discussions the ethics of torture, including those of Walzer in “Political Action” and Elshain in “Reflection.” Nothing like the scene of a captured guerilla leader Walzer imagines in “Political Action,” after which a principled politician must jettison his convictions in order to save thousands of lives from certain

¹²⁸ Ibid., 96.

¹²⁹ Ibid., 97.

peril, has entered the public record since 1973.¹³⁰ But this fact does not deter Elshtain in 2004 from sparking up the time-bomb scenario once more. In “Reflection,” Elshtain draws on her own context of contemporary global conflicts, but her only real revision of Walzer’s second of two scenarios in “Political Action” is to strip off the details with which Walzer embellished his telling of the tale. The rehash this leaves her with is howlingly cartoonish: “The villain is thoroughly villainous. The probability that he knows where the bomb is planted is as close to certainty as human beings can be in such situations.”¹³¹ (And how certain, it seems fair to wonder, is that?) These seemingly endless recyclings establish this intrinsically implausible scenario as a reliable invitation to precisely the sort of intellectual laziness the term “cliché” was invented to discourage. The universal popularity of the hypothetical narrative of the “ticking time-bomb” for the new casuists of torture reveals the usefulness of fiction where reality cannot be made to serve, given the scarcity of fact-sets at all resembling such a scenario within the actual documentary record of torture’s use. The logic of the “ticking time-bomb” scenario is wholly constructed from two incredible premises: 1) that captors know that a certain captive knows the precise location of a bomb before they have begun coercively interrogating him, and 2) that they can be certain that methods of torture will prove a reliable method of extracting this information from the captive.¹³²

¹³⁰ Walzer, “Political Action,” 166-68.

¹³¹ Elshtain, “Reflection,” 78.

¹³² In a more recent statement clarifying and reaffirming the position outlined in “Reflection,” Elshtain jettisons the ticking time-bomb in favor of the slightly less hackneyed and over-interpreted tale of Khalid Sheikh Mohammad. In short, Elshtain asks us to begin reasoning about torture afresh with case like that of Khalid Sheik Muhammed -- when the universal consensus is that there has never be another case like that of Khalid Sheik Muhammed. Short of dissecting Elshtain’s ethically and factually garbled exploitation of the real enough anecdote, suffice it to say, as she does in “Reflection,” “hard cases do make bad law.” Ibid., 87. Jean Bethke

The main ethical stances in the recent literature of torture have lined up along three basic reactions: 1) that, irrespective of circumstances, torture ought to remain absolutely prohibited; 2) that, subject to the fresh inquiries occasioned by the latest war, traditional bans on torture should be at least partially rescinded; and 3) that, while torture *per se* should remain off limits, certain unorthodox tactics at use in the present war could be embraced by a new category so as not to count as “torture.” Elsthtain takes the third option – what Steven Lukes calls the “Orwellian version” of the consequentialist view.¹³³ Elsthtain is made almost giddy at this potential opening to ply “the stock-in-trade of the moral casuist.”¹³⁴ In classic casuistic fashion, Elsthtain’s main concern while considering torture is neither with practices nor principles so much as “the word itself.”¹³⁵ By the time she finally gets around to doing so, Elsthtain defines “torture as the horrific practices about which no decent person has any doubts as to whether they constitute torture or not” – but, apart from the remarkable circularity of this formulation, the main project of her essay is to ponder situations regarding which there is an fact lively disagreement, among presumably decent people, about whether the acts in question constitute torture or not.¹³⁶

The first line of Jean Bethke Elsthtain’s biography on the University of Chicago’s website identifies her as “one of America's foremost public intellectuals,” implying that whatever chores “public intellectuals” are assigned, they constitute for this professor

Elsthtain, “Varieties of ‘Violence,’: Thinking Ethically About the Use of Force,” in *From Jermiad to Jihad: Religion, Violence, and America*, eds. John D. Carlson and Jonathan H. Ebel (Berkeley: University of California Press, 2012), 281 – 82.

¹³³ Steven Lukes, “Liberal Democratic Torture,” *British Journal of Political Science* 36, no. 1 (January, 2006), 5.

¹³⁴ Elsthtain, “Reflection,” 79.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*, 86.

more than an avocation.¹³⁷ Albert Camus articulated the vocation of the intellectual he took on as his own as the mission “to disintoxicate minds and to calm fanaticisms, even when this is against the current tendency.”¹³⁸ Elshtain’s aims as an author, self-described “ethicist” and “public intellectual” in the post-9/11 phase of her career might be read rather differently.

Central to Elshtain’s program in *Just War Against Terror* (to which the essay we have mainly considered can be viewed as a subordinate work) is the notion that a deployment of “fundamental theological and ethical concepts” offers weapons that are indispensable to the response demanded by the attacks of September 11, and she notes admiringly the well-stocked arsenal of Catholicism in this regard.¹³⁹ After all, it is not as if “Christianity has no knowledge of the sword.”¹⁴⁰ “One way or another, Christians, together with other citizens, face moments when they are asked: Where do we stand?”¹⁴¹ More specifically, the clearly most urgent question for Elshtain is: “How, then, can a Christian take up arms?”¹⁴² And Elsthai’s answer is at the ready, her aim sure, for she can call to her aid both St. Augustine and John Wayne.¹⁴³ “Are Christians not obliged to respond, even at the cost of dirtying their hands?” she asks.¹⁴⁴ Otherwise, “Appeasement may flow from desperate miscalculation.”¹⁴⁵

¹³⁷ <http://divinity.uchicago.edu/faculty/elshtain.shtml>

¹³⁸ Albert Camus, “Preface to Algerian Reports,” in *Resistance, Rebellion and Death*, trans. Justin O’Brien (NY: Knopf (Vintage), 1960, 121.

¹³⁹ Elshtain, *Just War Against Terror*, 121.

¹⁴⁰ *Ibid.*, 159.

¹⁴¹ *Ibid.*, 102.

¹⁴² *Ibid.*, 50.

¹⁴³ *Ibid.*, 55.

¹⁴⁴ *Ibid.*, 70, 111.

¹⁴⁵ *Ibid.*, 147.

Writing in 2012, Elshtain authors an enlarged and in some ways sharpened restatement of her 2004 argument. In “Varieties of ‘Violence,’: Thinking Ethically about the Use of Force in the War on Terror,” Elshtain scolds “sloppy thinking” which is guilty of “overusing and conflating terms such as violence, torture, and war.”¹⁴⁶ The great superiority of Christian-American violence over Arab and Islamic violence Elshtain harps upon again and again is that *their* violence is indiscriminate whereas *ours* is reasoned, proportionate, and hemmed in by standards. “For just warriors,” Elshtain reassures readers of *Just War Against Terror*, “both aims and means are limited, even if one has been grievously harmed.”¹⁴⁷

“Sacralizing suicide, or homicide, or other evils would certainly be inconsistent with Christian doctrine, but soldiering is another matter.”¹⁴⁸ By contrast, “The just war tradition requires that the philosopher, the moralist, the politician, and the ordinary citizen consider a number of complex criteria when thinking about war.”¹⁴⁹ Elshtain herself often demonstrates to the detriment of the credibility of such distinctions, however, that moral standards, Jesuitically applied, can often be negotiated on a sliding scale. As Talal Asad observes trenchantly in connection with Walzer: “The definition of war and terrorism as opposites makes it possible to speak of a war *on* terror and to assume that the state can conduct itself freely toward the terrorist precisely because he does not respect the law.”¹⁵⁰ For example, elsewhere in *Just War Against Terror*,

¹⁴⁶ Jean Bethke Elshtain.

¹⁴⁷ *Ibid.*, 58.

¹⁴⁸ *Ibid.*, 51.

¹⁴⁹ *Ibid.*, 56.

¹⁵⁰ Talal Asad. *On Suicide Bombing*. (NY: Columbia University Press, 2007), 22.

Elshtain includes a telling qualification to the anodyne distinctions drawn in the passage quoted above: war is the sort of thing, she adds, which “rarely admits of absolutes, and there are usually no bright lines separating alternatives” – after all, “public authorities are always compelled to act in a kind of fog.”¹⁵¹ Fog, again, is truly the oxygen of casuistry. And the incense that guarded the confessional may, oddly enough, bear some resemblance to the tobacco smoke drifting over the saloon doors through with the Duke-like man of action boots the unruly, casuistry stuffed among other trusted weapons on his gun-belt.

Though worthy of consideration in its own right, Elshtain’s search for consensus with Walzer in her 2004 essay on ‘dirty hands’ is all the more interesting when read as an interregnum within large and on-going public disagreements between these two leading American political theorists over the same period — which is to say, against the backdrop of international conflicts that were far from theoretical. As William J. Bennett writes in *Why We Fight*, “The military battle is one thing. The battle of public opinion, over our airwaves and in our newspapers and journals, in our schools and churches, in our families, in our hearts, is another.”¹⁵² Alternatively, as Michael Walzer puts it In *Just and Unjust War*:

It is important to stress that the moral reality of war is not fixed by the actual activities of soldiers but by the opinions of mankind. That means, in part, that it is fixed by the activity of philosophers, lawyers, publicists of all sorts. But these don’t work in isolation from the experience of combat, and their views have value only insofar as they give shape and structure to that experience in ways that are plausible to the rest of us.¹⁵³

¹⁵¹ Ibid., 52-53.

¹⁵² William J. Bennett, *Why We Fight*, (NY: Doubleday, 2002), 170.

¹⁵³ Michael Walzer, *Just and Unjust Wars*, (NY: Basic Books, 1977), 15.

Weighing in on the national debate then underway about whether the United States should invade Iraq in the absence of an attack, and in the face of “scant evidence” of terrorist connections or the intent to use weapons of mass destruction, on August 15, 2002, former National Security Advisor Brent Scowcroft makes the seemingly modest proposal that “we need to think through this issue very carefully.”¹⁵⁴ On September 4, 2002, former Secretary of the Navy James Webb cautioned, from the editorial page of the *Washington Post* that “wars often have unintended consequences.”¹⁵⁵ On September 23, 2002, 100 ‘Christian scholars of ethical theory,’ published a petition they had all signed in the *Chronicle of Higher Education*. “As Christian Ethicists,” it read, “we share a common moral presumption against a preemptive war on Iraq by the United States.”¹⁵⁶ On September 29, Illinois Senator Dick Durbin held a press conference announcing his opposition to a pending resolution authorizing President Bush to use force in Iraq.¹⁵⁷ As a member of the Senate Select Committee on Intelligence on October 1, 2002, Senator Durbin read the *National Intelligence Estimate* assessing the Iraqi threat.¹⁵⁸ On October 2, 2002, nearly 3000 people assembled on Federal Plaza in Chicago, Illinois. At this rally, a letter of support was read from Senator Durbin. A certain obscure state senator also took the occasion to clarify, “I don’t oppose all wars. What I am opposed to is a

¹⁵⁴ Brent Scowcroft, “Don’t Attack Saddam” *Wall Street Journal*, August 15, 2002
http://www.wagingpeace.org/articles/2002/08/15_scowcroft_dont-attack.htm

¹⁵⁵ James Webb, “Heading for Trouble; Do We Really Want to Occupy Iraq for the Next 30 Years?” *The Washington Post*, September 4, 2002; A21.

¹⁵⁶ “100 Leading Ethicists Oppose Iraq War,” Sojourners, http://archive.sojo.net/index.cfm?action=action.ethicists_statement. “100 Ethicists Oppose Attack on Iraq,” National Catholic Reporter, http://www.natcath.org/NCR_Online/archives/101102/101102f.htm

¹⁵⁷ Dorning, Mike; Chase, John “Durbin Opposes Bush War Resolution,” *Chicago Tribune* (September 30, 2002), p 1.

¹⁵⁸ Senator Dick Durbin, “Additional View,” *Report on the U.S. Intelligence Community’s Prewar Intelligence Assessments on Iraq* 108th Congress, 2nd Session, S. Report 108-301 <http://www.intelligence.senate.gov/108301.pdf>, 498 – 507. Also available at: http://www.globalsecurity.org/intell/library/congress/2004_rpt/iraq-wmd-intell_toc.htm

dumb war. What I am opposed to is a rash war.”¹⁵⁹ Ignoring Senator Robert Byrd’s prophecy that “The judgment of history will not be kind to us if we take this step,”¹⁶⁰ on October 11, 2002, 77 U.S. Senators cast their votes in favor of S. J. Res. 45, *Authorization For Use of Military Force Against Iraq Resolution of 2002*, over the objections of Senators Durbin, Byrd and 21 others.¹⁶¹

It seems unlikely that Professor Jean Elshtain, then a resident of Chicago, was in Federal Plaza on October 2, 2002. Perhaps she had not read the columns by Scowcroft, Webb or Byrd, and obviously was not persuaded by the public statements of one of her senators. For on October 6, 2002, in the same week that Congress was debating what became *Public Law 107-243*, Elshtain published in *The Boston Globe* an editorial “A Just War?” answering the question in her title affirmatively. In this *Boston Globe* editorial, Elshtain begins by trumpeting her status as “an ethicist and a Christian” to undergird the credibility of her political stance falling in line behind the Bush march to war. She advertises the present statement as a banner hoisted over a just response to a war of words initiated against the President’s agenda, launched by a less patriotic rival band of ethicists from encampments such as the *Chronicle of Higher Education*. She connects her willingness to endorse the Iraq invasion not only to her revelation about the evils of terrorism after September 11, 2001 which led to her, she says, “to play a central role in drafting a statement, ‘What We’re Fighting For.’” She gives legs to allegations of a

¹⁵⁹ Marilyn Katz, “Five Years Since Our First Action,” blog archive, Chicagoans Against War and Injustice, October 2, 2007, <http://www.noiraqwar-chicago.org/?p=127>.

¹⁶⁰ Robert C. Byrd, “Congress Must Resist the March to War,” *The New York Times*, October 10, 2002 <http://www.nytimes.com/2002/10/10/opinion/congress-must-resist-the-rush-to-war.html>

¹⁶¹ <http://thomas.loc.gov/cgi-bin/bdquery/z?d107:S.J.Res45>:

connection between Al Qaeda and the Iraqi government itself, asserting that Saddam Hussein provided “substantial and material support” to Osama bin Laden.

Referring to any plan of deterring Saddam’s development of weapons of mass destruction, Elshtain, catching the wave of a rising tide of belligerence, assumes the failure of such a plan. Betraying not a hint of mental reservation, Elshtain adjusts the just war requirement to *exhaust* other options, trimming it back to a more workable stipulation that “other options have been explored.” (And this, apparently, is a requirement which has been fulfilled -- five months prior to the UNMOVIC report to the Security Council). Elshtain comes twice right to the verge of conceding that the Iraqi threat does not rise to the level of the classic ‘*casus belli*’ -- because, in her words, “Iraq has not attacked us directly, and it may never do so.” However, she concludes that other factors unique to the situation obviate such a pretext. This returns us to the opening proposal of the article: “to make a case for *preventive or preemptive* use of force” -- as if these two concepts were interchangeable in the just war framework.¹⁶²

By the end of “A Just War?,” in a style not unreflective of the Bush administration’s own protean public relations strategies, Elshtain will have presented rather a jumble of independent rationales, whose relation to one another, taken separately, may not be clear. Elshtain’s initial portrait of the dangers facing America short of war against Iraq definitely appeal to prevailing sentiments of the time of generalized panic at the prospect of another terrorist attack emanating from the Middle East. In the final paragraph of her editorial, however, Elshtain shifts her weight one last time, and places

¹⁶² Elshtain, “A Just War?” in *The Boston Globe*. October 6, 2002, http://www.boston.com/news/packages/iraq/globe_stories/100602_justwar.htm, emphasis added.

her foot squarely on what is revealed as for her the paramount concern: “the Iraqi victims of Saddam Hussein.” All other considerations aside, “just war theory demands that we consider them.” Elshain quotes from President Bush’s speech to the U.N., taking its claims seemingly at face value. After bewailing the threat of “isolationism” and insisting that Bush was acting multilaterally and with UN backing, Elshain does show herself at least a few months ahead of the curve by casting the coming invasion primarily as a “humanitarian intervention.” Factual references in this 2002 editorial do not enable readers to determine whether these are the victims in question are those felled by the well-known war crimes of the 1980s and 90s (and Elshain does cite Samantha Power’s book on the atrocities of this period), the tortured or disappeared of Ba’athist prisons, the children who died due to shortages of food and medicine while Iraq was under UN sanctions, some other group – or all of these. This uncertainty may not matter for Elshain’s argument in favor of intervention on humanitarian grounds, however, for it seems to be a prospective slaughter in Iraq that is of most concern to her. “He will not hesitate to target civilians intentionally. The only questions are when and where.” The most relevant analogies for Elshain in analyzing the Iraq of 2002 would be the “ethnic cleansing” of Bosnian Muslims and tribal genocide against Rwandan Tutsis in the 1990s. How, Elshain asks, can we again stand by?

Melissa Rogers presents Elshain to her audience at the National Press Club on October 5, 2001 by listing among her credentials this imprimatur: “Her friend and colleague Michael Walzer calls her a truly independent, deeply serious, politically

engaged and wonderfully provocative political theorist.”¹⁶³ Such celebrated affinities notwithstanding, in the succeeding months and years, the paths taken by these friends in evaluating US foreign policy sharply diverged. All the “engagement” and “provocation” of which each might be capable could be found on full display.¹⁶⁴ A dean of just war studies at least since her 1992 book on the subject, Elshtain is publicly sanguine about the US invasion of Iraq at the same time Walzer expresses his continuing desire “to see the inspection system work” and his strong belief in the need to oppose the Bush administration “and its doctrine of preemptive war” with an urgency just as palpable.¹⁶⁵ At the Press Club event, Elshtain can be found making her debut as a member of an elite intellectual commando squad I shall henceforth refer to as “the just war casuists.”

In a striking first-person exclamation in “Political Action,” Walzer confesses: “I don’t think I could govern innocently.”¹⁶⁶ When, two weeks before US bombing of Baghdad begins, Walzer recommends a US “exit strategy” of extending no-fly zones, imposing “smart sanctions,” and pushing for an expanded UN monitoring system with more NATO troops -- knowing what he knew about the conduct of the Ba’athist regime –

¹⁶³ “Just War Tradition and the New War on Terrorism,” event transcript, Pew Forum on Religion and Public Life, October 5, 2001, Washington, D.C. <http://www.pewforum.org/Politics-and-Elections/Just-War-Tradition-and-the-New-War-on-Terrorism.aspx>

¹⁶⁴ At least two skirmishes in this public contestation are worthy of special note. The first of these occurred at a distance, from the pages of major American newspapers during the run-up to the invasion, in the form of dueling editorials: On October 6, 2002, Elshtain weighed in with “A Just War?” in *The Boston Globe*. http://www.boston.com/news/packages/iraq/globe_stories/100602_justwar.htm. “What a Little War in Iraq Could Do” appeared over Walzer’s by-line in *The New York Times* on March 7, 2003, the same day weapons inspector Hans Blix briefed the United Nations Security Council. <http://www.nytimes.com/2003/03/07/opinion/what-a-little-war-in-iraq-could-do.html>. Though he never mentions Elshtain by name in “Regime Change and Just War,” Walzer does not need to; he is taking direct aim at defenses of the Iraq war with which she has been associated in the past. Elshtain, in turn, was invited by the journal *Dissent* (formerly edited by Walzer) to respond in their “Arguments” section, where she takes the opportunity to re-state her case. Both papers were subsequently published in the pages of *Dissent Magazine* 53, no.3 (Winter 2006): 103-111.

¹⁶⁵ *Just War Theory*, ed. Jean Elshtain. (New York: New York University Press, 1992). Jean Elshtain, “A Just War?” in *The Boston Globe*, October 6, 2002 http://www.boston.com/news/packages/iraq/globe_stories/100602_justwar.htm.

Michael Walzer, “Introduction: Drums of War, Calls for Peace” *Dissent* 49 (Winter 2003): <http://www.dissentmagazine.org/issue/?issue=49>

¹⁶⁶ Walzer, “Political Action,” 161.

he would surely not claim to be writing innocently.¹⁶⁷ Elshtain's own plan of action at the same time –green-lighting that of the Bush administration, and accepting its diplomatic and public relations chicanery at face value – seems worthy of equally candid evaluation.

Participating in a panel at the Ethics and Public Policy Center on February 6, 2003, William Galston, urging “clear thinking and honest deliberation about the real choice we face,” and taking pains to discourage “a redefinition of classic concepts,” patiently measures the impending invasion against just war categories. He invokes the authority of Michal Walzer against more selective and creative interpretations which had by then already begun to circulate in the course of his remarks:

Let me summarize a lot of legal and philosophical argument by suggesting that at the heart of the doctrine of justified anticipatory self-defense lie four criteria: (1) the severity of the threat, (2) the degree of probability of the threat, (3) the imminence of the threat, and (4) the costs of delay. Testing the Iraq case against these criteria, I think we would have to say that the threat is high, at least in the worst case; for example, the acquisition of the transfer of nuclear weapons to terrorists. The probability of such an event is contested, and many experts believe Saddam does not have an incentive to do anything of the sort. Anyway, in all probability we are not talking about a threat that is imminent, and the costs of delay -- at least when measured in months rather than years -- are rather low. This led the most eminent student of modern war, Michael Walzer, hardly a dove regarding Iraq, to find the following conclusion: In the absence of evidence suggesting not only the existence of Iraqi weapons but also their imminent use, preemption is not an accurate description of what the president is threatening. No one expects an Iraqi attack on the United States tomorrow or next Tuesday so there is nothing to preempt. The war that is being discussed is *preventive* not preemptive. It is designed to respond to a more distant threat. Walzer goes on to note that international lawyers and just war theorists have never looked with favor on this argument, because the danger to which it alludes is not only distant but speculative, whereas the costs of a preventive war are certain and usually terrible.¹⁶⁸

¹⁶⁷ Walzer, “See What,” *Ibid.*

“War in Iraq: Is it Just? A Conversation with Christopher Hitchens, William Galston, and George Weigel,” in *Religion, Culture, and International Conflict: A Conversation*, Edited by Michael Cromartie. (Lanham, MA: Rowman & Littlefield, 2005), 79.

¹⁶⁸ “War On the Horizon: Is It Just?” A Conversation with Christopher Hitchens, William Galston and George Weigel. Ethics and Public Policy Center. http://www.eppc.org/programs/faithangleforum/conferences/eventID.22,programID.37/conf_detail.asp. On the same panel, Christopher Hitchens, handing over his credentials as an investigative reporter, states that US Secretary of State Colin Powell's presentation to the United Nations the day before had been “absolutely admirable” and that as far as the certainty of the danger that Iraq would use weapons of mass destruction for genocidal purposes, “all doubts on that one must now be stilled.” Subsequent scholarly demolitions of the doctrine of preventive war from a normative point-of-view have included: Neta C. Crawford, “The Justice of Preemption and Preventive War Doctrines,” in *Just War Theory: A Reappraisal*, ed. Mark Evans (Edinburgh: Edinburgh University Press, 2005), 25 – 49, and Dieter Janssen, “The Legitimacy of Anticipatory Defense and Forcible Regime Change,” in *Ethics, Nationalism, and Just War: Medieval and Contemporary Perspectives*, eds. Henrik Syse and Gregory M. Reichberg (Washington, D.C.: Catholic University of America Press, 2007), 323 – 351. From the point-of-view of military strategy and doctrine, a careful contextualization is provided by Joe Barnes and Richard J. Stoll, “Preemptive and Preventive War: A Preliminary Taxonomy,” Rice University: James A. Baker III Institute for Public Policy, 2007 <http://bakerinstitute.org/publications/Preemptive%20and%20Preventive%20War-1.pdf>

A concerted effort, in striking contrast to more sober interpretations like Galston's, by leading public intellectuals to finesse the meaning of "a just war," for the purpose of soothing the doubts of any sitting nervously on the sidelines, was one front in the larger campaign saturating the media in 2002-03. This front was defined by an apparently at least somewhat coordinated campaign to mute the effect of explicitly ethical and religious opposition to the war being voiced from other quarters.¹⁶⁹ Just war casuists like George Weigel, Robert George, Jean Elshtain and others worked vigorously to discredit Iraq critics as false claimants to the just war inheritance. A climate of impending international war might seem a moment to summon all the resources of careful deliberation an intellectual tradition might provide. Not so for the just war casuists. Rather than holding up the "last resort" standard and asking the United States to adhere to it, however, the just war casuists argued that this standard was now obsolete. Grown restless under "the tired categories of another era," his coterie of writers which included Elshtain demonstrated a clear resolve to perform the rear-guard action of clearing a path to a destination at which much governmental and some popular decision-making had already arrived.¹⁷⁰ A consistent theme throughout the wartime writings of this group: that the time had come, *in precisely the name of* "the just war tradition," to

¹⁶⁹ I am associating Elshtain here primarily with Catholic writers such as George Weigel and Robert P. George, whose reasoning tracks more closely with hers. However, it is also worth noting that appearing the same week as Elshtain's editorial was a letter to President Bush signed by five major Evangelical Christian leaders, including Richard Land, President of Ethics & Religious Liberty Commission of the Southern Baptist Convention. Best known as "the Land Letter," this statement also explicitly invokes "just war theory," while parroting administration talking points. http://en.wikisource.org/wiki/Land_letter. Among the relevant documents by other leading members of Elshtain's coalition are: Robert P. George, "A Just War in Iraq," *Wall Street Journal*, December 6, 2002, A14; an interview with George, Kathryn Jean Lopez, "Justice in War," *National Review Online*, October 15, 2001, http://old.nationalreview.com/interrogatory/interrogatory_101501b.shtml; George Weigel, "The Just War Case for the War," *America*, March 31, 2003, http://www.eppc.org/printVersion/print_news.asp?newsID=1577; George Weigel, "Just War and Iraq Wars," *First Things*, April 2007, <http://www.firstthings.com/article/2007/03/just-war-and-iraq-wars-36>

¹⁷⁰ The quotation is from Jean Elshtain, *Just War Against Terror*, 76.

surpass the confining strictures of received just war thinking in favor of a more advanced, nuanced and holistic version. Capturing the zeitgeist of much American intellectual debate preceding Operation Iraqi Freedom, James Schall gives center-stage to the concern that legitimate self-defense may be inhibited by an overly exhaustive analysis. Citing Elshstain, Schall conveys his impatience with views of war that might “prevent quick and decisive action” in response “to the new kinds of war that we see in the twenty-first century.”¹⁷¹ “The just war theory,” Schall declares, “is relatively useless in this area.”¹⁷²

It was not without the efforts of this small but dedicated, well-placed and highly skilled troop of public intellectuals I am calling the “just war casuists” that the new “Bush Doctrine” found its voice. The concept of “preventive war,” if not wholly original, was much enlarged by their handiwork from the form it had in any scholastic archive where it may have slumbered -- and came roaring to life as never before. A souped-up notion of “preventive war” was rolled out with the specific intent of rendering the need to meet the criteria of the traditional understanding of just war theory obsolete, thereby opening wider a political path for the US attack on Iraq. In its re-tooled model, “preventive war” debuted with enhanced features to allow for easier handling in those tight spots. The logic of responding to asymmetric threats prompted a re-balancing of the just war tests. Risks had to be treated as certainties; speculation accepted as truth. A just “response” was now the anticipation of an attack, not a reply to one. And once the

¹⁷¹ James Schall, S.J., “The Real Alternatives to Just War,” in *The Mind That Is Catholic* (Washington, D.C.: Catholic University of America, 2008), 274.

¹⁷² *Ibid.*, 269.

requirement of a true *casus belli* was jettisoned, away with it slid any framework as to how the aims of a war could be limited, and its means held proportionate. In keeping with the hip, consumerist lingo of “torture-lite,” the re-boot might as easily have been branded “Just War 2.0,” or perhaps “Turbo Thomas.”

Perhaps editorial staff of the *Boston Globe* hit upon the idea of accompanying Elshtain’s 2002 op-ed with a side-bar –a numbered list in different type-set of no fewer than seven just war criteria. The inference could certainly be drawn by a casual reader that Elshtain was proceeding through the items in the side-bar list in the main columns, systematically comparing actions to criteria as she goes. A careful reading of the quite complex adjoining text under Elshtain’s by-line, however, finds her engaged in a different endeavor, and obviously not sharing in the intention of the straightforward list reproduced in the box. Elshtain broaches the topic of the just war tradition in order to introduce a new interpretation of its teachings. Her maneuver entails shortening the received list and qualifying the remaining terms to update its stipulations for new times. The tension is sharp enough that at some point, the reader begins to wonder whether the editors appended the outer text-box as a sort of ironic counter-point to the main text, in the post-modern style of the formatting in Jacques Derrida’s *Glas*, for instance.

Elshtain continues in 2006 and 2010 to uphold the central tenants of her 2002 case for the justice of the Iraq war.¹⁷³ In the “Jean Bethke Elshtain Responds” portion of a 2006 *Dissent* debate with Walzer, Elshtain queries:

¹⁷³ “Elshtain Responds,” 110.

But who knew for sure? Unless Clinton, Gore, Albright, and Prime Minister Tony Blair, as well as President Bush, were, or are, all 'lying,' there was sufficient compelling evidence of WMD to raise the level of concern and enhance the case for intervention.¹⁷⁴

This statement may raise, among others, the awkward question of just how much homework a “public intellectual” is obliged to perform.¹⁷⁵ Moreover, it plainly commits to major fallacies taken by itself. The assumption closest to the surface can be restated as another question: if enough people make an assertion, does “sufficient compelling evidence” exist as to its validity? The polemical counter-charge embedded in the imputed accusation of ‘lying’ is used to imply that any past mistakes in accepting the claims of others would have required the even more incredible presumption of lying on the part of all those (or at least a magic five) offering the claims. But surely Elstain is not implying that everything which could not be a lie (assuming that this is the case here) must be true, and taken for true, or accepted purely on the authority of whoever says it. By framing her question in an ostensibly rhetorical form, Elstain trades upon the gnostic adage of Secretary of Defense Donald Rumsfeld that “the absence of evidence is not the evidence of an absence,” with appropriate corollaries. Defenders of this position pretend they only erred, if at all, on the side of an abundance of caution.

Writing about the Iraq war, Jean Elstain’s deployment of the “just war” framework and terminology constitute a fine demonstration of casuistry, with all its liabilities. In her general interest articles and a widely-reviewed book, joining other

¹⁷⁴ James Tully, “Governing Conduct,” in *Conscience and Casuistry in Early Modern Europe*, ed. Edmund Leites (NY: Cambridge University Press, 1988), 27.

¹⁷⁵ Elstain reports in 2010 that sadly her source for intelligence about conditions under Hussein “suffered dreadful nightmares and other symptoms of distress and finally had to quit the project.” “Letters,” *University of Chicago Magazine* July/August, 2010, http://magazine.uchicago.edu/1008/every_issue/letters.shtml. High on the syllabus of anyone for whom further study of the Iraq episode is still wanted would be the works by Draper, Ricks, Blix, Fallows, Corn and other in the bibliography to this report. For starters, Elstain might be referred to the invaluable archive called *The Iraq Papers* for some speedy catch-up.

publications during the same months during 2002-03 by like-minded authors of academic distinction, the impression is created of a mentality which has resigned itself in advance to work back from a judgment already rendered on a case at hand to a revised formulation of the relevant principles of evaluation. To paraphrase: *since it would be just to invade Iraq, it is time to revisit our criteria for what makes a war just*. If the components of this theory could only be disassembled and briskly rubbed together, so went the strategy, the resulting friction could ignite in the minds of readers a state of shock and awe.

Elshtain's most original contribution to the project of just war casuistry might be her trusty weapon of the hyperbolic "tick-list." She frequently uses this as a straw man alternative to the only sort of interpretation of the just war tradition that could be tenable. For example, in 2006 Elshstain begins by applauding Walzer for not falling for such simplistic enticements, with this favored term of phrase, for seeing that "the just war tradition is not simply a series of boxes to be checked."¹⁷⁶ In truth, the procedure of those who invoked the just war framework to legitimize the Iraq invasion never discarded the metaphors of this proverbial "tick list," however. Their efforts, rather, were more analogous to introducing a new, fourth box in addition to the conventional three, and offering that checking this fourth box could be sufficient in lieu of squaring plans with any of the others. Rather than continuing to accept Elshstain's straw-man trope of the infamous "tick-list," readers well informed on the subsequent history of Iraq, rather than chafing at the too-confining strictures of the just war tradition might be inclined to issue two cheers for tick-lists. Perhaps applications of just war analysis to the impending Iraq

¹⁷⁶ Elshstain, "Responds," *Ibid.*, 109.

war might have navigated the dirty-hands forks in the road more skillfully with the addition of less casuistry rather than more. The question is by this point inescapable: in the Iraq “just war” debate, was it really the inherited yardstick which came up short (as once alleged), or the attempts to bend it? Review of the work of the just war revisionists in light of what ensued in Iraq might enhance our appreciation of the value of fairly rigid moral frameworks in times of crisis. One is led to the thought that, perhaps particularly in such high-stakes situations, a few steady compass points might do more good than harm. At the least, torture of prisoners and mass killing in warfare emerge as stronger candidates for apodictic injunction rather than casuistic exception.

The full arsenal of Jean Elshtain’s well-honed intellectual armature apparently did not equip her to peer very far beneath the surface of government war-machine propaganda in the early 2000s. But it is significant to the effort to take stock of her claimed fidelity to Walzer’s ‘dirty hands’ framework in all this that Elshtain has never recanted her original position regarding the imputed justice of the war. Early in her 2002 newspaper op-ed, Elshtain lays aside the reservation: “Don’t barge in and do more harm than good.” Of course not. And the obviousness of a matter from hindsight does not necessarily exonerate neglect of it before the fact. Elshtain reportedly does now concede the possibility that there may have been a “prudential error” on the part of those who made the decision to go to war against Iraq, but makes this point in a way which seems make prudential considerations external to the original question of a war’s justice.¹⁷⁷ It

¹⁷⁷ “Just War.” University of Chicago Magazine. May-June 2010. <http://magazine.uchicago.edu/1006/investigations/just-war.shtml>

should be needless to add, especially when considering the words of such an esteemed authority on the subject of the just war tradition, that this hedge elides the well-established status of the evaluation of factors such as the likelihood of success and the premeditation of end-points to the question of the justice of a military intervention.

Pulling in a distinction finely drawn by J.L. Austin, Walzer points out that “an excuse is typically an admission of fault; a justification is typically a denial of fault and an assertion of innocence.”¹⁷⁸ Because excuses acknowledge fault, they sometimes constitute a good step in the direction of confession and repentance. When there are no excuses, sometimes disingenuous justifications are made to fill in -- i.e., rationalizations. Rationalizations are the dark twin of justifications. And sometimes casuistry can be exploited to help rationalizations along in a manner almost indiscernible from that with which it generates excuses. Walzer unwisely discounts this possibility. Especially when offered before-the-fact, casuistic rationalizations can short-circuit the process of excuse-making – and thus any form of the public accountability Walzer wants -- later on.

Though Jean Elshtain’s post 9/11 writings indeed constitute a majestic reminder of the power of casuistry (to which accomplishment she openly aspires), they also remind us of the perils that often travel behind its sophistications. For example, consideration of the afterthoughts Elshtain has steadfastly *not* expressed about her rationalizations for the torture of alleged terrorists and on behalf of the justice of the Iraq war undermines Walzer’s hope that a more casuistic attitude toward ‘dirty hands’ would also set the stage for a larger share of public accountability. Quite the contrary, this case-study with

¹⁷⁸ Walzer, “Political Action,” 170.

reference to one of Walzer's most prominent professed disciples suggests, if anything, that the flexibility casuistry facilitates in deliberating prior to action lays the groundwork for continued evasiveness in its aftermath. But this may be a surprising turn of events only relative to what is, to begin with, an eccentric and ahistorical presentation of "casuistry" on Walzer's part.¹⁷⁹

¹⁷⁹ Pinpointing the operation of casuistic rhetoric in Elshtain's just war arguments in no way requires moralizing outrage. Nor does this critique close off the debate about the Iraq war's justice. Fernando Teson, and David Mellow exploit the modifications of just war reasoning according to the newer logic of "humanitarian intervention" which Elshtain approves in more general terms. Fernando R. Teson, "Ending Tyranny in Iraq," *Ethics and International Affairs* (2005), 1-20. David Mellow, "Iraq: A Morally Justified Resort to War," in *War, Torture and Terrorism: Ethics and War in the 21st Century*, ed. David Rodin. Malden, MA: Blackwell, 2007, 510- 70.

Conclusion: Dilemmas Deliberated

“The dilemma of dirty hands,” Walzer stresses, “is a central feature of political life.” And he seems to have a place for a ‘dirty hands of normal times’ – as embodied in a backroom deal cut between a party boss and a politician – or the typical ‘hustling and lying’ of ordinary politics. Regardless of the scale of its impact, ‘dirty hands’ in the way Walzer speaks of it is not a hallmark of corruption but rather its opposite.¹⁸⁰ If corruption twists public power toward a private good, ‘dirty hands’ are quintessentially acquired by a leader’s sacrifice, at a moment of high drama, precisely with a view to the public good. But Walzer also suggests that the nostrum behind a resigned shrug that “no one succeeds in politics without getting his hands dirty” may feel itself confirmed by reference to something as commonplace as negative campaign advertisements or electoral brokerage in smoke-filled rooms. “It arises not merely as an occasional crisis in the career of this or that unlucky politician, but systematically and frequently.”¹⁸¹ Lawmakers in modern democracies, we might remind ourselves, trade horses all the time; democracies daily confront not only lawmakers but the citizens who choose lawmakers with binary choices between morally unpalatable options. Walzer’s notion of ‘dirty hands’ embraces these mundane trade-offs as much as more epic conflicts.

The ability to take on ‘dirty hands’ is part of what makes ‘good politicians’ worthy of that appellation in our eyes, says Walzer. When Walzer accuses his readers of wanting “our” politicians to be capable of getting their hands dirty, “capability” here, it

¹⁸⁰ Walzer, “Political Action,” *Ibid.*, 164

¹⁸¹ Walzer, “Political Action,” 162.

grows progressively clearer in the course of his essay, entails both a certain hardness as demanded by occasion – *and* a tendency toward appropriate remorse.

Paradoxically, the presumption of a somehow innate capacity to take on ‘dirty hands’ on the part of skilled politicians– and yet rebound from the debacle -- also sometimes fosters a view of officials as a species set morally apart. But this shy delegation is hypocrisy. Any plan to keep one’s own hands antiseptic, meanwhile deliberately leaving it to others to dirty their hands on our behalf, does not in fact absolve us of responsibility upon slight reflection. Pretending that we can simply hand the wheel to others whenever we cannot help skidding into blind alleys is sheer self-deception; Walzer’s presupposition is that we travel in a democratic polity where directional levers always lie to some degree within reach, whether we choose to touch them or not. And the immanent meaning of ‘dirty hands’ in Walzer’s essay cannot be derived without underscoring the democratic dimension of moral accountability.

And indeed, I would argue, that Walzer, some appearances to the contrary, may be ultimately less interested in the actual logic or rhetoric of a casuistic defense than in the often parallel phenomenon of confession. Crucial to the events which can restore the palms of leadership to whatever condition of hygiene is minimally required to resume their duties, is the presence of a mysterious “we”, a chorus palpably present just off the proscenium, although it is not quite audible in this essay. Such an audience is required to receive and react to the guilty politician’s confession if it is to have any meaning at all. The transaction hinted at by Walzer, between a remorseful leader and his public, not conceivable in terms of the “Protestant” or “neoclassical” views as he has outlined them,

seems to be a kind of public confession followed by collective expiation. Now we might want to suggest that Walzer is working with a political notion of confession in this text, not a sacramental one, or even fit his vision with the catharsis of pagan drama. In any case, the action of “Political Action” would not be complete without the coda in which “we” of the democratic polity hand out appropriate comeuppance or mercy (that is, penance or absolution) to dirty-handed politicians – but profanely, that is, only by joining them at their own diabolical game.

The thickets of costly rationalization in which a scholar and public intellectual as redoubtable as Jean Elshtain could become ensnared in the early 2000s, succumbing to the ready pretext of unavoidable ‘dirty hands,’ certainly give pause -- particularly since this high-profile entanglement occurred at an historic moment in which it did not seem far-fetched to imagine that the whole world might be attending to the pronouncements of such authorities, and standing ready to be enraptured by an Ivy League display of casuistic pyrotechnics of the sort of which only her like could be capable.

In her writings on torture, Elshtain seems to be in search of a hero who combines the faith of Kierkegaard’s Abraham with the can-do attitude of *24*’s Jack Sparrow. In Elshtain’s reconstruction of “Political Action,” when a statesperson gets it wrong, it is still the case that he or she might deserve another chance. The important thing is that “He or she can stand before God as a guilty person and seek forgiveness.”¹⁸² With this turnabout, the theological themes Walzer had most explicitly associated with Weber lurch front and center in Elshtain – though with a different valence. Elshtain’s moral theology,

¹⁸² Elshtain, “Reflection,” *Ibid.*, 83.

as revealed here, actually betrays a greater proximity to the stress upon subjective truth in Soren Kierkegaard than to far more objective and scientific posture of a Max Weber.

The Kierkegaardian aspect of Elshtain's 'dirty hands' justification is its radical incommunicability. At the same time that he suspends the moral law with a view to the *telos* of utilitarian benefit, Elshtain's interrogator somehow simultaneously "eschews the exculpatory stratagems of utilitarianism."¹⁸³ The deepest difference between Faust and Abraham, according to Kierkegaard, is that "the tragic hero is still within the ethical," which Kierkegaard also calls "the universal," whereas the "knight of faith" is "an emigrant from the sphere of the universal," and for him "the ethical is the temptation."¹⁸⁴ Having decided to "temporarily override a general prohibition," Elshtain's interrogator cannot return to the realm of the universal. Like Abraham returning from Mt. Moriah, he must remain silent: "They should not seek to legalize it. They should not aim to normalize it. And they should not write elaborate justifications of it."¹⁸⁵ They have done what they had to do under the circumstances, for no reason they can make intelligible to others. Compare Kierkegaard: "Abraham's situation is different. By his act he transgressed the ethical altogether and had a higher *telos* outside it, in relation to which he suspended it." Abraham chooses the absolute in a way only a solitary individual can, "by virtue of the absurd."¹⁸⁶ Thus, he can never explain himself. He becomes the most important witness of his own action – and God's. But he cannot testify. "First and

¹⁸³ Elshtain, "Reflection," 81.

¹⁸⁴ Soren Kierkegaard. *Fear and Trembling/Repetition: Kierkegaard's Writings, VI*. trans. Howard V. Hong and Edna H. Hong. (Princeton, NJ: Princeton University Press, 1983): 110; 59; 115.

¹⁸⁵ *Ibid.*, 83 - 84.

¹⁸⁶ *Ibid.*, 59.

foremost, he does not say anything, and in that form he says what he has to say.”¹⁸⁷

Though, in fidelity to utilitarian doctrine, Elshtain posits an ethical *telos* for her interrogator, as counted in lives to be saved, the religious dimension of the thought process she describes makes the resemblance to Kierkegaard’s “knight of faith” unmistakable. She applauds the fact that Bonhoeffer never offered any public justification of his deeds.¹⁸⁸

Even at the point of his critique of Weber, the missing element is exposed at the lacunae where the “hero’s suffering needs to be socially expressed (for, like punishment, it confirms and reinforces our sense that certain acts are wrong). And, equally important, it sometimes needs to be socially limited.”¹⁸⁹ If an anticipated residue of guilt on the part of the leader who takes on dirty hands is to be relied upon as a fool-proof vaccine against terrible and grandiose delusion, then any advance from the preoccupation with tragic heroism attributed to Weber may be placed in question. One of Walzer’s chief concerns (made most explicit in the second of his two main examples) points to the steady expectation of a public reckoning in the aftermath of an awful political choice of lesser evil. What Walzer is plainly driving at is a system (though not clearly a political as opposed to a cultural system) of public accountability.

¹⁸⁷ Ibid., 118 – 119.

¹⁸⁸ Elshtain, “Reflection,” 84.

¹⁸⁹ Walzer, “Political Action,” 178.

For Walzer, in notable contrast to Elshtain in this regard, a constant willingness to “explain ourselves to other men and women” is an intrinsic part of what it means to be a citizen – or a leader – of a democratic society, no matter what we do.¹⁹⁰

Moral life is a social phenomenon, and it is constituted at least in part by rules, the knowledge of which (and perhaps the making of which) we share with our fellows. The experience of coming up against these rules, challenging their prohibitions, and explaining ourselves to other men and women is so common and so obviously important that no account of moral decision-making can possibly fail to come to grips with it.¹⁹¹

For Walzer, an integral part what makes a ‘good politician’ good is a devotion to being as moral in all of her actions as it is possible for her to be. The final catch: we are all politicians. The task of living a moral life and participating in political life, from Walzer’s taken-for-granted point-of-view, seem necessarily to implicate one another. ‘Dirty hands’ would not compel our attention to the same degree if we were not responsible for what others do in our name and ostensibly on our behalf. And it seems crucial to Walzer’s perspective that we the people of a moral community can drag our feet (or, as Walzer even says, “be properly skeptical”) when asked to march behind a tyrant too quick to declare moral emergency, and somehow even strive to hold such abusive leaders accountable.¹⁹²

Walzer calls on citizens of the “moral communities” he addresses in his 1988 restatement to be “reluctant to grant such exemptions” and “resist the routinization of emergency.”¹⁹³ We are, in fact, he claims, “morally bound to work against the

¹⁹⁰ Walzer, “Political Action,” 169.

¹⁹¹ Ibid., 169.

¹⁹² Walzer, “Emergency Ethics,” in *Arguing About War*. New Haven, CN: Yale University Press, 2004, 40.

¹⁹³ Ibid., 37, 49.

persistence” of emergencies.¹⁹⁴ Walzer urges readers, by this point, to find a way to avoid viewing “our dirty hands with less than abhorrence,” resolving that the compromises it entails are “something to which we can never be reconciled.”¹⁹⁵

But what exactly is it, we may continue to wonder, which can bolster the refusal of citizens of the “moral communities” Walzer addresses to allow dubious ‘emergencies’ to be perpetuated? Do we not need to know more about how we can forestall “those who act for us and in our name” from becoming “killers too quickly and easily”?¹⁹⁶ In the light of what standard, it seems fair to ask, are excessively or too flagrantly dirtied hands to be “socially limited”? If we are able, as Walzer wants, to “deny power and glory to the greatest liars,” against what beam is such overreaching balanced?¹⁹⁷ Walzer’s recourse to “prohibitions and taboos” seems altogether too vague¹⁹⁸ .

The British philosopher Bernard Williams expresses a consanguine impatience with ethical orthodoxy at virtually the same time Walzer is writing “Political Action.”¹⁹⁹ Adding the paradoxical examples etched by Williams to Walzer’s analysis challenges us to try out Williams’ “integrity” as a core value belonging not only to individuals as moral agents, but whole communities. By the time of “Emergency Ethics,” Walzer is searching for a way to tether “our” reluctance to grant exemptions to politicians eager to proclaim

¹⁹⁴ Ibid., 48.

¹⁹⁵ Ibid., 41, 43, 39, 47.

¹⁹⁶ Walzer, “Political Action,” 164.

¹⁹⁷ Walzer, “Political Action,” 180.

¹⁹⁸ Ibid.

¹⁹⁹ Bernard Williams, “A Critique of Utilitarianism,” *Utilitarianism, For & Against*, eds. J. C. Smart & Bernard Williams, eds. (NY: Cambridge University Press, 1973), 77 – 150.

“emergency!” whenever they find it “morally convenient.”²⁰⁰ Walzer concludes that the only force capable of instilling effective restraint will be a public recognition that “communal death” can be threatened as much by official immorality as by the disaster ‘dirty handed’ actions might be employed to forestall. Thus, Walzer seems to envision those on whose behalf ‘dirty hands’ are said to be necessary rising in rebellious defense of their way of life, even at the risk of sacrificing their physical safety. What must intervene is a deep loyalty to what Walzer also calls “solidarity,” or, alternatively, “*the ongoingness of the community*.”²⁰¹ To convey what he means by pronouncing this odd abstract noun “ongoingness,” Walzer quotes Edmund Burke’s aphorism about a contract between the living, the dead, and the unborn of a society. This contract precludes our resignation as a people to any means of preservation which lead us to “imitate our worst enemies.”²⁰² If we jettison our moral principles in order to save our lives, we may end up feeling profoundly foolish as we “stand by and watch the destruction of the moral world in which those principles and prohibitions have their hold.”²⁰³

Borrowing the terms of Bernard Williams’ reflections, perhaps we can avoid shrinking from the most disquieting epigram in all of Walzer’s publications on ‘dirty hands’ by turning it on its head. At the end of “Emergency Ethics,” Walzer intones: “moral communities make great immoralities possible.”²⁰⁴ Perhaps it could at least also be said that, just as for the moral figures of Jim and George at the center of Williams’

²⁰⁰ Ibid., 37.

²⁰¹ Walzer “Emergency Ethics,” 47; 39.

²⁰² Ibid., 47.

²⁰³ Ibid., 37.

²⁰⁴ Ibid., 50.

parables, moral communities *with integrity* will make certain immoralities *impossible*, regardless of the circumstances which may seem to call for them. A certain type of action could be renounced by the polity on the grounds that, in respect of a sense of communal identity more than absolute morality, no entity capable of performing such an action could be recognizable as “us.” Thinking even a bit further beyond Walzer’s 1988 communitarian standard of integrity, we might further inquire whether the *ongoingness* urges us to cherish could be embodied in the fundamental laws and institutions of a community, rather than showing itself only when the leaders of that community find it necessary to act outside those procedures.

What Bernard Williams calls “integrity” and what Camus and some of his characters invoke as “honor” may not in all cases be distinguishable from Machiavelli’s “glory” or Weber’s “conscience.” Williams’ “integrity” and Camus’ “honor” would seem to have in common, not to be equated with an indifference to consequences, a factoring in, along one’s best estimates of those consequences, a consideration of what the actions in question would say about “who one is.” Such a vision might enable a political actor to draw a line between doing her best in the face of insurmountable contingencies and deliberately doing evil in the prospect of doing good. Thus, without recourse to deontological theories, such pivots might support a preference for reflection over speculation.

Few outcomes are ever certain. In the face of life’s greatest uncertainties (no doubt including those suffused with the most agonizing moral dilemmas), deliberations

where the stakes are highest might be well served by a certain retrospective gaze as much as by future projections. Perhaps an assessment subsumable neither by calculations of future costs and benefits nor universalizable maxims can be made to sum the meaning one has taken one's life to this point to have, and perhaps this can be broadened to a conception of the life of a community and not just an individual agent. As Williams underscores this point in a subsequent essay: "a habit of reluctance is an essential obstacle against the happy acceptance of the intolerable."²⁰⁵ By "reluctance," Williams elaborates that he speaks of "not just initial hesitation in reaching for the answer, but genuine disquiet when one arrives at it." And as he puts it, "Only those who are reluctant or disinclined to do the morally disagreeable when it is really necessary have much chance of not doing it when it is not necessary."²⁰⁶

The sympathetic reconstruction of a deliberatively democratic subtext to "Political Action," hemmed in by consideration of personal and collective integrity is confirmed by some of Walzer's subsequent work (where his omission of further mention of his once-favored notion gives every impression that he has become a lapsed casuist). But this attempt at rescue does not erase any of the potentially even larger problems with argument of "Political Action" -- in ways preceding sections of this essay have attempted to suggest, among others. Though the modesty of its immediate demurral of any pretense to the possibility of erecting a bridge where none can be made to stand may hold abiding appeal, the notion of 'dirty hands,' in Walzer's treatment remains troubling in ways

²⁰⁵ Bernard Williams, "Politics and Moral Character," *Moral Luck: Philosophical Papers 1973 – 1980* (Cambridge: Cambridge University Press, 1983), 63; 65.

²⁰⁶ Williams, "A Critique," 101.

beyond those he plainly intends. The fact that Walzer's argument regarding 'dirty hands' does not propose a solution to the problem it takes up, but instead argues for the permanent unavailability of a solution, does not make its thesis less controversial but only more so. Though the showy embrace of equivocation in Walzer's take on 'dirty hands' may continue to persuade many that less nuanced answers fall short of the genuine complexity of the phenomena it describes, disappointment will persist in other quarters, where Walzer's tenaciously tentative settlement of the issues entailed by what he calls 'dirty hands' will be regarded as a peremptory and unwarranted gesture of theoretical surrender. In sum, the question remains as to whether this signpost does more to illuminate than to further enshroud the inherently murky realm it would ostensibly help navigate.

'Dirty hands,' ostensibly a 'limit situation' at the boundaries of moral life, actually serves as a concept to posit an opaque nodal point at its center, a spoke at the center of the wheel, as it were, from which everything, at almost any time, could come apart. A conscientious politician is sought who can be clear-eyed about seeing what is wrong, stout-hearted in carrying it through in the most expedient way, but repentant in the wake of moral disaster. But the problem for the theory is that, by imagining this nodal point in the eye of the storm, it makes it seem that things could go either way with equal justice – without actually saying so. Thus in the end, though presenting itself as a theory for the moralization of politics, "dirty hands" runs the risk of providing the blueprint for a deliberative process in which arbitrary will according to expedience is privileged over rights and law. 'Dirty hands' spins out hypotheticals like its 'ticking

time-bomb scenario,” thus threatening to make casuistically buffered exceptions the norm. By anticipating a blinding collision of moral theories which may well transpire nowhere else as frequently as in the seminar room, the theory itself holds the potential to encourage a kind of reflective defeatism, ultimately encouraging a propensity and installing the ready offer of rationalization for, in a moment of crisis, a simple unwillingness to think things through. Judging and conscience are the by-products of thinking, according to Hannah Arendt. But she adds that:

When everybody is swept away unblinkingly by what everybody else does and believes in, those who think are drawn out of hiding because their refusal to join is conspicuous and thereby becomes a kind of action.... The manifestation of the wind of thought is no knowledge; it is the ability to tell right from wrong, beautiful from ugly. And this indeed may prevent catastrophes, at least for oneself, in the rare moments when the chips are down.²⁰⁷

Arendt suggests that *thinking* is the most precious of human capacities not in some metaphysical sense but in the political realm of our times. The courage to think, as a form rather than an alternative to action -- insofar as it compels one to pause long enough to notice which moral qualms are impregnable, regardless of how extreme the circumstances -- is thus never incompatible with a refusal to think the unthinkable.

²⁰⁷ Hannah Arendt, “Thinking and Moral Considerations (1971),” in *Responsibility and Judgment*, ed. Jerome Kohn (NY: Schocken Books, 2003), 188-89.

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