

Abstract: Aristotle suggests an act can be right under the circumstances, but also shameful. Michael Stocker sees in this a dirty hands theory, according to which it is sometimes right to do wrong. However, Karen Nielsen cites Aristotle's claim that a good person will never do something shameful to argue that Aristotle rejects dirty hands. In this paper I offer a partial defense of, as well as an amendment to, Stocker's interpretation of Aristotle. Specifically, I argue that being confronted with a tragic dilemma which forces an agent to dirty her hands damages the agent's moral integrity but that demonstrating shame makes it possible to repair the damage. Finally, I apply Aristotle's conceptions of dirty hands and shame to the case of torture in a ticking time bomb scenario.

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Aristotle, Torture, and the Shame of Dirty Hands

We can understand the problem of dirty hands in terms of a conflict between utilitarian and Kantian moral intuitions. In Michael Walzer's classic example, a politician must decide whether to order the torture of a prisoner who knows the location of bombs set to kill many innocent citizens (2007, p. 283). The politician orders the torture "even though he believes that torture is wrong, indeed abominable, not just sometimes, but always" (283). Utilitarianism regards the torture as unqualifiedly right if it brings about the best consequences, whereas Kantianism regards it as categorically wrong, since torture violates Kant's prohibition against using people as mere means. The dirty hands theorist takes a middle position between the two and tries to make sense of the claim that the politician does right by means of doing wrong.

Walzer credits Machiavelli with being the first to discuss dirty hands. However, Michael Stocker¹ locates a theory of dirty hands in a much earlier source, Aristotle's *Nicomachean Ethics*. For Stocker, acts of dirty hands are voluntary actions that are "(1) right, even obligatory, (2) but none the less somehow wrong, shameful, and the like" (52). Acts of dirty hands are right, all-things-considered, but the bad features of the act aren't negated by overriding considerations

¹ "Dirty Hands and Conflicts of Values and of Desires in Aristotle's Ethics," in *Plural and Conflicting Values*, (Oxford: Clarendon Press, 1990), pp. 51-84.

in favor of the act. The wrongness of the dirty hands act is double-counted. First it counts as a (non-action-guiding) reason not to do the dirty act. But once the wrongness is overridden by (action-guiding) reasons in favor of the dirty act, the wrongness is counted again. Bernard Williams terms this leftover wrongness a “remainder” (1973, p. 179).

Pace Stocker, Karen Nielsen denies that Aristotle has a theory of dirty hands. She argues that in his discussion of shame in the *Nicomachean Ethics*, Aristotle expresses a clear “rejection of the doctrine of dirty hands” (2007, p. 288). Aristotle writes that “it is for voluntary actions that shame is felt, and a good man will never do bad actions” (III.1.1128b28-29). If acts of dirty hands are voluntary wrongs and thus shameful, then it seems, as Nielsen puts it, “Aristotle does not condone voluntary, shameful behavior” (288). This appears to contradict the doctrine of dirty hands, according to which voluntary, shameful behavior is sometimes right.

In this paper I defend Stocker’s view that Aristotle allows for dirty hands. Nielsen thinks Stocker errs by ignoring Aristotle’s conception of shame. I agree. However, I argue closer consideration of Aristotle’s conception of shame actually bolsters the view that the *Nicomachean Ethics* advances a theory of dirty hands. Aristotle’s conception of shame helps make sense of the phenomenology of dirty hands, both from the perspective of the virtuous agent who must do wrong in order to do right, and from the perspective of the community standing in judgment of the agent. My claim is that, for Aristotle, the agent who dirties her hands does something virtuous (overall) by vicious means. On my reading, shame plays an important role in Aristotle’s dirty hands theory: it allows the agent to repair her integrity and standing in the community after an (uncharacteristically) vicious act.

I.

Stocker's discovery of a theory of dirty hands in the *Nicomachean Ethics* rests on his reading of Aristotle's discussion of voluntariness and so-called mixed-acts in Book III. Mixed-acts are acts that seem both voluntary and involuntary. Consider a ship captain who orders "the throwing of goods overboard in a storm" (III.1.1110a9-10). Aristotle notes that "in the abstract no one throws goods away voluntarily, but on condition of its securing the safety of himself and his crew any sensible man does so" (III.1.1110a9-11). Despite appearances, Aristotle concludes that such acts aren't a mix of voluntary and involuntary; rather, they're wholly voluntary. In the moment of action² the ship captain (1) has the principle of motion within her, and (2) acts in awareness of the relevant facts. Thus the action meets Aristotle's criteria for voluntariness (III.1.1109b35-1110a3). As Nielsen observes, then, mixed-acts drop out of Aristotle's considered ontology (280).

Stocker, by contrast, sees something more interesting in ostensibly mixed-acts than a mixture of voluntariness and involuntariness. "To be mixed," writes Stocker, "there must be reasons both for and against doing it. The mixture is a mix of reasons—for and against" (58). It's important to note Aristotle's view that all our actions aim toward *eudaimonia* (human flourishing) (62). In mixed-acts (as in dirty hands acts), regardless of whether the agent opts for or against a particular action, she ends up further from the *eudaimon* life. However, practical reason demands that she (voluntarily) choose to act in the way least damaging to her *eudaimonia* overall. It would be damaging for the ship captain to lose her cargo, but it would be far more damaging to lose her life, her crew's lives, and her ship and its cargo. Nielsen's point may be granted that Aristotle intends "mixed-act" as a provisional term for an act containing a mixture

² "Both the terms, then, 'voluntary' and 'involuntary,' must be used with reference to the moment of action" (1110a13-14).

of voluntary and involuntary. But this doesn't undermine Stocker's main point—that Aristotle's ostensibly mixed-acts also feature a mixture of reasons, for and against the action.

To see why this matters for a theory of dirty hands, it will be helpful to consider a purportedly mixed-act with more ethical significance. Aristotle considers a tyrant who “tells you to do something *shameful*,³ when he has control over your parents and children, and if you do it, they will live, but if not, they will die” (italics mine, III.1.1110a6-8). This example fits Stocker's definition of dirty hands. The act is shameful and thus wrong, but the reasons to do the shameful act are overriding. Although doing something shameful tells against *eudaimonia*, allowing a tyrant to kill your family would destroy necessary conditions for a *eudaimon* life. Any sensible person would save her family rather than spare herself shame, but the shamefulness of the act points toward the moral remainder.

It shouldn't be surprising that Aristotle recognizes situations calling for the decent person to do wrong. In Martha Nussbaum's discussion of “tragic conflict” (her term for dirty hands), she observes that Aeschylus's *Agamemnon*, which Aristotle knew, depicts such a scenario. She writes,

Agamemnon is told by the prophet that if he does not offer up his daughter as a sacrifice, the entire expedition [to Troy] will remain becalmed. Already men are starving (188-9), and winds blowing from the Strymon 'were wearing and wasting away the flower of the Argives' (189-90). If Agamemnon does not fulfill Artemis's condition, everyone, including Iphigenia, will die. He will also be abandoning the expedition and, therefore, violating the command of Zeus. (34)

³ Nielsen notes that “Aristotle's 2nd-century commentator Aspasius suggests that the ‘mildly’ shameful thing in question is wearing women's clothes in public” (278).

Agamemnon is faced with overriding reasons for killing his daughter. If he refuses to sacrifice Iphigenia, it will be a dereliction of his duty both to the gods and his men—and his daughter will die anyway. It's always wrong for a father to murder his own innocent child. But, in sacrificing his daughter, Agamemnon does what's right—even obligatory—while dirtying his hands: “Smearing a father's hands / In a daughter's blood-bath at the altar” (*Agamemnon*, 195-6).

II.

The case of Agamemnon suggests it's sometimes obligatory to “do bad actions.” Nielsen maintains, however, that Aristotle's discussion of shame implies a rejection of dirty hands. Aristotle defines shame as “a kind of fear of disrepute” (IV.9.1128b11). Shame also is an emotional response to having done something disgraceful, which Aristotle says a good person would never do: “to feel disgraced if one does such an action, and for this reason to think oneself good, is absurd; for it is for voluntary actions that shame is felt, and the good man will never voluntarily do bad actions” (VI.9.1128b26-29). For Nielsen, this represents a decisive rejection of the dirty hands doctrine. Aristotle plainly says a good person will never voluntarily do bad actions, which seems to be exactly what the dirty hands theorist claims she'll do.

How, then, does Nielsen account for the tyrant case? She agrees that the good person will meet the tyrant's demands. However, she argues that “even though his act may be of a type that would be shameful in most other circumstances (it is ‘stereotypically shameful’), it is not shameful under the present circumstances” (284-5). That is, Nielsen allows that the good person facing an apparent dirty hands dilemma may do something “stereotypically shameful,” but because the act is right under the circumstances, it's not actually shameful. She sides with utilitarians who claim an action's rightness or wrongness is wholly determined by circumstances, without moral remainder.

On Nielsen's interpretation, Aristotle is a "mitigated circumstantial relativist" (275). For Aristotle, the virtuous person must determine the right action relative to the particular situation (II.9.1109b23-26). She believes this means that "with a few exceptions" we can't "determine in advance what kinds of actions are 'shameful'" (276). That is, we can't characterize a particular action as shameful before taking into account the context in which it occurs. Further, Nielsen claims a theory of dirty hands is dependent "on a metaethical picture that recognizes the existence of exceptionless moral rules" (276). Nielsen is right about this (it explains the Kantian horn of the dirty hands dilemma). But note that this doesn't rule out dirty hands for Aristotle.

Thoroughgoing relativism doesn't allow for exceptionless rules, but *mitigated* relativism does.⁴ Indeed, Aristotle insists that some actions are always wrong. For example,

adultery, theft, murder; for all of these and suchlike things imply by their names that they are themselves bad.... It is not possible, then, ever to be right with regard to them; one must always be wrong. Nor does goodness or badness with regard to such things depend on committing adultery with the right woman, at the right time, and in the right way, but simply to do any of them is to go wrong. (II.6.1107a9-17)

If it was obligatory for Agamemnon to murder his daughter, we can imagine a case in which it's obligatory to commit adultery. But Aristotle holds that adultery and "suchlike things" *always* are wrong. Pace Nielsen, then, Aristotle's metaethical picture doesn't preclude dirty hands problems. There can be acts that are right (all-things-considered) but also (always) wrong.

Moreover, Aristotle insists that "if some actions are disgraceful in very truth and others only according to opinion, this makes no difference; for neither class of action should be done, so that no disgrace should be felt" (IV.9.1128b23-24). Marlene Sokolon suggests that, for Aristotle,

⁴ Nielsen concedes that "Aristotle *appears* to recognize the existence of a small number of exceptionless rules" (italics mine, 276).

acts shameful only according to opinion shouldn't be done because doing so "could destabilize the regime and the support for established law" (118). This would be a serious offense given Aristotle's view that it's finer to attain the state's end than the individual's (*EN* I.9.1094-9-10).

Nielsen might reply that Aristotle's conception of actions which are disgraceful "according to opinion" is different from her conception of "stereotypically" shameful actions. However, the two aren't mutually exclusive. Indeed, actions disgraceful according to opinion and stereotypically shameful actions overlap in exactly the area concerning us. Nielsen admits the tyrant knows "the onlookers are likely to think [the stereotypically shameful act⁵] is always shameful, and that they will judge the man accordingly" (282). So regardless of whether the action is actually or stereotypically shameful, it's also disgraceful according to opinion. And Aristotle is clear that acts which are disgraceful according to opinion never should be done.

III.

I've shown that Nielsen's attempt to reconcile Aristotle's discussion of shame with his discussion of mixed-acts fails. However, her challenge to Stocker so far has gone unanswered. Aristotle is clear that the good person will never voluntarily do bad actions. Nielsen assumes that since the agent with dirty hands acts rightly, all-things-considered, the agent does what Aristotle's good person would do. In a sense, Nielsen is correct. If a good person faces a dirty hands situation, that person will do what's right, all-things-considered. My claim, however, is that Aristotle is committed to the view that by dint of finding herself in a tragic dilemma, the good person's moral integrity is damaged. Tragic dilemmas are bad moral luck for the agent.

Thomas Nagel explains that moral luck occurs when "a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him in that respect

⁵ That is, "cross-dressing." See note 3.

as an object of moral judgment” (59). The kind of moral luck at issue is what Nagel terms “situational luck.” “What we do,” writes Nagel, is “limited by the opportunities and choices with which we are faced, and these are largely determined by factors beyond our control” (58). Because tragic dilemmas are shaped by factors beyond the agent’s control, the agent must (voluntarily) do something bad for which she’s subject to moral judgment. As a result, she ought to feel shame. Since the good person will never voluntarily do bad actions, anyone unlucky enough to face a tragic dilemma is thereby not a (wholly) good person—even if she was before.

Interestingly, Nielsen sees that this is entailed by Stocker’s position. She expresses outrage at the idea that “by facing their victims with this type of choice-situation, ... tyrants will *necessarily* succeed in damaging the victim’s character, for they will do wrong no matter what they do” (295). Stocker doesn’t see this as a consequence of his reading of Aristotle, however. He thinks, for Aristotle, “the agent in the [tyrant] case may well act from a wholly good character—one that is in no way bad” (58). He claims the “regret proper to dirty hands ... does not require shame about ... having a bad character” (79). Here I agree with Nielsen that Stocker fails to see the implications of Aristotle’s discussion of shame in *EN* IV.9. But while Nielsen sees the character damaging effect of dirty hands as unacceptable, I see it as revealing Aristotle’s sensitivity to a crucial aspect of dirty hands phenomenology. Aristotle holds that the agent should feel shame (not just regret) for acting with dirty hands.

IV.

For Aristotle, shame is a conditional virtue.⁶ Although he claims a good person will never do anything shameful, he says “*if* a good man did such actions, he would feel disgraced”; however, shame isn’t a proper virtue since “the excellences are not subject to such qualification”

⁶ Aristotle identifies a mean with regard to shame: modesty (II.7.1108a32).

(IV.9.1128b30-1). Moreover, Aristotle says shame is more like a temporary physico-emotional response⁷ than a stable state of character (IV.9.1128b10-11). Because virtues are stable states of character that are good without qualification, shame isn't a proper virtue. Nevertheless, there are two reasons why the moral agent should possess the conditional virtue of shame.

First, shame plays an important role for Aristotle in moral education, particularly for the young and *hoi polloi*. Learners become virtuous through habituation that includes internalizing punishments for bad behavior (Curzer, 2002, p. 158). Shame is an internalized punishment for past wrongdoings and imagined⁸ future wrongdoings. Because tragic dilemmas arise rarely, they present even the morally mature agent with learning opportunities. If the dirty hands act isn't accompanied by emotional pain, this indicates that she doesn't know it's dirty—which in turn suggests the agent lacks the cognitive and emotional capacities for virtue.

Aristotle views shame as more than a negative reinforcement against bad behavior, however. Part of the cognitive function of shame is that it acts as what Howard Curzer terms a “salience projector” (160). The emotional response an agent has to her dirty hands act makes salient features within the act that make it vicious. This is an important point. Aristotle says in his discussion of mixed-acts that in such situations, “[w]hat sort of things are to be chosen, and in return for what, it is not easy to state; for there are many differences in the particular cases” (*EN* III.1.1110b7-9). Because of their complex and unfamiliar structure, tragic dilemmas are especially intellectually and emotionally challenging.

⁷ Aristotle observes “people who feel disgraced blush” (1128b12-13).

⁸ In the *Rhetoric*, Aristotle offers a somewhat broader definition of shame. He writes, “Shame may be defined as pain or disturbance in regard to bad things, whether present, past, or future, which seem likely to involve us in discredit” (1383b15-16). Later in the same chapter, Aristotle writes, “shame is the *imagination* of disgrace” (italics mine, 1384a24).

The second reason an agent with dirty hands should feel shame is that it's an observable—and thus a socially significant—emotion. Sokolon notes that, for Aristotle, “shame, unlike other emotions, is identified by its physical manifestation of blushing. This means that shame is literally physically observable and that, even politically, shame ... functions in a sociopolitical environment” (111). If someone dirties her hands, she potentially threatens social cohesion. Even if an act is overall justified, it still can actualize a disvalue for the moral community. By evincing shame, the agent shows her respect for the value she has betrayed.

On the view I'm urging, while the agent in a tragic dilemma is compelled (though she acts voluntarily) to actualize a disvalue, in dirtying her hands she doesn't necessarily act viciously without qualification. The agent may act virtuously overall, though significant elements of the action are vicious (Stocker, 73-4). In the tyrant case, the agent doesn't perform the shameful act because *it* is an expression of her values; rather, she dirties her hands to prevent a greater evil. The agent thus preserves something she values by means of actualizing something she disvalues, thereby disrupting the unity of her moral identity.

V.

The Aristotelian picture of dirty hands comes into sharper focus when we contrast it with Kantian and utilitarian approaches to the debate over torture. The issue is timely in light of renewed debate in the wake of the Senate Intelligence Committee's recently released CIA Torture Report. To be clear, I'm in no way defending torture here. There's no evidence CIA torturers faced a genuine ticking bomb scenario. However, Walzer's thought experiment points to the *possibility* that something as reprehensible as torture may be justified under certain extreme conditions. In such a case, dirty hands theorists will say the torturer acts rightly under

the circumstances, but also does something very wrong. What Aristotle contributes is a way to understand the dynamic *positive* role shame can play, both for the actor and her community.

Article 2.2 of the UN Convention on Torture reads: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” This uncompromising position may be characterized in terms of Kantian absolutism. For Kant, justice must be done “though the world perish” (Kant 1993, p. 515). He proscribes using people as mere means under any circumstance (1993, p. 195), and thus categorically proscribes torture. But as Walzer argues, “absolutism represents ... a refusal to think about what it means for the heavens to fall” (2004, p. 37). The Kantian agent who refuses to torture under *any* circumstances may resign thousands (or hundreds of thousands) to a horrible death.

In contrast to the UN’s categorical opposition to torture, former Vice President Dick Cheney expresses a starkly different view.

I was and remain a strong proponent of our enhanced interrogation program. The interrogations were ... legal, essential, justified, successful, and the right thing to do. The intelligence officers who questioned [i.e., “tortured”] the terrorists can be proud of their work, proud of the results, because they prevented the violent death of thousands.... (AEI 2009)

Note Cheney’s utilitarian justification for torture—specifically, the (dubious) claim that CIA torture “prevented the violent death of thousands.”

Perhaps it would be appropriate, especially from a utilitarian perspective, to be proud of such *results*, but Cheney’s assertion that torturers can be proud of their *work* is disturbing. As David Sussman explains, the horror of torture is not only that it’s “an extreme form of cruelty,”

but also that it's "the pre-eminent instance of a kind of forced self-betrayal, more akin to rape than other kinds of violence characteristic of warfare" (4). Even if torture is justified under the circumstances, it's always a very bad thing. To be proud of torture is "shameless"; it shows "indifference in regard to ... bad things" (*Rhet.*II.6.1383b16-17).

David Luban offers further reason for those who value freedom never to be proud of torture. He observes that "the peculiar horror of torture within liberalism arises from the fact that torture is tyranny in microcosm, at its highest level of intensity" (1438). The utilitarian calculus treats the evil of torture as though it can be cancelled out by its result. But the wrongness of torture leaves a moral remainder our emotions should track. As Stocker notes, for Aristotle "emotions conceptually involve values.... Emotions are 'registrings' of how one's values are faring in the world" (78). When torture becomes necessary, liberal values aren't faring well. Pride in torture, even as a means to a good end, is an implicit affirmation of tyrannical values.

How, then, might we balance the pulls of absolutism and consequentialism? In a 2008 "Meet the Press" interview, former President Bill Clinton offered his thoughts on torture.

I think what our policy ought to be is to be uncompromisingly opposed ... to torture, and that if you're the Jack Bauer⁹ person, you'll do whatever you do and you should be prepared to take the consequences.... And if you happen to be the actor in that moment ...

I think you should be prepared to live with the consequences. (2007)

Clinton's statement echoes the approach to dirty hands I'm attributing to Aristotle. On this view, torture expresses values to which we should be unequivocally opposed. In the ticking bomb situation the moral agent will torture if she thinks it's the right thing to do, all-things-considered. However, because there's an indissoluble moral remainder, she'll have to take the consequences.

⁹ Bauer is the main character on the television series, "24."

I read Clinton's words, "take the consequences," to suggest the actor may be charged with a crime. Although it seems wrong to punish someone for an all-things-considered right action, punishing someone for dirtying her hands would affirm our core values to prosecute a torturer who voluntarily violates them (even if she does so for good reason). If the agent evinces shame, however, a nominal sentence may be appropriate. Clinton's words, "live with the consequences," suggest the agent will suffer emotionally. This makes sense if we take seriously the notion that the agent did the right thing, all-things-considered, but also did something shameful. The torturer who feels no shame demonstrates that torture isn't deeply objectionable to her. Again, failure to punish a shameless torturer would affirm illiberal values (regardless of the good results). In the last analysis, the agent's willingness to accept punishment—both internal (shame) and external (prison)—reflects the worth of her moral character.

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