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# **The Problem of Dirty Hands in Transitional Justice**

MA Thesis

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## **Acknowledgements**

The topic of my thesis is a product of my true passion in both political philosophy and political science. It is not a secret that during my studies at Tartu I was desperately searching for the topic in political philosophy that would be the most interesting for me to research. During the first semester of the second year I finally found the problem of dirty hands and was excited about it. I was even more excited when a little bit crazy idea to connect it with transitional justice was born in my mind. I tried to apply all my knowledge in political science to make my thesis sound more interesting and interdisciplinary.

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## Introduction

In everyday life people follow principles or rules that vary depending upon the culture, religion, and other factors. At the same time, no one is safe from having a conflict of their own beliefs and principles. Among all people who face this sort of inner conflict politicians are a special target group to look at. This is due to politics being in a public realm where common people expect politicians to publicly speak about the reasons for their political decisions. People have all rights to demand these reasons, because they elected these politicians to represent their interests. That is why a politician's situation is different from an ordinary man's: an ordinary man does not need to report his motives for his actions, while politicians are being pressed to.

Due to this difference it is important to know whether politicians lie, as people expect answers from them and they need to give a response, regardless of whether or not it is actually true. Thus, public utterance is one of the key elements in politics, by which people can make assumptions about politicians. This is how trust or distrust in government is created and how people can defend or despise politicians. The people's support is extremely important for politicians especially in situations of crisis or during changes of political regime. Several questions can be raised, for instance: is honesty the best policy? Does a politician need to acknowledge their mistakes publicly? What should a politician do if the people are in favor of one decision while they see another decision as a better option for the common good? What if common good does not exist in its universal form and despite any action taken people will be unsatisfied with the politician's choice?

In the first part of my thesis I will analyze the moral dilemma in politics called "the problem of dirty hands" and represent views of philosophers who were writing on this topic. As there is no standard definition of the problem, I will focus on how philosophers described the elements of the problem. Among elements I distinguish the nature of a person who wants to become a politician, permissible means of achieving and holding power, justification for political actions, and the feeling of guilt. The latter element I will use as a criterion to separate philosophers who recognized feeling guilty for political decisions from those who

presented justifications for actions. Later I will turn to the utilitarian position and its criticism as a bridge from theoretical framework to more practical thinking about politics.

In the second part of my thesis I will switch the focus to political decision-making during a transitional period of a state. I will use the historical example of the Nuremberg trials as a precedent in establishing individual criminal responsibility for past crimes. I will show that there are crimes that cannot be justified under any circumstances, and for which perpetrators should be punished regardless of whether they feel guilty for their actions and regardless of retroactivity in law. This will lead me to consider implementation of retributive justice against perpetrators of the previous regime in post-communist countries. I will map three different approaches towards retributive justice supporting prosecution as the best way. After that I will use the case of contemporary Russia to determine whether perpetrators of the previous regime were prosecuted. The problem of dirty hands in transitional justice, as I propose it, is about the conflict between society and politician considering the best timing for implementing justice against perpetrators of the past. At the end I will advocate postponing justice as a compromise solution in dealing with the problem of dirty hands in practice.

The name for the problem of dirty hands can be traced back to Sartre's play "Dirty Hands" about politics and one communist party in particular. The leader of this party, Hoederer, talking to his comrade said his famous words that were used by Walzer later to coin the name of the problem:

All means are good when they're effective... How do you cling your purity, young man! How afraid you are to soil your hands! All right, stay pure! What good will it do? Why did you join us? Purity is an idea for a yogi or a monk. You intellectuals and bourgeois anarchists use it as a pre-text for doing nothing. To do nothing, to remain motionless, arms at your sides, wearing kid gloves. Well, I have dirty hands. Right up to the elbows. I've plunged them in filth and blood. But what do you hope? Do you think you can govern innocently? (Sartre 1989:218)

## **Part 1. The Problem of Dirty Hands in Historical Perspective**

### **1.1. Michael Walzer on Inevitability of the Problem**

I will start the first part of my thesis by analyzing Walzer's view as he used the problem in his influential paper "Political action: The problem of dirty hands" (1973) and later also in his book "*Just and Unjust Wars*" (1977). In this section I will reconstruct Walzer's argument about politicians being hustlers and liars for the greater good. I will also present his description of the problem, its elements, and reasons of its existence.

In the paper "Political Action: The Problem of Dirty Hands" Walzer argued that no one can govern innocently, however, there are possibilities to make the right political decision. This will be true from the utilitarian point of view despite the fact that a politician who had made the right decision would still be considered as guilty of a moral wrong.

Moreover, it would be wrong to think that the dirty hands problem is occasional and not every politician faces it. On the contrary, it has systematic and frequent character (Walzer 1973:162). Then why are politicians different from entrepreneurs who engage in morally ambiguous behavior? The former is elected to represent people's interests, so when he lies and intrigues – he is doing this for us, for our common good. We can trace the whole Walzer's argument:

P1. Politicians act for our greater good.

P2. Politicians need to have power and glory to act for us.

P3. There are men ready to hustle and lie for power and glory.

P4. To win competition and achieve power and glory politicians need to hustle and lie.

C. Politicians are liars and hustlers for our greater good.

Are politicians really "peoples servants" as Benjamin Franklin put it?<sup>1</sup>  
Servants need to please without making limits or restrictions on people who they

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<sup>1</sup> During Franklin's speech at the constitutional convention (July 26, 1787) he stated that: "In free Governments the rulers are the servants, and the people their supervisors & sovereigns." (Franklin and Ketcham 2003:398)

are serving. In reality a politician is a “visible architect of our restraints” who “taxes us, licenses us, forbids and permits us, directs us” (Walzer 1973:163). We can see that instead of controlling politicians, politicians control us and do this for their and our own good, as paradoxical as it may sound. According to Walzer, politicians can even use violence or the threat of violence against us with a potential of even becoming a murderer. Walzer presented three reasons of why the problem of dirty hands in politics exists. These reasons are that a politician needs to serve himself in order to act for others, a politician needs to rule over others to serve them, and a politician needs to use violence against others.

Walzer stressed that hustles and lies are inevitable for a politician to succeed while on the stage of running for the office and/or later when he has received the power. Any political candidate should be aware that other candidates could potentially be ready to hustle and lie to acquire power. Walzer considered running in an election as a commitment to win. In order to do so, the candidate should use any means necessary within rational limits to achieve his/her goal. Furthermore, “if the candidate didn’t want to get his hands dirty, he should have stayed at home” (Walzer 1973:165). I support inevitability of the problem in politics because politics lacks transparency and simplicity in gaining power and making decisions.

On the other hand, there can be a truly honest candidate who points out their moral principles and strong will against any temptations. As the third premise suggests above, there are other candidates that are ready to play dirty in order to win elections. Will our candidate do the same to get a seat in the parliament and further improve peoples’ welfare? Will he stick to his position and lose the race even if it means the inability to represent peoples’ interests and do good things – his ultimate goal?

Walzer picked out a similar character in one of his examples. Imagine a political candidate who is facing a problem: in order to win the election he needs to make a deal with a ward boss who is known for his dishonesty. It may seem that decision is obvious – to not have any business with this unscrupulous man. However, the mentioned deal is about school construction for the next four years, which will have a positive result for a local community and a large sum of money will be involved. On one side of a scale our candidate has an improved level of

education, while on the other side there is uncertainty about whether the money for construction will be spent entirely according to the deal, or will be possessed by a dishonest ward boss.

According to Walzer, when this candidate has doubts about the deal it is a positive sign. The candidate's feelings themselves are not important in this situation, but reasons of his disinclination to step in. It is likely that a bad person would agree on the deal without any doubts, rather than a good man who is not used to such kind of actions. To do what is against one's moral standing and to understand one's moral fault of doing wrong means that person is inherently good. As voters, we want good men and women to become politicians, because we know that for the common good they are capable of performing some wrong action in case of necessity, not personal interest. If the politician overstep his moral principles and sign the contract we will expect him to feel guilty for doing bad actions. He did this for our future good and people expect him to sacrifice his personal ambitions and put forward people's interests. This situation of making a morally wrong decision, feeling guilty and believing to be so – is a description of having dirty hands (Walzer 1963:166). Feeling guilty or non-guilty I will use later as a criterion to distinguish authors who wrote on the topic.

Walzer also showed another example to describe the dirty hands. The main character of this example is a politician who got the power together with his friends during the times of prolonged colonial war. He stands against the war and stresses on decolonization and peace. He is also honestly committed to his standings. In order to stop the war, this new leader is going to the colonial capital to negotiate with rebels. At the same time in the capital is planned a terrorist campaign with bombs hidden in houses all around the city that will explode within the next twenty-four hours. Luckily, a rebel leader was captured and he can possibly know locations of bombs.

Thus, the new pro-peace leader needs to make a decision: to torture or not to torture the rebel to get the information and prevent killing of innocent civilians. This decision is hard to make as the leader is a pacifist and he has publicly proclaimed his views against torture and violence. This is one of the reasons why people voted for him. For him to agree to torture means to betray the beliefs people chose him for. Moreover, he personally is against the torture

and frankly believes that it is wrong. But he is convinced that torture is a needed measure within the current situation, and by going against his own moral standing he is doing what needs to be done for the sake of his people.

Taking this into consideration, by ordering to torture the rebel, the new leader is committing a moral crime as he accepts a moral burden. He acknowledges and bears his guilt, and lets us know that his hands are dirty:

Here is the moral politician: it is by his dirty hands that we know him. If he were a moral man and nothing else, his hands would not be dirty; if he were a politician and nothing else, he would pretend that they were clean. (Walzer 1973:168)

This quote has an important meaning, as it is not only summarizes the last example, but also is necessary in understanding morality within a political realm.

Why would a moral man not have his hands dirty? Because it is highly unlikely that he will override moral principles and agree on any wrong action. A moral politician is still considered to be moral even after performing a wrong action because he did not betray moral stakes. He did not agree that the action was right, even after it was done he still supported the position that it was wrong and that he felt guilty for agreeing on it. On the contrary, by claiming that he committed no moral crime, a politician cannot be called a moral politician. He neither acknowledges his guilt nor bears it. As we can see, there exists a room for a moral politician to override moral laws and still be seen positively in the eyes of the people.

In brief, the first section I dedicated to explaining the problem of dirty hands according to Walzer. I reconstructed his argument about politicians as hustlers and liars, and stressed on two examples of politicians facing the problem while making a tough decision. Besides his own vision of the problem, he also proposed historical perspective on thinking about dirty hands that includes the possibility of guilt. In the next section I will take these three understandings and analyze works of Machiavelli, Weber and Camus respectively.

## 1.2. The Problem of Dirty Hands and Guilt

### 1.2.1. Machiavelli on a Bad Man to Act for Country's Sake

The problem in philosophical texts can be traced to the works of Machiavelli. In this subsection I will analyze his views on the nature of a person pursuing a political career, the ways of gaining power, and justifications of political actions. Regarding the description of the problem, it is formulated in "*The Prince*" as follows:

If a ruler who wants always to act honorably is surrounded by many unscrupulous men his downfall is inevitable. Therefore, a ruler who wishes to maintain his power must be prepared to act immorally when this becomes necessary. (Machiavelli 1995:54-5)

Looking at this quote, we can see some resemblance with Walzer's argument. Mainly, with the third premise: there are men who are ready to hustle and lie for power and glory. Machiavelli also puts it in a similar way where a good politician can lose his power easily if tainted politicians surround him. Several questions can be raised on this point, for instance: can a good person enter politics? What are the ways to obtain power? How can a politician justify his decisions, especially when they are the tough ones?

I will start answering these questions by talking about the nature of a person pursuing a political career. On this topic Machiavelli turned to an example of reconstituting political life in corrupted cities. He stressed that for this matter a good man is required to. In conditions of corruption, it is highly unlikely that getting power is an easy task for a good man. This is why usage of extraordinary methods such as the use of force and appeal to arms is one of the most likely outcomes, if not a necessity. However, a good man would not resort to these methods, but a bad man can apply these methods and gain power instead. Machiavelli puts some concerns about how another man will use his newly gained position:

Very rarely will there be found a good man ready to use bad methods in order to make himself prince, though with a good end in view, nor yet a bad man who, having become a prince, is ready to do the right thing and to whose mind it will occur to use well that authority which he has acquired by bad means. (Machiavelli 2003:163-4)

So, the good man will not give up his creed, while the bad man will gain the power. Still, we cannot be sure whether he will use it for common good and not his personal ambitions. It is also important to mention that Machiavelli is not

talking openly about feeling guilty. However, by his descriptions of a good man we can assume that a good man will not turn to bad methods because he understands that they are bad, so by turning to them he will feel guilty.

But are there any moral ways to obtain power, not by force or fraud as Machiavelli describes it? He answers negatively, mentioning that there are also those to whom rank comes in the form of a gift or inheritance<sup>2</sup>, and that vast power can be achieved by using fraud rather than by open and undisguised force. (Machiavelli 2003:310-11) However, in *"The Prince"*, which was written prior to *"Discourses"*, the author pointed out that one could become a ruler by ability, luck or favor. Nonetheless, he did not exclude usage of force after gaining the power: "It is easy to persuade them [people] about something, but difficult to keep them persuaded. Hence, when they no longer believe in you and your schemes, you must be able to force them to believe." (Machiavelli 1995:20)

Finally, Machiavelli looked at a private citizen who could become a ruler through the favor of his fellow-citizens (that is closer to the situation nowadays) and what hardship this person might go through. From one side, a private citizen was elected by the people who consider themselves equal to him, so he cannot give them orders. From the other side, elected ruler has an absolute responsibility for every choice he makes so that he needs to justify each and every decision. Acting out of necessity for common good is usually used as such justification. In other words, the end justifies the means: "With regard to all human actions, and especially those of rulers, who cannot be called to account, men pay attention to the outcome" (Machiavelli 1995:63). Machiavelli explained this with an example from Roman history: Romulus killed his brother Remus for the common good (later Romulus founded the civic state and senate). Machiavelli's position is that this action is justified and Romulus deserved to be excused, because while committing the crime he was thinking about the common good rather than his personal ambitions (Machiavelli 2003:131-4). However, this kind of actions should not be casual and encouraged. Only in the state of emergency

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<sup>2</sup> This is highly unlikely given a democratic regime, but we can still witness nowadays how members of the same family enter politics. The list of these names includes Bush, Clinton in the USA, Yanukovich in Ukraine, etc.

when the future of the state is at stake a ruler can consider using extraordinary methods.

Another action that the ruler can justify as for the common good is not keeping promises. Thus, even if he do something that contradicts with his promises given to his electorate, people should not be judgmental. According to Machiavelli, doing things for common good can be an excuse to not keeping promises or not being candid with the people. Instead, the rulers preferred by Machiavelli are “being skillful rather in cunningly deceiving men; they have got the better of those who have relied on being trustworthy.” (Machiavelli 1995:61)

Ultimately, Machiavelli’s position towards the ruler and his actions is formulated in the next maxim:

Wherefore the prudent organizer of a state whose intention it is to govern not in his own interests but for the common good, and not in the interest of his successors but for the sake of that fatherland which is common to all, should contrive to be alone in his authority. Nor will any reasonable man blame him for taking any action, however extraordinary, which may be of service in the organizing of a kingdom or the constituting of a republic. (Machiavelli 2003:132)

From this we can distinguish the following elements. Firstly, a politician should govern for the common good instead of his own interests. Secondly, he should act in the best interest of the country, not his successors. This can be interpreted as supporting of long-term decisions that may have impact even decades after they were made, rather than short-term decisions that may be preferable for successors. Next, a politician should act according to his own vision and no one else’s. As people elected this particular person to represent their interests and they expect him to act according to his view. Otherwise, we would elect someone else.

Utilitarian point can also be seen in this quote – a politician can take any action, ordinary or extraordinary, as long as it is for the sake of the country. Respectively, Machiavelli’s position is that no one can blame a politician for any action, as people may not know all peculiarities of politician’s intentions and actions (as a politician is not necessarily frank with the people). Thus, people do not know all his thoughts and motives, and it is wrong to make a judgment whether he should be blamed for his decision.

Despite mentioning utilitarian point in Machiavelli's writing I do not count him as a representative of this theory as his position on crimes diverges from utilitarian. To support my claim I present Walzer's position on this matter:

He [Machiavelli] can be understood to be saying that political actors must sometimes overcome their moral inhibitions, but not that they must sometimes commit crimes. I take it that utilitarian philosophers also want to make the first of these statements and to deny the second. (Walzer 1973:168)

Overall, Machiavelli stated the dirty hands problem as complicated and may be even unresolved in the context of corrupted system and unscrupulous politicians. Outside of the corruption he justified any actions in order to achieve common good as long as politician's intention was to act in the best interest of the country. A good man to be a politician and hold power should be able to 'play dirty' when necessary, otherwise he will lose his position and ability to serve for common good. Next I will turn to more contemporary philosophers Weber and Camus to examine their text on the elements of the problem.

### **1.2.2. Weber on a Paradoxical Nature of Ethics in Politics**

In "*Politics as a Vocation*" Max Weber defined politics as a "striving to share power or striving to influence the distribution of power either among states or among groups within a state" (Weber 1970:78). According to him, a politician strives for power for two reasons: for power as it is, and to serve some ideal or egoistical aim. Weber also called a feeling of power as one of enjoyments in political career. A politician by calling is the one who has a charismatic domination over other people. To become a politician a person needs to have three qualities, as stated by Weber. These qualities are passion, a feeling of responsibility, and a sense of proportion. Passion here is a devotion to the 'cause', and if you have it then you will also feel responsibility for any actions taken. At the same time, you need to look at everything and everyone around you critically and from a distance with concentration and calmness – this is the sense of proportion.

Considering conduct in politics, there are two ethical orientations. Firstly, there is an "ethic of ultimate ends". Weber describes it as related to possible success. If the politician performed an action and it had good results, then everything went as it should. But if that action led to negative results then this

politician would not think whether he did something wrong and whether it was his fault. Rather, he would blame the world or put all responsibility on others. By doing so the politician has no feeling of guilt for the action that failed. On the contrary to this, “ethic of responsibility” is about ascribing results to one’s actions. Proponent of such ethical view will not think about other people’s impact on the action, rather for any outcome of his action he will put all responsibility only on himself. Thus, he would also feel guilty for performing that action.

At the same time, Weber stressed on a paradoxical nature of ethics in politics, and that the person who wants to become engaged in political activity should be aware of this fact. Thus, two described kinds of ethically oriented conduct were not meant to be two opposites. Weber considered both ways as supplements that constitute a genuine man who can have a calling to be a politician. Coming back to the topic of violence as a means in politics, Weber’s position was that some tasks of politics can only be solved with the help of violence, so he considered violence as an acceptable mean to use. However, he also put limitations on the use of violence according to the ethic of absolute ends i.e. striving for the idea of socialism is dangerous due to usage of violence and lack of responsibility for consequences (by this he meant losing the salvation of the soul) (Weber 1970:126-127).

According to Walzer’s interpretation, Weber’s politician with dirty hands is a tragic hero and here is why. As the world is a realm of Satan the person is fully responsible for any decision they make and by using violence that God does not require the person is stealing a possibility of salvation from himself:

The politician takes the sword himself, and only by doing so does he measure up his vocation. With full consciousness of what he is doing, he does bad in order to do good, and surrenders his soul. [...] We don’t want to be ruled by men who have lost their souls. (Walzer 1973:177)

However, once he paid that high price, his hands are clean again.

To summarize this subsection, Weber’s account on the problem can be seen in his underlining of the qualities to become a politician and presenting the paradox of ethics in politics. Two ethical orientations proposed by him can be seen as examples of escaping from the guilt (ethic of ultimate ends) if the outcome of an action is negative, and of accepting the guilt (ethic of responsibility). However, putting these ethics together results in having a political

behavior. Thus, Weber stressed on the equivocality of the political realm and complexity of the dirty hands problem.

### **1.2.3. Camus on Justifying Actions and its Limits**

Walzer distinguished another interpretation of the problem in Camus' play "Le Justes" (in different translations known as "The Just" or "The Just Assassins") that was based on real events and real personalities. The play takes place at the beginning of 20<sup>th</sup> century when the Social Revolutionary Combat Organization is preparing an assassination attempt on the Grand Duke Sergei. Members of this organization are driven by the idea of socialism and freedom and see the liberation from tyranny by killing the Duke.

In Act Two the Organization failed the first assassination attempt as Kaliayev who needed to perform the action saw children in the carriage with the Duke and did not throw the bomb as he had no intension to kill the innocent. After this the members had a long argument about whether it is permissible to kill children for the sake of the idea and whether there are limits in justifying actions. All but one member Stepan agreed that not every action can be justified and "destruction has a right and wrong way, and there are limits..." (Camus 2006:187) but they still considered terror as the right way to change the situation in the Russian Empire and to eliminate tyranny. However, revolutionaries created a room for feeling guilty by supporting not killing the innocent and putting limits on actions. We may presuppose that if their terroristic act ended up with innocent casualties then revolutionaries would question their methods. Questioning methods can be considered as one of signs that might lead to feeling guilty.

Among all members the most confident in his position is Stepan<sup>3</sup>. He sticks out by openly calling himself an atheist. His character in general embodies the radical idea about the ethic of means justified by the end. This kind of position I will show in the next section using works of Trotsky.

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<sup>3</sup> Unlike all other revolutionaries in the play, Stepan had no prototype in the real life, his character was entirely created by Camus.

Furthermore, revolutionaries were concerned with the possibility of changing their mind once they went from preparing to executing their plan. They were afraid that they would face doubt about the assassination and would not complete their mission. This can be explained by the fact that they, in general, are against killing people. However, in killing the Duke they do not see killing a human being but a symbol of tyranny. Kaliayev explained his terroristic act in prison by saying that “I threw the bomb at your tyranny, not at a man!” and that the Duke “was the living, human symbol of the supreme injustice” (Camus 2006:212). Every time the Chief of Police of the Grand Dutchess brought up the point that Kaliayev killed a living man, not an abstract idea, the prisoner denied that and came up with justifications for his actions for the sake of the socialism and a better future. His denial of killing a man is a clear expression of his position against killing in general.

Kaliayev is Camus’ example of the person who faces the problem of dirty hands. While his moral beliefs are against killing people, he perceives the situation of assassination of the Duke as a justified action<sup>4</sup> because it is for a better future of the people in his country. While it is doubtful whether he feels guilty, he does not escape the responsibility by paying an equal price for his action – life for a life.

According to Walzer’s interpretation of Camus, the members of the Organization are committing crime, but they are innocent by being ready to die for it and to take a full responsibility for their actions. Execution symbolizes self-punishment and liberation from guilt and pain that is why they die<sup>5</sup> with relief. Camus’ view is attractive for Walzer because of the closer examination of an imaginary punishment that fits the crime, and further reasoning that can go from it. Camus position is reasonably an extremist position, as acting against moral laws needs to be an exception rather than common practice. For this we need to have a high level of value moral stakes, and apply the highest level of punishment.

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<sup>4</sup> See Part 2 section 2.1. of this thesis for the further development of the question whether a murder can be justified.

<sup>5</sup> While Walzer was referring to them in the plural form, in the play was described only the execution of Kaliayev, all other members remained alive.

Altogether, elements of the problem of dirty hands can be found in the works of Machiavelli, Weber, and Camus. These authors were accentuating on the questions of a person who wants to gain power, ways of how the power can be gained as well as doubt, limitation of means, guilt and justification for actions. Analysis of their views in historical perspective provides a background for better understanding of the problem in contemporary political setting. Next I will present other philosophers who were not mentioned by Walzer but whose works also contain elements of the dirty hands problem from another angle.

## 1.3. Beyond Walzer's consideration. The Problem of Dirty Hands and Feeling Not Guilty

### 1.3.1. Trotsky on Morality as a Tool of Politics

In this section I will add two more positions regarding the dirty hands problem and analyze utilitarian position about the topic together with its criticism. All authors represent views or situations when wrong actions are justified by necessity of political regime, following an ideal, or for common good. Thus, the criterion that unites all subchapters is not feeling guilty for doing wrong.

Firstly, I will show how the absence of religious moral guidelines affects political decision-making. For this purpose, in this subsection I will address one of the prominent communism theorists Trotsky and look at two of his works "*Terrorism and Communism*" and "Their Morals and Ours". In the latter work he stressed on morality that serves politics and on ideological function of class struggle.

Trotsky's notion of morality objectifies it as a tool for the purpose of class struggle and achieving socialism. He considered secularization of morality by classical philosophical idealists as "a tremendous step forward" (Trotsky 1938). His instrumental view towards morality together with his atheism<sup>6</sup> can be considered as grounds for more vague limits while talking about usage of corrupted means like violence for achieving a goal. Trotsky wrote about dictatorship of proletariat and violence as the central mean to come to power and hold it, showing its natural character:

The revolution "logically" does not demand terrorism. Just as "logically" it does not demand an armed insurrection. What a profound commonplace! But the revolution does require of the revolutionary class that it should attain its end by all methods at its disposal – if necessary, by an armed rising: if required, by terrorism. (Trotsky 1920)

Relying on Marxism and the idea of revolution, he rejected democracy because democracy rejected dictatorship of proletariat and thus, violence. For Trotsky usage of measures of suppression and intimidation are justified as in the end the

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<sup>6</sup> By this I mean that a religious person would have a fear of punishment for bad deeds that depends on religion, i.e. loss of salvation, bad karma, punishments based upon Quran, etc. While an atheist is not bounded by religion and has no fear of religious punishment, for him it might be easier to justify corrupted means and not feel guilty. At the same time I do not state that all atheists are not following the same moral standards as religious people.

ultimate goal of socialism and later communism will be achieved. Giving examples of Reformation, two revolutions in England, and the Great French revolution, he tried to show the similarities to the difficult conditions in which proletarian dictatorship in Russia took its place that can be also seen as a justification of terror. Trotsky took one step further in "Their Morals and Ours" by claiming that democracy and socialism are similar as they justify under certain conditions violence and murder. The latter two are the products of social contradictions within society so for preserving democracy or achieving it bad means can be justified because they are used for the common good. For instance, national representatives of numerous democratic countries all over the world supported the killing of Libyan leader Gaddafi and considered it as a positive step for Libya on the way to democracy.

Trotsky also emphasized that there is no clear differentiation between 'peaceful' class struggle and a revolution, thus every strike resembles civil war by violence and murder. For Trotsky the revolution that carries these elements is considered as "anti-moral" from the exploiters' point of view. He rejects any pacifist positions about having a healthy socialist movement without using violence and lies. "Lie and worse", where worse is equal to violence and murder, is an inalienable principle of the class struggle. Led by the Marxist position of abolishing the power of man over man, Trotsky thought that this end could be achieved only through revolution. For him, the means are completely justified by the end, and the end is completely justified by being the ultimate goal of Marxism.

However, it would be wrong to think that Trotsky was arguing for any means to be accepted for use. Those means that keep zeal of proletariat to resist the oppression, help to understand their historical mission and support the notion of self-sacrifice during the struggle – are permissible by Trotsky.

The position of Trotsky can be summarized by his quotes: "Who aims at the end cannot reject the means" (Trotsky 1920) and "Dialectic materialism does not know dualism between means and end. The end flows naturally from the historical movement. Organically the means are subordinated by the end" (Trotsky 1938). As we can see, for him dirty hands can be exculpated, as there is common good at the end in the form of Socialism and eventually Communism.

To sum up this subsection, I tried to show how socialist ideas and proletarian revolution in Russia influenced dirty hands problem in the works of Trotsky. The next author I want to consider is Hannah Arendt as the elements of the problem can be found in her work "*Eichmann in Jerusalem*".

### **1.3.2. Arendt on Eichmann and Pontius Pilate Moment**

I have found only one paper that mentions Arendt regarding the guilt in the problem of dirty hands. However, it does not contain a sufficient analysis of the problem in Arendt's works<sup>7</sup>. On the contrary, I will map the key points on dirty hands that were addressed in "*Eichmann in Jerusalem*". I will also address Walzer's paper that was analyzed before.

Before considering the elements it is important to introduce the problem as it was formulated by Arendt: "The youth of Germany is surrounded, on all sides and in all walks of life, by men in positions of authority and in public office who are very guilty indeed but who feel nothing of the sort" (Arendt 1968:251).

To clarify from the beginning, Adolf Eichmann was not a politician in the contemporary meaning of this word. He was not elected by common people to serve them, he was appointed to the position and served as one of the gears in the bureaucracy system. However, what makes him similar to a politician is the illusion of decision making and ruling peoples lives. As I have mentioned before, Walzer pointed out that a politician is a "visible architect of our restraints" who "taxes us, licenses us, forbids and permits us, directs us" (Walzer 1973:163).

From first sight Eichmann had freedom of choice and decisions, he saw himself as the ruler of destiny. That is why he repeated about doing "justice to both parties", stressing upon the importance of his role in creating an idea how to solve the Jewish question and claiming about his implication to the death of five million Jews. In reality, he was just a gear, dehumanized and the one carried no importance as an individual, as "the nature of every bureaucracy is to make functionaries and mere cogs in the administrative machinery out of men, and thus to dehumanize them" (Arendt 1968:289). If not him - someone else would have

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<sup>7</sup> See further Dovi, S. (2004). The Problem of Guilt: Rethinking the Problem of Dirty Hands

had that position and acted according to the orders. His importance was just an illusion, but he truly believed in it. So I will look at his case as an example of the dirty hands problem from his standpoint as a person who is responsible for the well-being of others.

I would like to consider an example of riflemen described by Walzer and see how Eichmann can be fitted into it. Imagine a firing squad whose members got rifles to execute the victim. However, some of the rifles were loaded with blanks and no one from the squad knew who received those weapons. They performed the execution and while everyone was a potential killer, they were all relieved from the sense of guilt. Turning to the Eichmann case, this is the Pontius Pilate moment. During the Wannsee Conference he observed that those present during the event were supporting the Final Solution, that he is not the only one in charge of the violence. Being a part of a big team can play a psychological trick, putting the responsibility on the others or seeing the action as the right one if everyone supports it.

Most importantly, Eichmann had some doubts about a violent, bloody solution before the mentioned conference. From the materials of the case it can be stated that he was not a person who got satisfaction from performing criminal orders. The voice of conscience that spoke to him before January 1942 is an evidence of his inner dilemma. However, "he could see no one, no one at all, who actually was against the Final Solution" (Arendt 1968:116). Therefore, he was sure in the correctness of this plan and he no longer had doubts as "his conscience spoke with a 'respectable voice', with the voice of respectable society around him" (Arendt 1968:126). Moreover, the help of Jews in administrative and police work was proof for him that even Jews are not totally against the Solution, that it was rather a compromise. As he had no competence to stop the mechanism of death mills in Auschwitz he was one of the Walzer's riflemen - just obeying orders.

Another point in regards to the riflemen example is not directly connected to Eichmann but rather to the system in general. Einsatzgruppen was a military unit formed from the Armed S.S. whose members were performing the Final Solution. These men were murderers, but they were not sadists or killers by nature. Two representatives of these men were mentioned. The first one, Dr. Otto Bradfisch a

former member of the Einsatzgruppen and was accused of killing at least fifteen thousand people. During court he stated that he was always 'inwardly opposed' to what he was doing. The second man was former Gauleiter Arthur Greiser of the Warthegau, who during a separate court hearing stated that his "private soul" was always against the actions performed by his "official soul" (Arendt 1968:127). Arendt considered normality of the people like Eichmann as an example of banality of evil.

It was Himmler's idea to sort the men who did not get satisfaction from violent actions out of those who actually got physical pleasure from what they did. The task related to the former men was to persuade them to have no pity or guilt about what they were doing. On the one hand, they had a sense of being a part of "something historic, grandiose, and unique ('a great task that occurs once in two thousand years')" (Arendt 1968:105) and on the other hand, Himmler played a trick turning the instincts towards themselves. Thus, these men were looking at murdering not as their crime against the people but as a part of their duties that is unrelated to their personal feelings. They did what they were required, it was their job, nothing more. Yes, it can be hard to bear and it is not a pleasant task to do, but what they could do in that situation?

Looking further on the other side of the case - Jews and their role in performing the Final Solution, I also found elements of the dirty hands problem. As I mentioned in the introduction to part 1, one of the points in the problem is that bad actions can be done in order to achieve an ultimate goal of greater good. Some of the Jewish officials who collaborated with the Nazi regime and helped with destruction of their own people had this feeling of sacrifice of the smaller for the sake of the bigger:

We know how the Jewish officials felt when they became instruments of murder – like captains 'whose ships were about to sink and who succeeded in bringing them safe to port by casting overboard a great part of their precious cargo'; like saviors who 'with hundred victims save a thousand people, with a thousand ten thousand. (Arendt 1968:118)

In reality it was not as heroic as it seemed to be. As an example Arendt mentioned Hungarian doctor Kastner, who saved 1684 people with the price of 476000 lives. Generally the Jewish collaboration Arendt described as "the darkest chapter of the whole dark story" (Arendt 1968:117) stresses upon the important role of Jewish commandos as actual killers in the extermination camps.

What Arendt did not mention is that despite collaborating with the Nazi regime some people actually succeeded in saving Jews. An outstanding person among these people is Irena Sendler, a Polish nurse who smuggled 2500 Jewish children from the Warsaw Ghetto and provided them with false identity documents. While out of the context her actions of taking others children and falsifying documents seem to be wrong, but they can be morally justified due to circumstances.

To sum up, in this subsection I tried to map the main elements of the dirty hands problem that I have found in *“Eichmann in Jerusalem”* from the angles of Eichmann, Nazi regime in general and Jews-collaborators. I talked about dehumanization of the person within bureaucratic system and the illusion of decision making and doing justice. I used an example from Walzer’s paper about firing squad to show the parallel with Eichmann’s reasoning and Himmler’s trick of releasing murderers from the pity and sense of guilt. Another important moment is that total support of “respectable society” was crucial for Eichmann’s Pontius Pilate moment and getting rid of doubts about the Final Solution.

The purpose of the whole section was to show two interpretations of the dirty hands problem that were not examined by Walzer. Trotsky represented a radical version of Camus, while Eichmann’s case is closer to the second part of my thesis due to the topic of justice implementation and punishing prosecutors of the previous regime. I consider both interpretations as interesting regarding the problem and they have a potential for further research.

Turning to the last subsection of the first part, I want to look further at utilitarian argumentation about the problem and what objections the opponents of this view can make. Among all theories I will address particularly to utilitarianism as for the second part of my thesis it is important to differ actions according to their effect or result. I will look at the implementing transitional justice that affects the future development of the whole country so the question of utility is definitely the most important.

### 1.3.3. Utilitarian Position and its Criticism

In this subsection I will introduce the problem of dirty hands from utilitarian point of view presented by Hare and Brandt together with the criticism of this theory by Walzer and Schumpeter. The aim of this subsection is to show different perspectives on the dirty hands problem and to have a theoretical background before turning to the case study in the second part of the thesis.

In the paper “Rules of War and Moral Reasoning” Hare summarized five theories about the basis of moral thought, which are the ideal observer theory, the rational contractor theory, specific rule-utilitarianism, universalistic act-utilitarianism, universal prescriptivism. He stressed that these five theories are equivalent in practice, and there are no important differences between them. Generally speaking, they generate the same method of moral thinking that can be used for practical purposes. While briefly describing all of them, Hare stressed that all five theories stick to four requirements of being equivalent. These requirements are factual knowledge, conceptual clarity, impartiality and benevolence (Hare 1972:169).

Later in the paper he turned to four difficulties that these theories are facing. The first difficulty that relates to the question of distributive justice and undermines Hare’s tentative view on equivalence of the five theories. This is due to the fact that only two utilitarian positions have a particular answer to the problem – specific rule-utilitarianism and universalistic act-utilitarianism. According to the second difficulty, it is hard if not even impossible to justify the enterprise of moral thought to the amoralist. The third difficulty relates to fanatics who are ready to sacrifice their own interests and the interests of other people for the sake of realization of some particular idea or goal. By doing this they are going against utilitarianism as they are blinded by some particular idea. For our topic of the dirty hands the last difficulty is the most important one.

The fourth difficulty is about a conflict that may occur after applying any of theories mentioned above. Consequences after the application of the theory may be in the opposition to the ordinary man’s intuitions. Particularly, to the “sacred principles” as Hare called them. These are the principles that people are usually obliged to follow. The problem is that there are cases when utilitarianism may

justify actions that are contradicting to these “sacred principles” of the ordinary man. Hare calls it the “weakness of utilitarianism”, and tries to defend utilitarianism by criticizing deontological theories for their defect: deontologists “have no coherent rational account to give of any level of moral thought about that of the man who knows some good simple moral principles and sticks to them” (Hare 1972:174).

To put in other words, deontologists do not distinguish levels of moral thought and do not see that there are other principles parallel to the ones that an ordinary man has. Hare gives an example of some very admirable person who knows some good simple moral principles. As other people admire him we can presume that he sticks to his principles and that those principles are good and moral. If he will be in the situation of stress or temptation we also assume that he will still stick to those principles and will not act in a bad or immoral way. If we will question his principles we would “show a corrupt mind”. According to Hare, in order to understand how we are managing to acquire or obtain these admirable principles, and what to do if they conflict, we should accept the possibility of having different levels of principles and inculcate those that will have the best consequences in the given situation. For this purpose Hare offers to adopt a ‘two-level’ approach.

Originally Brandt proposed this approach, and Hare saw in it a possible defense of utilitarian position against Nagel’s criticism<sup>8</sup>. To put it simply, there is a level of basic morally justified rules that people stick to in any usual situation. There is also another level of morally justified rules that can be applicable in some particular practical situation outside the scope of usual situations. Brandt was talking particularly about the rules of war that differ from morally justified rules, and that these rules of war would maximize the long-term utility of the

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<sup>8</sup> According to Nagel, there are fundamental moral principles that cannot be overridden by any other principles. He criticized utilitarianism for justifying means by the ends, i.e. for considering the possibility of situations when we can no longer stick to fundamental principles. If we will take Walzer’s example with the candidate who needs to make a choice whether to accept the deal with the ward boss, Nagel would answer that we cannot justify accepting the deal for two reasons: a) the ward boss is not an honest person and therefore making a deal with this kind of people is bad; b) the deal itself is bad as then the candidate will win by unfair means. So, Nagel’s absolutism lies on the principle that, on the contrary to utilitarianism, he is paying attention to the action itself, not to what will happen after the action will be performed. See further “War and Massacre”, pp. 127-129

critical situation<sup>9</sup>. What Hare did is he put Brandt's approach on a broader ethical scale. Hare saw the place for the simple moral principles deontologists are talking about, (or in terms of Brandt "morally justified rules of conscience") at the level of character-formation. These principles should be inculcated into ourselves and we should stick to them in our actions. However, Hare emphasized that we can adopt some other principles if they will maximize the utility of the situation (Hare 1972:174).

This approach particularly touches politics. According to Hare, "It is for the greatest good that statesmen should in general not tell lies in their public utterances [...] situations can arise in which it is quite obvious to a statesman that he ought to lie" (Hare 1972:176). I agree that there are different situations in politics and it would be wrong to assume that politics is built on the truth only. What is important here and what Hare is stressing on is that both statesmen and ordinary men need to cultivate the firm disposition to tell truth and to hate lying. Only under such condition in some certain situations lying can be seen as an act for the best. Hare called this approach general rule-utilitarianism.

Walzer presented another form of utilitarian argument, three ways of its development and criticism of these ways. The argument is as follows: political actors must overcome their moral inhibitions sometimes and they also need to be honored for their hard decision because it was the right one in given circumstances. The first way to develop this position is particularistic and it addresses to the circumstances. Political choice does not need to have an absolute value as it depends on circumstances in which political actor is making it. Moreover, his hands would not be considered as dirty, because "he has done what he should do as best he can, standing alone in a moment of time, forces to choose" (Walzer 1973:169).

The second way to develop the argument deals with the moral rules. Although we accept that there are moral rules, we cannot say that they prohibit improper actions. Rather they play a role of guidelines that are the result of summarizing previous decisions and calculations. In other words, they serve more like manuals for leading a life, but are not a set of laws. Therefore, it is not a

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<sup>9</sup> For the further consideration see Brandt "Utilitarianism and the Rules of War", p. 163

violation to override some of them and act contradictory to them. The last way of developing utilitarian argument recognizes usefulness of guilt. A politician who accepts and obeys moral rules will unlikely override them unless there is a crucial situation and he has no other choice but to break the rules for utilitarian reasons.

In the same paper Walzer criticized each of three developments of utilitarian argument. To start with, any moral decision-making is not an isolated act because we live among people and share moral laws with others. It is false to consider moral laws just as guidelines; otherwise we would not pay much attention to morality of overriding them. A person defending their decision to act against the moral law can offer justifications or excuses for making their decision. Justifications are used without the recognition of one's own fault and stress the innocence of the agent, while excuses are about recognition of the fault. We can say that a politician will justify his actions and a moral politician will offer excuses.

Walzer's last criticism was about the one-sidedness of a person's perceptions of his or her own action. A person will justify the usefulness of their action only if they are convinced of its utilitarian benefit. They would not feel guilt because they think that their action is completely justified. Walzer does not align with the utilitarian position because of this justification and denial of guilt. However, he saw the only usefulness of this position in feeling guilty and in the possibility that a politician may feel guilty even after teaching the utilitarian explanation. The feeling of superstitious anxiety is the only exception when we consider usefulness of utilitarian position, so that the more fully politicians accept the utilitarian account, the less it makes sense.

What is more, utilitarian philosophers accept only useful feeling of being guilty and deny the guilt itself, so the person can feel the guilt and be innocent at the same time. As feeling guilty implies suffering from it, then utilitarianism allows and supports sufferings of innocent people<sup>10</sup>.

Does a person need to feel guilty, or can they avoid it if the action was justified? Walzer made a distinction between feeling guilt after performing a bad action and thinking that it is right to perform a bad action. In the first case a person is overriding the moral law because of the necessity to do so, knowing

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<sup>10</sup> Ross wrote about punishment of innocent people for the sake of the community based on fabricated evidence if there were no real offenders found. Further see *"The Right and The Good"*

that in the usual situation he would not do so. In the second case a person agreed to go against moral laws without any doubts or regrets, “which leaves pain behind, and should do so, even after the decision has been made” (Walzer 1973:174).

Schumpeter also criticized utilitarianism in three directions. Firstly, his criticism was turned to the concept of common good in classical doctrine of democracy. Thus, he stated that there is no uniquely determined “common good”, as concepts of life and society are different and do not necessarily coincide. Secondly, if common good were defined, it still would not give straight answers to individual issues: “everyone desired health, but some will be against vaccination” (Schumpeter 1994:252). Thirdly, Schumpeter questioned the existence and exclusive ethical dignity of the will of the people.

Common good is a utilitarian center of gravity that holds together wills of individuals by rational discussion and creates the one big general will (or will of the people). Will of the people means that everyone knows definitely what he wants and if this state of facts is true it does not necessarily implies that political decisions would correctly represent the will of the people. As will of the people is a unification of different individual wills it is hard to do what people really want (Schumpeter 1994:253). This cast doubt on the dirty hands problem. A moral politician will make the hard decision and go through the doubt and guilt<sup>11</sup>, it would not necessarily satisfy his electorate as on the individual level people did not want the same.

In the same chapter an excuse can be found for people, such as in situations of problematic motives and interests the electorate depends on excitement and emotions rather than rationality. Schumpeter highlighted that when entering the political field, the mental performance of a typical citizen will drop to a lower level. This psychological effect is a popular topic among researchers of mass movements (i.e. in Hoffer’s *“The True Believer”*). Moreover, electorate prefers short-term promises and can underestimate candidate whose campaign is based on long-term projects and promises. At the same time, some

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<sup>11</sup> According to Walzer’s reading of Weber, even lose the soul

political groups who are running for the election can use this weakness in electorate reasoning for the benefit of their campaign.

To sum up Schumpeter's position, electorate's behavior has no excuses for a politician to misuse it for personal purposes as he needs to use his rationality for peoples sake despite any circumstances and make decisions that will not only have a quick outcome, but will also be beneficial in a long-term perspective. This point is very important for the second part of the thesis when I will consider different timing of implementing transitional justice and choose the most appropriate one for the case of Russia.

All things considered, with ending up the subsection about utilitarian position towards the dirty hands problem I finish the first part of the thesis. Within this part I analyzed different interpretations of the problem by prominent thinkers. I considered it from two different angles, using guilt as a criterion to distinguish authors. I showed that politicians might feel guilty for making a bad decision or not feel guilty. In the latter case they find justification for their deeds in political regime, following an ideal, or for common good. The aim of the first part was to build up a philosophical foundation for the further consideration of a case study within political theory. Thus, the second part will differ in the style and methodology that makes my thesis rather interdisciplinary than only philosophical. In the next part I will explain whether there is any difference between feeling guilty and not feeling guilty when it comes to implementing justice.

## **Part 2. Transitional Justice and the Dirty Hands Problem**

### **2.1. Transitional Justice and Retributive Justice**

In this part I will define transitional justice and look particularly at retributive justice as one of its parts. I will then focus on the measures of retribution placed upon the perpetrators and the case of Russia's transition to a democracy. Finally, I will show the possibility of postponed justice as a potential solution to the problem of dirty hands in case of Russia.

*"The Encyclopedia of Transitional Justice"* defines transitional justice as "a variety of judicial and nonjudicial means through which states and societal groups seek to come to terms with past human rights violations by providing truth, justice, redress, and reconciliation" (Stan and Nedelsky 2013:xlii). The origins of transitional justice can be traced back to WWI and a turning point occurred in its development during the Nuremberg trials. Before WWII countries responsible for crimes and harm were paying reparations to suffered countries and there was no sense of individual criminal accountability and responsibility. The situation changed after WWII when the accountability shifted from state responsibility to individual responsibility for war wrongdoings. By doing this the Nuremberg trials created a precedent in the world history that later formed the basis of modern human rights law (Teitel 2003:70-73). The Nuremberg trials made individual accountability and responsibility not a private state matter, but a universal matter by introducing two new categories of crimes – "crimes against peace" and "crimes against humanity" (Teitel 1999:46). Thus, there are crimes that cannot be justified by any means and people responsible for them should be prosecuted and punished.

However, the domination of rule-of-law and rejection of retroactivity were the obstacles for imposing accountability and prosecuting perpetrators. The rule-of-law means that wrongdoers can be punished if and only if they broke the law that was existed at the moment of committing the crime. Retroactive law refers to actions made in the past, and includes ex post facto that refers to criminal and penal laws. Ex post facto law "imposes criminal liability on behavior that took place prior to enactment of the criminal statute" (Gifis 1998:427). In other words,

with applying to retroactive law we can impose criminal sanctions on people responsible for past wrongdoings even if these wrongdoings were not having a status of wrongdoings at the moment of their performance and they were not forbidden by the law at the time of their performance. The rule-of-law rejects ex post facto law, so that crucial rule-of-law compromises were made to allow retroactivity and the possibility for Nuremberg trials to take place. The general aim of transitional justice and ex post facto laws is that “revisiting the past is understood as the way to move forward” (Teitel 2003:86). So, by applying transitional justice a state is building its path towards the future and democracy.

There are three types of situations where transitional justice is applicable: during a state’s transition to democracy from repressive rule, to peace from violent conflict, and when established democracies confront past serious injustices, sometimes generations after they were committed. There are also three goals of transitional justice: detachment from past atrocities through punitive measures, acknowledgement and restoration of victims’ dignity; preventing of future conflicts; creation and balance of legitimization of a new democratic regime. (Stan and Nedelsky 2013:5)

For my research I will take a post-communist transition of Russia to analyze the problem of dirty hands regarding the decision of a new government system how to deal with the past perpetrators. I will formulate the problem of dirty hands in this context the next way. Restoring past injustice is an important part of transition and reconciliation. There are a certain number of victims and their relatives who were affected by the previous regime’s crimes and who would like to bring to justice perpetrators of the past regime. At the same time, punishing past perpetrators will most probably strengthen people’s support in a new government. On the other hand, a disturbing situation of the state in transition may potentially become even worse if radical state actions will be taken. What is the right thing to do: to apply actions, to forgive and forget, or to postpone justice? I will advocate the last position. As for the case study, I will refer to events and data on former USSR and contemporary Russia as its successor.

What is retributive justice? It is a part of transitional justice that is focused on prosecuting and punishing offenders from a previous regime. It is generally seen as “the first step in advancing adherence to the rule of law and as

necessary for establishing a functioning legal order in the transitioning state” (Stan and Nedelsky 2013:237)

There are three options how to deal with retributive justice. Two of these represent different positions of the spectrum: civil and criminal sanctions (prosecution, lustration) and amnesty. As I will show later, there are pros and cons in applying any of these approaches. The third option that I advocate is so-called ”postponed justice”.

## 2.2. Civil and Criminal Sanctions: Prosecution and Lustration

The first option that can be divided into two separate parts is getting wrongdoers of the previous regime to take responsibility for their actions. In cases of mass violations of human rights and mass crimes it is extremely difficult to find and punish all who is guilty for the crime. That is why there are certain accountability mechanisms to help with these kinds of situations. These mechanisms are

institutionalized, procedurally shaped relationships between the wrongdoer and an authoritative domestic governmental or international institution, where the wrongdoer is duty-bound to explain his or her actions, while the authoritative institution has the right to pass judgment and impose sanctions on the wrongdoer. (Stan and Nedelsky 2013:6)

Thus, perpetrators can be divided into different categories and be punished depending on the level of violation or atrocity they committed. By making it possible to find those responsible for crimes and measure their impact to implement a certain punishment I reject the position about inability to identify wrongdoers and thus inability to perform justice. In case the person responsible for the crime is dead there can still be a court or special commission decision about his guilt de jure.

Looking closer at the prosecution, there are several arguments in favor of this method of dealing with perpetrators. From a moral point of view, it is right to punish a criminal in order to restore justice and from the legal point of view, there is a principle of equality before the law, which means that everyone responsible for the crime should be punished. It can also be seen as a method to prevent future crimes by individualizing guilt and showing that those in charge will be punished. A danger in not punishing perpetrators is that within conditions of building a new country people will be disappointed and lose trust in both the state and legal system. Furthermore, this can even lead to state violence against its own citizens (Stan and Nedelsky 2013:57).

Another pro-prosecution argument can be traced back to a legal maxim "justice delayed is justice denied". The temporal dimension of justice is definitely an important one and should be taken into consideration. Changing of a regime and a fluctuating political environment brings a new hope for the people. During this time people will almost surely support prosecutions and demand quick

justice. However, as I have shown in Part 1, Schumpeter pointed out an impatient nature of people, their preference of short-time promises and lack of willingness to support a politician who is targeted to long-term decisions. If a new government will not take any actions against punishing wrongdoers, the people can potentially lose their passion and interest in prosecution. As a result, there might be a lack of people's support to undertake any actions if the justice will be delayed.

Similar situations were during transitions in Greece and Argentina before 1990s. The difference between these two countries lies in the outcome of their actions. In Greece, Karamanlis took actions straight after the beginning of transformation having an enormous support of the Greek people, while in Argentina unsuccessful attempts of trial and punishment and policy mistakes led to a crisis, and later resulted in the indifference of people towards the prosecution (Huntington 1993:222).

Then why with all the positive sides of prosecution it was still a rare practice in the real life? Considering transition in Eastern Europe, many analysts stress upon the necessity of simultaneous transition to democracy in politics and from command economy to market economy. As this condition is highly difficult and has a lot of potential issues, it was called a "simultaneity problem" (Linz and Stepan 1996:244). Offe had another view, proposing not a double, but triple transition, adding a socioterritorial dimension (Offe 1996:32). Of course, transitional justice cannot avoid the impact of these transitions on itself making justice a risky business due to these conditions.

Another transitional justice measure is lustration and it is used against individuals who had an affiliation or collaboration with the previous communist regime or secret police. Lustration is "a range of government actions, including disqualifying those individuals from public and semi-public positions of trust, publicly disclosing information about those individuals, and outright employment bans" (Horne 2015:125). As later I will turn to the case of post-Soviet Russia it is important to mention that after the collapse of the Soviet Union there was no condemnation of Soviet Communism by independent Russia. However, the hearing about constitutionality of the Communist party and its ban took place in 1992 resulting in unsatisfactory decision for both sides (Schmemmann 1992). This

led to the absence of lustration in Russia as without condemning the previous regime no individuals who were affiliated or collaborated with the previous regime could be accounted and disqualified. Vladimir Putin can be a specific example of a person who was not lustrated but achieved the highest power in contemporary Russia despite his past KGB career.

### 2.3. Amnesty and Non-prosecution

The second option of retributive justice is amnesty, and I also include here arguments against prosecutions as both these methods are targeted to peaceful resolution and can be called "forgive and forget".

As with civil and criminal sanctions, there are also arguments for and against amnesty and non-prosecution. Firstly, in countries where the ruling party was predominant and was associated with the state itself, it was hard to implement any sort of changes to the system without damaging a normal functioning of state bureaucracy. Vivid examples of this are the former Soviet Union and Yugoslavia. At the same time, another problem is lustration of a distinct number of civil servants loyal to the previous government. In this situation a new state can find itself lacking qualified competent civil servants as they were all trained by the previous regime (Linz and Stepan 1996:250).

In the book *"The Third Wave"* Huntington used the term "forgive and forget" to describe the general tendency in Eastern Europe of the early 1990s. He only slightly touched the situation in the USSR because at the time of writing his book a period of transition has only just begun there (Huntington 1993:228). However, other authors pointed out that lustration and prosecution of the party-state officials and secret agents were the main accountability mechanisms in that region (Stan and Nedelsky 2013:8).

The reasons in favor of non-prosecution can generally be described as a "fragile political setting" (Stan and Nedelsky 2013:57). Offe emphasized that prosecutions can provoke revenge, and he argued that prosecutions should not be done at that time because the previous regime left chaos and there are other "more important things to do" (Offe 1996:83-4). However, he did not specify what those important things were, but we can assume that he was talking particularly about an unstable economical situation. Looking at the GDP of the former USSR republics in 1991 and the change in numbers after the Soviet Union collapsed, we can see that one year after gaining independence there was no positive growth and in 1993 these countries were still not reaching the same level of their industrial output they had in 1989 (Linz and Stepan 1996:440-1).

This can be seen paradoxically as together with rejecting prosecutions Offe is rejecting amnesty. His position is that both new political elites and the masses will not accept amnesty as the right way to deal with the past. He stands on the point that “at any rate, something must be done” (Offe 1996:83). Together with this indistinct description he proposed disqualification, retribution, and restitution as three options of justice. He also supported the position that these methods could hardly be used exclusively from one another and that any of post-Communist countries could hardly chose only one among them as they represented different angles of the old regime. As for the time frame of applying these methods, he is a proponent of extended time horizon as judicial procedures usually take a lot of time and proper justice cannot be made even if people and a new government will insist on the fastest way of dealing with this question (Offe 1996:88).

I support Offe’s view on applying all three options, as they relate to both civil and criminal law and can comprehensively administer justice. It should not be forgotten that along with the perpetrators there are victims who need to have compensation. With the help of the three options greater outcomes can be achieved.

## 2.4. Postponed Justice and the Problem of Dirty Hands

Now that I have presented the first two options of transitional justice against perpetrators of the past regime, I will present the final way how to deal with past injustice. Namely, I will advocate postponed justice as the correct choice for the former Soviet Union, will try to show why this topic is still relevant after almost twenty five years since the USSR's collapse and analyze its connection with the problem of dirty hands.

Does timing matter when it comes to transitional justice? Those who answer no to this question argue that timing affects the level of trust in the government, but not critically to say that it makes a significant difference. Measures enacted straightforward after the beginning of transition had generally the same magnitude of effect as measures enacted 15-16 years later. The quality of measures rather than time is more important for proponents of this position<sup>12</sup> (Horne 2015:124).

On the other hand, there are those who consider the temporal dimension as important while talking about retributive justice. Among them is Elster, who proposed four kinds of transitional justice according to the timing of its implementation. The first one is an "immediate" justice starting at the beginning of transition and ending within five years. Similarly, a "protracted" justice has its start immediately after transition has started, but its continuous process of justice will end only when all measures have been taken and all wrongdoers are punished. Thus, it may take an unknown amount of time to implement. A "second-wave" justice differs from "protracted" because it consists of two waves of justice: an immediate wave that is followed by a period of inaction and will resume again after a while with a new wave of investigation. The last type is a "postponed" justice that takes place ten years or more after the transition started (Elster 2004:75-6). While Elster used an example of Pinochet to describe this type of justice, I consider postponed justice to be also applicable nowadays to Russia for several reasons.

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<sup>12</sup> For the similar conclusions look Lynch and Marchesi (2015)

Firstly, I support the position of Elster that the length of the previous regime has a converse correlation with the level of emotions people have towards the topic of dealing with the past (Elster 2004:75). In the societies where the previous regime existed for a relatively short period of time, people will be more passionate and impatient about bringing perpetrators to the justice because past injustice is still fresh in their memories. Respectively, if the previous regime lasted for decades (in case of the Soviet Union for almost 75 years), then emotional demand for justice will be less urgent as memories about past crimes are unclear and vanished<sup>13</sup>. As an example, not all crimes of Stalinism are recognized and some of them are even denied (like the Great Famine in Ukraine) by the contemporary Russian government. Therefore, in a society that was under totalitarian or authoritarian regime for a long time retributive justice does not need to be done immediately with the beginning of the transition as there is no radical demand from the society and the new government can focus on more urgent political or economical issues.

In the case of Russia, there was no radical demand for immediate action, as data showed people's opposition towards the new regime rather than its approval (as it was in the case of Poland). According to the research conducted in January-February 1992, just half a year after the Soviet Union collapsed, in total 54 percent of people preferred the old political system in Russia, while 36 percent were in favor of the new political system and 10 percent had difficulty answering (see *Table 1, p. 50*)<sup>14</sup>. Even two years later in 1994 when another study took place, 68 percent of respondents answered that dissolving the Soviet Union and founding the Commonwealth of Independent States was a wrong decision, while only 12 percent supported the collapse of Soviet Union (see *Table 2, p.50*).

In the same poll people were asked to completely or generally support or deny the following statement: "It would be better to restore the former communist

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<sup>13</sup> Lower number of victims who are still alive and problems in obtaining past documentation can make this even more complicated for the new government (Pettai and Pettai 2015:8)

<sup>14</sup> I took the data from Linz and Stepan, "Problems of Democratic Transition and Consolidation", 1996:452. Data about the first questions data was originally published as Boeva and Shironin, "Russians between State and Market", *Studies in Public Policy* 205 (1992): 19-22. Data about the second and the third questions was originally published as Rose and Haerpfper, "New Russia Barometer III"

system". While analyzing the responses I want to bring them together into only two categories of proponents and opponents of the statement. For this purpose I added the percentage of those who completely and generally agreed with the statement (resulting in 23%), later performing the same with the number of those who generally and completely disagreed with the statement (resulting in 62%) (see Table 3, p.51). Thus, there is a contradiction in Russian people's reasoning, when they oppose the decision to dissolve the USSR and at the same time do not want to restore the communist system. This may be one of the obstacles for implementing transitional justice in general, as people's reactions can be hard to predict.

The next reason for postponing prosecution of wrongdoers is related to Russia's transition from a command to market economy. Gerber and Hout in their paper described the economic situation in post-Soviet Russia as follows:

China is selling manufactured goods to the United States and Japan, Russian industry is producing less than it did 15 years ago. Russia's imports increased, and trade and consumer services have proffered opportunities to some and incentives to many more. But the centralized Soviet system left in its wake a tattered distribution system, endemic regional and local imbalances, a bloated and inefficient industrial sector, and a legal system most would-be investors find unreliable. (Gerber and Hout 1998:36)

As can be seen from the quote, in the 1990s there was a lack of stability and a certain number of problems for the new government. According to official statistics, the economic crisis during those years was deeper than in the United States during the "Great Depression" (Boettke 1999:375). The first President of independent Russia Boris Yeltsin implemented radical economic reforms known as a "shock therapy". The aim of this policy was to transform the past command economy into market economy. However, this was a challenging and controversial path: by January 1996 surveys showed an enlarged income distribution and unparalleled income inequality, so that "there has been more shock than therapy" (Gerber and Hout 1998:3). Moreover, the policy resulted in meltdown of ruble in 1998 and Yeltsin gradually lost people's support, which reached its bottom point with less than 5% popularity by his resignation in December 1999 (Desai 2005:94). Needless to say, since the Soviet Union collapsed Russia has experienced hard economic times and has even enacted radical reforms that did not save the situation. For Russia, it was not the right moment to apply retributive justice measures.

The third reason why I consider postponed justice to be of current relevancy is because there was little done regarding transitional justice in Russia, so this issue still has a room for future discussions<sup>15</sup>. Andrieu stresses on 'the absence of any official measures to investigate past human rights abuses' and that what is de-facto going on in Russia he named as "pseudo-transitional justice". Moreover, he generally called the post-Soviet Russia's case as "an interesting, albeit regularly forgotten, case study of "failed transitional justice". He explained this as an attempt to keep political power and legitimacy of the government with the help of positive and nationalistic historical myth (Andrieu 2011:218). Elster is more abstemious in his assessment, describing the Soviet Union's transition path to democracy as "uneven" but without going into further details (Elster 2004:67). Boettke while writing about post-Soviet Russia used Churchill's famous quote about Russia as "an enigma wrapped in a contradiction"<sup>16</sup> adding that it still remains the same (Boettke 1999:371-2). Although it is highly unlikely during Putin's presidency, the topic of dealing with past wrongdoers will be risen, the possibility of turning back to this topic in the next five till ten years cannot be rejected.

According to presented conditions, even if transitional justice would be implemented, there could be some resistance from the people due to their contradictory responses. At the same time, there is a possibility of future practical evocation of transitional justice as it is a necessary element of transition to democracy. That is why postponing of justice can be a legitimate solution for Russia's situation.

How is this all connected to the problem of dirty hands that I have showed before? To put it simply, politicians of the new regime in order to show that their country is on the way to democracy are facing an uneasy task of implementing transitional justice. At the same time among different sub-problems they need to decide what to do with the past violations of human rights and the people who

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<sup>15</sup> According to Transitional Justice Data Base Project (covered cases between 1970-2007), there were only six cases of implementing justice mechanisms in Russia between 1994 and 2007. All cases were domestic; their targets were non-state and state agents. Five of them were amnesties and one was a trial.

<sup>16</sup> The original quotation was taken from Churchill's radio speech delivered on October 1, 1939: "I cannot forecast to you the action of Russia. It is a riddle wrapped in a mystery inside an enigma; but perhaps there is a key. That key is Russian national interest".

were in charge of it. It would take a lot of effort, resources and money, but a decision regarding this issue should be made. People might demand immediate justice as their emotional level is high, but at the same time the country itself is economically, politically and socially unstable. Despite people's trust and support, immediate justice can provoke other problems in the future, i.e. resistance to the new regime by supporters of the old regime<sup>17</sup>, riots<sup>18</sup>, and economical crisis.

However, the new government can choose another way to address this problem. Namely, by choosing amnesty or even non-prosecution. This is not what people would expect, and many would most likely be against this course of action as they have supported particular politicians to represent their interests and they have particular hopes and expectations towards the politicians' decisions. In this situation politicians of the new regime face the problem of dirty hands. On one hand, people can be pro-prosecution and politicians themselves understand that justice has to be made, as anyone guilty must be punished. On the other hand, there is a lot of uncertainty and doubts of whether the beginning of transition is the right time to deal with past crimes (both by prosecution and amnesty/non-prosecution) as it may provoke civil disobedience and political and economical problems. Despite the way politicians decide – people may consider it as a wrong decision.

The other way to solve the situation is to turn to postponed justice. Justice will be administered and guilty people will get the punishment they deserve. After ten or more years have passed since the beginning of transition neither political nor economical situations are in danger and the society can be more ready for this. This is how politician would not feel themselves in the problem of dirty hands and this is how they can have a compromised solution. In the case of Russia, several factors as changing people's preferences, the falling down of GDP, and attempting to hold power with the help of positive national myths lead to the lack

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<sup>17</sup> According to "New Russia Barometer IV", in 1995 the communist regime was rated positively (65.7% of responses) while the current regime was rated negatively (53.9% of responses). See Table 4, p. 51.

<sup>18</sup> According to "New Russia Barometer I" in 1992 people supported a supposition about likelihood of mass demonstrations and protests the same year (81.9% in favor). See Table 5, p. 51.

of transitional justice. Nevertheless, for the Russian government it is not too late to reconsider the situation and come back to transitional justice.

## Conclusion

The aim of my thesis was to consider the problem of dirty hands in politics from theoretical and practical standpoints. For this purpose I divided the structure into two parts. The first part is dedicated to analyzing the problem as it was written about in philosophical texts. In the second part I was using political science methodology and presented a case study.

I started with defining the problem of dirty hands as it was stated by Walzer. I presented Walzer's argument and supported his claim that it is inevitable to have the problem in politics. After that I took the division of three different understandings of the problem by Machiavelli, Weber, and Camus, and analyzed each of them. This analysis was my own interpretation of the three authors, I was addressing to Walzer only regarding particular moments. I also presented two more readings of the dirty hands problem by Trotsky and Arendt that were beyond Walzer's consideration. Trotsky's position can be described as radical Camus, while Arendt wrote about a practical case of Eichmann's trial.

In the last section of the first part I presented a utilitarian position and its opponents to prepare a theoretical foundation for the further consideration of a practical case study. Within the first part I was giving different descriptions of the problem of dirty hands together with analyzing its key elements, such as political decision making, justification of actions, guilt, who and how can gain power in politics, etc.

Turning to the second part, my goal was to introduce the concept of transitional justice and retributive justice in post-communist countries. I dealt with three options of retributive justice and supported usage of both civil and criminal law measures towards past perpetrators. The dirty hands problem within this context as I put it relates to the question of when is the best time to deal with the past wrongdoers. I described possible solutions that are proposed in political theory and on the case study of post-Soviet Russia advocated the third option – postponed justice. I considered postponed justice to be a compromised solution regarding the dirty hands problem and Russian context.

## Summary

This thesis explores the connection between the problem of dirty hands in political philosophy and transitional justice in political science. Respectively, it is divided into two parts.

In the first part the problem of dirty hands is considered in historical perspective. I take Walzer's description of the problem and try to find the elements of the problem in works of different philosophers. Among all philosophers who wrote on the topic I distinguish those who recognized feeling guilty for political decisions from those who presented justifications for actions.

In the second part I use the precedent of the Nuremberg trials to stress on the individual criminal responsibility for political actions as there are crimes for which wrongdoers should be punished regardless the circumstances or feeling guilty. I take the case of contemporary Russia to see whether the wrongdoers of the previous regime were prosecuted. I proposed the problem of dirty hands in transitional justice as related to choosing the best timing for implementing justice against perpetrators of the past. In the end, I advocate postponed justice as a compromise solution for the case of Russia.

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## Appendices

**Table 1. Preferences for Old and New Political Systems in Russia and Poland in January - February 1992**

Preference	% at Age:				% Preferring Present System over Old System
	To 29	30-59	Over 60	Total	
In Russia:					-18
Present system better	43	39	21	36	
Old system better	45	52	71	54	
Don't know	12	9	8	10	
In Poland:					+51
Present system better				74	
Old system better				23	
Don't know				3	

Source: Linz and Stepan, *Problems of Democratic Transition and Consolidation* (1996:452)

**Table 2. Russian Attitudes in 1994 about the Dissolution of the USSR in 1991**

Question: "In December 1991 leaders of Russia, Belorussia and the Ukraine decided to dissolve the USSR and found the CIS. What do you think of that now?"	% at Age:			
	18-29	30-59	60+	Total
It was the right decision.	16	12	8	12
It was the wrong decision.	57	70	75	68
Difficult to answer.	28	18	17	20

Source: Linz and Stepan, *Problems of Democratic Transition and Consolidation* (1996:451)

**Table 3. Russian Attitudes towards Restoring the former Communist System: April 1994**

Agreement with Statement, "It would be better to restore the former communist system."	% Response at Age:			
	To 29	30-59	60+	Total
Completely agree	5	8	18	9
Generally agree	8	14	19	14
Generally disagree	30	29	23	28
Completely disagree	41	36	22	34
Difficult to answer	16	13	19	15

Source: Linz and Stepan, *Problems of Democratic Transition and Consolidation* (1996:452)

**Table 4. Regime Ratings by Russians in 1995**

Values	Categories	Regime	
		Communist	Current
-1	Negative	19.9%	53.9%
0	Neutral	14.5%	19.4%
1	Positive	65.7%	26.7%

Source: "New Russia Barometer IV" (1995)

**Table 5. Russians About Probable Protest in 1992**

Question: "Do you consider likely in 1992 mass demonstrations and protests about the political situation in Russia?"	Value	Response
Miss or don't know	0	0.8%
Yes	1	81.2%
No	2	18.0%

Source: "New Russia Barometer I" (1992)

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