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CONTENT & OPINIONS

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FROM THE EDITOR

*Un*precedented Times: A History of Adapting to Educational Challenges

The new semester had barely begun as a highly virulent viral infection created havoc on college campuses everywhere, spurring mitigation efforts. Some institutions closed completely; others halved class sizes and quarantined symptomatic students. Public gatherings were prohibited and athletic competitions cancelled. Movie theaters, bowling alleys, and churches shuttered; restaurants limited indoor dining. Students were advised to avoid groups and refrain from class attendance if feeling ill. Masks and social distancing were ordered by health authorities, and travel restrictions between city centers established and enforced.

Although descriptions in the preceding paragraph aptly align with our experience of the continuing COVID-19 pandemic, the events are actually derived from 102-year-old historical accounts by college students, faculty, and administrators during the 1918 influenza pandemic. The similarities are concurrently remarkable and unremarkable as individuals globally sought to contend with—and adapt to—the unimaginable crisis of their respective time.

Historical similarities also suggest that the learning environment of both 1918 and 2020 was characterized by the ability to adjust, to reinvent, and to innovate. Smaller indoor class sizes, outdoor field trips and open-air classrooms, journaling, hybrid instruction (by phone in 1918 or by computer in 2020)—these are some of the learning-within-a-pandemic creations that are evident in both periods. Although higher education students, faculty and administrators of these 20th and 21st century crises are separated by a hundred years of change, examples of pandemic college learning shows that the mixing of innovative traditional and non-traditional learning tools and modes is virtually timeless.

Among the many lessons of the current crisis is knowledge that there is an element to learning that transcends method, approach, or venue, and the authors of this Volume 3 Issue 1 deftly capture this essence in their work. This issue of the *Journal of Business Law & Ethics Pedagogy* provides classroom ideas and resources for teaching that are innovative and simultaneously malleable to the multiple learning platforms many of us have recently adopted. Some of the exercises and concepts found in these articles are inspired by the current crisis; all will provide students with enhanced ability to make connections between their studies, business operations, and the world in which they live and work.

In *Business Continuity in Light of Coronavirus Disruption—A Group Exercise*, author Nanci Carr shows how crisis can create opportunity—even in the classroom—through a study of business disruption. This practical exercise focuses on allowing hospital-based employees to begin working remotely, and examines the requisite logistical and legal issues associated with such a transition. Covering a variety of topics, such as consent, liability, and HIPAA regulations, Professor Carr's lesson helps students make a vivid direct correlation between the COVID-19 crisis and its impact on business operations.

Author Tonia Hap Murphy has developed a valuable compendium of resources and their application in her article *Law in the Time of Coronavirus: How and Why to Cover COVID-19 Disruptions in a Business Law or Legal Environment Course*. Including a virtual textbook range of business law topics, Professor Murphy presents engaging and immersive examples that capture the "silver lining" of our current crisis—understanding a connection between real world current challenges and the lessons we take with us from these issues to apply in the future.

In the essay *Getting Our Hands Dirty: Making the Problem of Dirty Hands Work for Us*, author Barry Sharpe suggests using the concept of dirty hands to introduce students to some of the more complex aspects of ethical thinking. Because the idea that an action may be both justified and wrong is difficult to reconcile, Professor Sharpe believes that the paradoxical nature of dirty hands is a useful framework to reconsider ethical theories and their often hasty, "cookie-cutter" application. Student encounters with messy moral landscapes helps to broaden their ethical toolbox for challenges and more thoughtful decision-making in both life and work.

Using the analogy of a flowing river, author Nancy White illustrates how cases and law move through the court system in *The River of Case Law and the Engagement Ring*. Including a short lecture (<4 mins.) and a well-organized exercise (with teaching notes), Professor White provides students with an opportunity to understand the complexities of how cases are decided and how precedents are created and applied. Focusing on the law of the "engagement ring" and other gifts given in contemplation of marriage, *The River of Case Law* is an engaging (pun intended) look at the consistency and structure of our legal system.

Authors Susan Willey and Cheryl Black present a practical, multifaceted project in their article *Speaking Their Language: Assigning Infographics and Videos as "Digital Deliverables" to Teach Legal Environment of Business Students About Social Media Policy*. In this highly engaging exercise, students are asked to analyze a corporate media policy, create an infographic and training film, and apply the policy to various workplace scenarios. Drawing on Generation Z's affinity for social media, the importance of digital deliverables, and the need for projects that align with many learning platforms, Professors Willey and Black have created a versatile lesson that combines knowledge and technical skills in a unique and innovative way.

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Christine Ladwig
EDITOR-IN-CHIEF

Getting Our Hands Dirty: Making the Problem of Dirty Hands Work for Us[1]

Barry Sharpe*

ABSTRACT

Business ethics instructors looking for a different way to explore ethical theory with students may want to consider the problem of "dirty hands." The traditional approach to introducing ethics to students—a parade of ethical theory from utilitarianism to deontology to virtue ethics, etc.—may inadvertently lead to a distorted view of ethical landscapes that obscures the messiness of ethical decision making. The problem of dirty hands presents a different frame for discussing moral conflict, dilemmas, agency, justification, responsibility, moral injury and moral costs.

KEY WORDS: ETHICAL THEORY, PEDAGOGY, DIRTY HANDS, MORAL REMAINDERS

I. Introduction

In the classic "problem of dirty hands,"[2] a political actor faces the dilemma of doing something that is both right and wrong. As Michael Walzer[3] expresses it in his seminal essay on dirty hands, an action "may be exactly the right thing to do" but still leave a person "guilty of moral wrong."[4] The problem of dirty hands (DHs) is usually presented as a distinctive political problem; that is, the problem is most often tied to political action because of common assumptions about political ends and means. As Walzer characterizes it, the DHs problem is a "central feature of public life" and "posed most dramatically in politics."[5] In this essay, I argue that DHs, although most visible in politics, is not limited to political life.[6]

Business ethics educators can draw lessons from DHs to inform and structure how students engage with ethical theory. More specifically, students analyzing DHs may open up or uncover different ways of thinking about moral conflict, dilemmas, agency, justification, responsibility, and moral costs.

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[1] An earlier version of this paper was presented at the Sixth Annual Research in Business Symposium, Western Carolina University (March 29, 2019).

[2] Michael Walzer, *Political Action: The Problem of Dirty Hands*, 2 PHIL. & PUB. AFF. 160 (1973).

[3] Professor Emeritus of Social Science, Institute for Advanced Study of Princeton University.

[4] Walzer, *supra* note 2, at 161.

[5] *Id.* at 74.

[6] For examples of scholars who take this view of DHs, see MICHAEL STOCKER, PLURAL AND CONFLICTING VALUES (1990); C.A.J. Coady, *The Problem of Dirty Hands*, STAN. ENC. OF PHIL. (2018), https://plato.stanford.edu/entries/dirty-hands/; CHRISTOPHER GOWANS, INNOCENCE LOST: AN EXAMINATION OF INESCAPABLE WRONGDOING (1994); and George Brenkert, *Google, Human Rights, and Moral Compromise*, 85 J. OF BUS. ETHICS 453-478 (2009).

[H]ow we respond to the problem of dirty hands says a great deal about where we stand on some of the most fundamental issues of moral and political philosophy.[7]

If you teach courses in ethics or address ethical issues in other courses, you probably encounter, perhaps frequently, overly simplistic accounts of ethics and ethical decision making by students.[8] I claim that one way to address the problem of overly simplistic accounts of ethical theory and ethical decision making is to introduce to students the idea of DHs—an action can be justified and wrong at the same time.[9]

To test this idea, I designed a course—"Ethics, Politics, and Policy"[10]—around DHs. The course opened with an introduction to DHs[11], we returned to DHs throughout the course, and students responded to a survey[12] on DHs as part of the final exam. What I wanted to achieve was a kind of *experiment* with DHs and ethical theory. This essay documents that experience. To provide context for the student learning experience, I incorporate student responses to the survey throughout the remainder of this essay.

II. Describing the Problem of Dirty Hands

A. Defining Dirty Hands (DHs)

Michael Stocker[13] defines DHs as "acts that are justified, even obligatory, but nonetheless wrong and shameful."[14] What this account shares with other accounts of DHs is the idea that something morally relevant

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[7] Charles Blattberg, *Dirty Hands*, INT'L ENC. OF ETHICS (2015).

[8] A pick-and-choose method (e.g., ethical theory as a post-hoc rationalization for a decision) or battle of the theories approach (e.g., once an appropriate theory has been selected, then the debate is over) are two examples of what I have in mind here.

[9] Faculty and students, especially in legal studies, may be familiar with the doctrine of clean (or unclean) hands. Although the problem of dirty hands and the doctrine of clean (or unclean) hands may appear to be similar, the basic structure of each is different. The doctrine of clean hands is a rule in equity that denies relief to a party based on wrongful conduct related to the issue in question. In essence, a plaintiff or defendant should not benefit from illegal or unethical conduct (i.e., guilt precludes remedy). With the problem of dirty hands, guilt coexists with a justified but nonetheless wrongful action. It is this paradoxical structure, right and wrong at the same time, which separates the *problem* of dirty hand from the *doctrine* of clean hands. Highlighting the difference between the problem and the doctrine could be a useful classroom exercise.

[10] "Ethics, Politics, and Policy" was an upper-division undergraduate course in Political Science that carried an ethics-intensive designation. It was in-person in a seminar format.

[11] The case involves the decision by the London School of Economics (LSE) to accept money from the Gaddafi Foundation and work with Saif Gaddafi on civil society initiatives in Libya. For background on the case, see Jeevan Vasagar and Rajeev Syal, *LSE head quits over Gaddafi scandal*, THE GUARDIAN, March 3, 2011, https://www.theguardian.com/education/2011/mar/03/lse-director-resigns-gaddafi-scandal. To see how the framework of justified but still wrong was initially framed for students, see John Keane, *Libya, Intellectuals and democracy: an open letter to Professor David Held*, OPEN DEMOCRACY, March 18, 2011, https://www.opendemocracy.net/en/libya-intellectuals-and-democracy-open-letter-to-professor-david-held/ and David Held, *Dealing with Saif Gaddafi: naivety, complicity or cautious engagement?*, OPEN DEMOCRACY, March 16, 2011, https://www.opendemocracy.net/en/dealing-with-saif-gaddafi-naivety-complicity-or-cautious-engagement/.

[12] The following survey questions formed part of the course's final exam:
1. Define, in your own words, the problem of dirty hands.
2. Do you think there really is a problem of dirty hands? Why or why not?
3. Does the problem of dirty hands serve as a useful "road map" for exploring and examining political ethics? Why or why not?
4. Which case(s) reviewed in this course do you think serve(s) as the best example of the problem of dirty hands? Why? If you do not think any of the cases examined in class serve as an example of the problem of dirty hands, please explain how you came to this decision.
5. What, if anything, can be learned about ethical theory through an examination of the problem of dirty hands?
6. Are there any important terms or concepts that you think the problem of dirty hands helps to explain or clarify?
7. Are there any important terms or concepts that you think the problem of dirty hands serves to confuse or distort our understanding?
8. Please evaluate the following claim: "Even if we reject, in whole or in part, the logic of dirty hands (DHs), in politics or in ordinary life, I contend it is still instructive for us to grapple with the possible 'remainders' of dilemmas/conflicts often described as DHs as a way of testing ethical theories, but also as a way of grounding the educational experience of students in the particular challenges of messy moral landscapes."

[13] Professor Emeritus of Ethics and Political Philosophy, Syracuse University.

[14] STOCKER, *supra* note 6, at 9.

may remain after a decision or action. Bernard Williams[15] describes this as a "moral remainder."[16] It is this idea of a "moral remainder," captured in the image of dirty hands, which may help to address superficial application of ethical theory by students. The concept of moral remainders, and the potential challenge to ethical theory that it represents, certainly struck a chord with my students.

> [DHs] **helped me better understand utilitarianism**. I never knew what to call an issue that seemed to leave something needing further examination, **I just thought it was a complicated issue and that was all there was to it**....Even though there is a good outcome in the problem of dirty hands, the good that is done does not outweigh the wrong and implicates the character of the actor making the dirty hands decision. In utilitarianism, when the issue is measured to the actor making the decision, [the actor] is found to be moral.[17] (Emphasis added.)

This is how one student presented DHs as a way to explore complex ethical decision making and approach and understand ethical theory. Notice how an encounter with DHs provokes a new kind of reflection on what the student previously thought was simply a messy or complicated issue. The language used by the student (outcomes and character) highlights the interplay of competing ethical considerations and underscores the potential value of DHs as a way to maintain tensions among ethical theories (e.g., utilitarianism and virtue theory). The student reflects on her understanding of utilitarianism and how DHs press her to reconsider its meaning. Instead of picking and relying on one ethical theory to understand the conflict, she notes the relevance of both theories for marking the ethical dimensions of the conflict.

B. Possible Business Applications of Dirty Hands

Since teaching this course a few years ago, I have explored the use of DHs, especially this idea of moral remainders, more specifically in the context of business ethics. George Brenkert's[18] article "Google, Human Rights, and Moral Compromise"[19] illustrates the potential use of DHs for cases outside of the field of politics. Although Brenkert uses the language of moral compromise rather than the language of DHs, his article represents a nice way to introduce the *structure* of DHs to students.

> [T]he compromise when one does not live by or fulfill one or more (of one's) moral principles or values, but instead does something that violates them in order to fulfill other values and principles one also holds to be important that cannot be fulfilled if the first values or principles are fulfilled.[20]

Notice how his treatment of moral compromise tracks the structure of DHs—one violates an important value or principle in order to secure another important value or principle.

It is this idea of "moral remainders" that most closely tracks the structure of DHs and presents a desirable difficulty for students as they explore the application of theory to practice in ethical decision making.

> [O]ne makes difficult decisions that leave one with a sense of violation and loss, and possibly of guilt, because of the **moral residues that remain**, while one does what one thinks one must (all things considered) do.[21] (Emphasis added)

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[15] Distinguished moral philosopher (1929-2003) who taught at the University of Cambridge and the University of California, Berkeley.

[16] BERNARD WILLIAMS, PROBLEMS OF THE SELF 185 (1973).

[17] Student comment in end-of-course survey on dirty hands.

[18] Professor of Business Ethics at Georgetown University.

[19] BRENKERT, *supra* note 6.

[20] *Id.* at 463.

[21] *Id.* at 463.

Using this framework of moral compromise, Brenkert explores Google's decision to develop a search engine that would operate within the parameters set by the Chinese government. He concludes that, under certain situations, business managers may face moral compromise and that business ethicists have provided insufficient guidance in this area. Brenkert emphasizes that we may need to do more to introduce students (and business managers) to the reality of compromise and moral residues. If we accept Brenkert's concern about compromise and moral residues, then we may need to rethink some of the more traditional approaches of teaching ethical theory and ethical decision making. Using DHs in ethics courses is one way to address Brenkert's concern.

Even with Brenkert's promising application of moral remainders to cases like Google's operations in China, the question of whether there are examples of DHs outside of politics remains an important one. It was also a question frequently asked by my students.

- I had a hard time transferring the problem of dirty hands to examples that were not in the political field.
- I would like to have more examples of dirty hands outside of politics.[22]

Michael Stocker does provide a few cases of DHs that he thinks fall outside of the political domain. The first example is an incompetent or unlucky military commander who direct soldiers into an "untenable situation" and then abandons them to avoid even greater losses. The second example is useful research funded by dirty money.[23] Stocker does not explore these cases in much detail.

These cases seem promising; worth expanding or adapting for course use. The first suggestion is a college or university president facing a closure decision. There are numerous examples to explore for possible classroom use (Sweet Briar College—decision to close followed by decision to stay open; Burlington College—closed; Dowling College—closed; Mount Ida College—closed; MacMurray College—closed; Shimer College—acquired by North Central College; and Wesley College—acquired by Delaware State University). The second suggestion is the London School of Economics acceptance of funding from the Gaddafi Foundation (see Footnote #10 for additional information on this suggestion). Both of these suggestions could provide students with the opportunity to navigate messy ethical landscapes replete with compromise and moral remainders.

There is a good case for introducing DHs as a way to explore ethical issues outside of the political sphere. Before introducing DHs in the classroom, however, it is important to review challenges to DHs that deny that it even exists.

C. Challenges to Dirty Hands

[Dirty Hands] is a conceptual confusion with unfortunate moral residues.[24] [Dirty Hands] creates a feeling of confusion about how an action can be morally correct by being immoral.*[25]*

Some skeptics and critics claim that DHs do not exist, even in politics. Kai Nielsen[26] denies that there is a dilemma, compromise, or moral remainder as Walzer and others claim. Nielson accepts there may be occasions when political actors may face a decision about whether to get their hands dirty (i.e., do something that would ordinarily be "morally impermissible"). The "conceptual confusion" rests with the characterization of this situation as a paradox.[27] Even if we are faced with doing wrong no matter what we do, "we do not do wrong by doing the lesser evil."[28] If it is something we ought to do, Nielsen argues that it simply cannot be viewed as

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[22] Student comments in end-of-course survey on dirty hands.

[23] STOCKER, *supra* note 6, at 24.

[24] Kai Nielsen, *There Is No Dilemma of Dirty Hands*, POLITICS AND MORALITY 20, 21 (2007).

[25] Student comment in end-of-course survey on dirty hands.

[26] Professor Emeritus of Philosophy at the University of Calgary.

[27] Nielsen, *supra* note 24, at 21.

[28] *Id*. at 22.

wrong. To view it in this way (i.e., to add guilt to what is a morally traumatic situation), is to "add insult to injury by making, artificially and confusedly, a conceptual and moral dilemma out of it as well."[29]

The conceptual confusion of DHs could result in additional "moral residues" as well. As Charles Blattberg[30] suggests, "dwelling too much on the topic can be corrupting since it could make people feel as if there is no escape from the ethicist's infamous slippery slope and this could lead them to relax their ethical standards."[31] One student expresses concern about how acceptance of DHs could spur a kind of undesirable moral permissiveness: "Dirty hands allows for there to be a window of leeway…[It] is a very slippery slope."[32]

If DHs is to serve as a useful framework for thinking about ethical theories and moral conflict, then its paradoxical structure must do more than simply mark a conceptual confusion or illustrate a tragic dimension of politics.

> The Structure of Dirty Hands is such that it seems to involve a contradiction or paradox. The advocate of Dirty Hands says in effect that it is sometimes right to do what is wrong, and this seems tantamount to saying that some act is both wrong and not wrong.[33] The fact that dirty hands is paradoxical forces us to go deeper and ask more questions. We are now faced with the task of examining dirty hands from different perspectives until we can work out all the ins and outs of ethical theory. This is beneficial because keeping the conversation going creates more room for new discovery and discussion.[34]

As we have seen, no matter the position taken on the relevance or appropriateness of DHs, it is clear both skeptics and proponents center on the paradoxical structure of DHs. One goal in using DHs to frame discussion of ethical theories is to get students to hold on to the confusion a bit more and resist labelling DHs as mere confusion or mistake as a way of accounting for external and internal costs as features of ethical decision making. The paradoxical structure of DHs seems like a promising framework to support this goal. Stocker uses claims about the contradictory nature of DHs to highlight what he thinks are deficiencies in our understandings of ethical theory and the place of moral emotions in decision making.[35] I ask students to hold on to the paradox at the heart of DHs and consider what they gain by taking the paradox seriously, rather than constructing or seeking a way out of the paradox.

D. Benefits of Dirty Hands

Although sometimes identified as a spark for general creativity,[36] I focus on how paradoxes may be useful in working with students. Glenn Tinder[37] offers useful suggestions about what students gain through engaging with paradoxes.[38]

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[29] *Id.*

[30] Professor of Political Philosophy at the Université de Montréal.

[31] BLATTBERG, *supra* note 7.

[32] Student comment in end-of-course survey on dirty hands.

[33] COADY, *supra* note 6.

[34] Student comment in end-of-course survey on dirty hands.

[35] STOCKER, *supra* note 6, at 22-23.

[36] Angela Leung, *Why Confronting Paradoxes Can Give You a Creative Boost*, CHARACTER & CONTEXT, July 10, 2018, http://www.spsp.org/news-center/blog/confronting-paradoxes-creative#gsc.tab=0.

[37] Professor Emeritus of Political Science at the University of Massachusetts at Boston.

[38] GLENN TINDER, POLITICAL THINKING: THE PERENNIAL QUESTIONS (1995).

Two of these suggestions are particularly useful in the classroom:

1. Paradoxes "forcefully remind us of the inadequacy of verbal formulas."[39]
2. Paradoxes help to establish "a thoughtful and continuing relationship to questions."[40]

What might our moral language fail to capture about our moral experiences? How might our moral language blunt our thinking? How might it encumber moral imagination? Are consequences the final or most important ethical consideration? How should we weigh intent or character against (estimates of) moral injuries? I claim that DHs, resting as it does on a paradox, forces us to reconsider the meaning and reach of ethical theories. This includes reconsidering the distinctive language associated with ethical theories (harm, duty, virtue, etc.). When students are tempted to think that simply naming something is sufficient for making an argument, a salutary effect of a paradox may be to slow down this process and force them to reconsider language and its application.

Tinder also argues that paradoxes may arrest a hasty rush to answers.[41] I observe this hasty rush to answers too frequently in ethics courses. Many students see the task before them as: (1) identify the right/best/most convenient ethical theory, and (2) provide the answer to the question(s) presented by the case, dilemma, or scenario before them. Although certainly understandable, I would like students to stay with the question(s) a bit more, "keep thought alive,"[42] and establish what Tinder calls "inquiring openness."[43]

For example, consider Rousseau's famous paradox – "forced to be free"[44] (an image from Rousseau's *The Social Contract* that students often struggle with). How can one be coerced and free at the same time? Does one preclude the other? This paradox presses us to reconsider the meaning and application of terms like freedom and coercion. In the case of DHs, we are pressed to reconsider the meaning and application of terms like justified, wrong, and shameful. "Forced to be free" could lead students to reconsider the central meaning of freedom and the conditions that support or prevent its exercise. It also highlights how often we consider the meaning of freedom in terms of ways in which we are not free. In terms of DHs, we are compelled to confront how to characterize the moral harm or wrongdoing as a constraint, weight on a scale, or a remainder. In addition, by applying these terms to examples, students may develop a better appreciation for the push/pull that comes from the normative claims associated with contested concepts (e.g., liberty "can be limited only for the sake of liberty itself"[45] or restricting consumer choice as a way of preserving consumer autonomy[46]). Similarly, an examination of DHs could lead to further consideration of what it means for one moral principle to override another even while the "defeated" principle leaves a remainder. Alternatively, engagement with DHs may present useful ways to connect with other disputes and debates in ethics: justification versus excuse, individual versus collective responsibility, shame versus guilt, etc.

Although I did not assign Tinder on paradox for students in "Ethics, Politics, and Policy", several students came to a similar conclusion about "keeping the conversation going." As stated previously, one reason for designing a course around DHs is to address an overly simplistic understanding and application of ethical theory by many students in ethics courses. Often once a student identifies and employs an ethical theory, it can close down the conversation and signal the end of the argument.

[M]oral conflicts are real, not just confusions or mistakes by one side about what really matters.[47]
As instructors, we have other goals in addition to "keeping the conversation going." We would also like to see conversation proceed in a way that supports student engagement and learning. In his work on ethical decision

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[39] *Id.* at 237.

[40] *Id.* at 242.

[41] *Id.* at 237.

[42] *Id.* at 165.

[43] *Id.* at 423.

[44] "[T]hat whoever refuses to obey the general will shall be constrained to do so by the whole body; which means nothing else than that he shall be forced to be free." JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT AND DISCOURSE ON THE ORIGIN OF INEQUALITY 22 (1967).

[45] JOHN RAWLS, THEORY OF JUSTICE 204 (1971).

[46] BARRY SCHWARTZ, THE PARADOX OF CHOICE: WHY MORE IS LESS (2005).

[47] ANTHONY WESTON, A PRACTICAL COMPANION TO ETHICS 69 (2011).

making as creative problem solving, Anthony Weston[48] asks us to resist the question "which side is right" and reframe the inquiry in terms of "what each side is right about."[49] The initial result may be a messier ethical landscape, but this could be a gain. For example, recognition of, if not comfort with, some level of uncertainty is an important learning outcome for students. As Weston puts it, "moral conflicts are real, not just confusions or mistakes by one side about what really matters."[50] Taking seriously the value claims that stand behind justified but still wrong/shameful could prepare for a more "adequate account of all the important values that are at stake,"[51] which includes acknowledging how and why moral values pull us in different directions. It is in this sense that "keeping the conversation going" helps to protect against superficial and inadequate accounts of ethical theory and ethical decision making. To put it differently, the aspirational goal is to balance the need to stay on guard against the promise of easy solutions to complex problems, while cultivating the moral imagination capable of resisting the easy, powerful logic of necessity.

E. Dirty Hands or Spattered Hands?

> We should conceptualize situations in which INGOs [International Non-Governmental Organizations] have mostly good intentions, some good effects, and contribute knowingly but unintentionally to injustices perpetrated primarily by others, as spattered hands problems.[52]

Another way to use DHs in the classroom is to change some of the features of DHs to explore morally relevant issues for decision making. In DHs, the dirty hands are a result of the active, intentional wrongdoing by an actor. What if the actor is not actively causing the harm? Jennifer Rubenstein[53] introduces the concept of spattered hands in her work on the ethics of humanitarian aid provided by INGOs. She examines decisions made by INGO agents to provide food and medicine to refugee camps even though such efforts often will be exploited by warring parties in the area. The harm is not intentional as in dirty hands, so she created this new category, spattered hands, to designate the intentional harm done by others but still capturing the sense in which the attempt to do good is importantly connected to evil deeds. This strikes me as a potentially useful way of thinking about moral compromise and moral remainders, and one that is more likely to describe moral conflicts outside of politics.

Review of coverage of the massacre at a mosque in New Zealand by the Washington Post serves as an opportunity to test the usefulness of the concept of spattered hands as an analytical framework for student use in the classroom.[54] Whether or not the struggle of tech giants like Facebook and Google to pull uploaded material like live coverage of the massacre at a mosque in New Zealand is equivalent to "contributes knowingly but unintentionally to injustices perpetrated by others," the question does helpfully reframe issues of harm and responsibility. In this way, the introduction of the concept of spattered hands to students in an ethics course places in the foreground what traditional reviews of ethical theory might leave in the background–the possibility for or likelihood of "moral remainders."

In "Ethics, Politics, and Policy" I used the London School of Economics (LSE) accepting funding from the Gaddafi Foundation and participating in reform efforts led by Saif Gaddafi as a kind of test case for dirty and spattered hands. Students read public statements from David Held[55] explaining his decision to work with

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[48] Professor Emeritus of Philosophy and Environmental Studies at Elon University.

[49] WESTON, *supra* note 47.

[50] *Id.*

[51] *Id.*

[52] JENNIFER RUBENSTEIN, BETWEEN SAMARITANS AND THE STATES: THE POLITICAL ETHICS OF HUMANITARIAN INGOS 103 (2015).

[53] Associate Professor of Politics at the University of Virginia.

[54] Craig Timberg, Drew Harwell, Elizabeth Dwoskin, and Tony Room, *How social media's business model helped the New Zealand massacre go viral*, WASHINGTON POST, March 18, 2019, https://www.washingtonpost.com/technology/2019/03/18/how-social-medias-business-model-helped-new-zealand-massacre-go-viral/?utm_term=.89f94a804226.

[55] Distinguished political theorist (1951-2019) who taught at the Open University, the London School of Economics, and the University of Durham.

the Gaddafi Foundation. His statements reflect the logic of DHs or spattered hands – something could be right and a mistake at the same time.

> There is no risk-free path in engaging with authoritarian regimes, but refraining altogether would also be a mistake. I think it was right to engage and to make a contribution to the dialogue about the democratisation of Libya. But with the terrible knowledge we have now, I would never have countenanced this funding option, nor would the Governing Council of the LSE. It was a mistake that is deeply regrettable.[56]

Student responses to this case present some interesting perspectives on the use of DHs as a way to explore and test ethical theories.

> This is an example of dirty hands because the school thought they were educating and endorsing a reformer who would make great change in Libya. The money they accepted was used for good, but the connection to the Gaddafi regime made it dirty money. In this case, ***the attempt of the London School of Economics to do good led them to do wrong***.[57] (emphasis added).

The student's conclusion here—"the attempt of the London School of Economics to do good led them to do wrong"—appears to follow the paradoxical logic of DHs, but it misses or ignores a critical element of DHs—a active, intentional moral wrongdoing. Structurally this case looks more like "spattered hands" than "dirty hands." Actions by the repressive Gaddafi regime are the source of the harm, not the LSE.

Even if the student mischaracterizes the case (which itself presents an important teachable moment), the student highlights a particularly noteworthy feature of messy ethical landscapes – decision making under conditions of uncertainty.

> The problem was that this school [accepted funds from] the totalitarian Gaddafi regime. Further examination of the problem would show that the LSE was taking the money under the assumption that the son of the leader of the Gaddafi regime, who had studied at the LSE, would not follow in the dark footsteps of his father.[58]

Here, the student rightly focuses on a critical feature of DHs cases: the conflict at the heart of DHs—doing something that is right and wrong at the same time—is itself based on probabilistic calculations of means and ends. How should we regard decision making under conditions of uncertainty as a morally relevant feature of judging an action after the fact? Does DHs help us to factor in important considerations of the actor, as opposed to the spectator? Students often make the following comments in response to an ethics case: "I would never find myself in such a situation"; "I would follow my conscience"; "I would go with the greatest good for the greatest number"; or "I would do my duty". I contend that student comments like these represent a way in which traditional reviews of ethical theory may lead to distorted understandings of ethical decision making. Does this shift from spectator to actor, facilitated by DHs cases, help to address overly simplistic accounts of ethical decision making represented by these typical student comments?

> I think **it was right** to engage and to make a contribution to the dialogue about the democratization of Libya. But with the terrible knowledge we have now, I would never have countenanced this funding option, nor would the Governing Council of the LSE. **It was a mistake** that is deeply regrettable.[59] (emphasis added).

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[56] HELD, *supra* note 11.

[57] Student comment in end-of-course survey on dirty hands.

[58] Student comment in end-of-course survey on dirty hands.

[59] Held, *supra*, note 11.

In David Held's admission of mistake and regret, we find a morally relevant feature of decision making usually missing or not explicitly acknowledged in many textbook treatments and classroom discussions of ethical theory. Although certitude is convenient for testing ethical theories against one another, it is uncertainty that marks much of the messiness or dirtiness here. If there is some "moral remainder" in Held's regret, then we can see this is an example of how the moral nature of our acts is "importantly within our control but also importantly outside our control."[60] It is this feature—both within and outside of individual control—that connects back to the logic of DHs and its potential pedagogical value as structure for student engagement with uncertainty in ethical decision making.

III. Conclusion

Even if we reject, in whole or in part, the logic of DHs, in politics or in ordinary life, I contend it is still instructive for students to grapple with the possible "remainders" of dilemmas or conflicts sometimes described as DHs as a way of testing ethical theories. This struggle grounds the educational experience of students in the particular challenges of messy moral landscapes. A sustained engagement with DHs forces us to reconsider at least some of the following features of messy moral landscapes: moral costs as remainders; overridden moral principles still have weight and matter; and that justified but still wrong may not be clean, but it is still meaningful.

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[60] STOCKER, *supra* note 6, at 23.