

POLITICAL PHILOSOPHY & THE DARK ARTS

-Steven Smith*

I. INTRODUCTION

“I’m the guy who’s telling you the way it is.”

– Elmore Leonard, *Get Shorty*

*“A modern philosopher who has never once suspected himself of being a charlatan must be such a shallow mind that his work is probably not worth reading.”*¹ I could not agree more with this sentiment. Those words, written by the great Polish philosopher and dissident Leszek Kolakowski, come to my mind every time I try to address the question what is political philosophy and what is it for, what are its methods, if any, and how does it differ from other branches of knowledge? These apparently simple questions are also the most difficult to answer. I want to consider especially the role of political philosophy as a pedagogic enterprise, that is, as a type of political education.

The obituary for political philosophy had been written so many times that, like Mark Twain, one can only say that the reports of its death have been greatly exaggerated. Writing at approximately the midpoint of the twentieth century, Leo Strauss spoke for a consensus view when he wrote: *“Today, political philosophy is in a state of decay and perhaps of putrefaction, if it has not vanished altogether.”*² The end of political philosophy was deemed part of the end of philosophy more generally and was pronounced by two of the most powerful currents of modern thought. Hegelians and Marxists saw philosophy as an “ideological” after-thought destined to disappear in the planned or rational society of the future. *“When philosophy paints its grey in grey, a*

* Alfred Cowles Professor of Political Science and Professor of Philosophy, Yale University. He can be reached at steven.smith@yale.edu.

¹ LESZEK KOLAKOWSKI, *METAPHYSICAL HORROR* 1 (University of Chicago Press, 1988).

² Leo Strauss, *What is Political Philosophy?* in *WHAT IS POLITICAL PHILOSOPHY? AND OTHER STUDIES* 17 (Free Press, 1959).

shape of life has grown old.” Hegel wrote in one of his finest sentences. “*The owl of Minerva begins its flight only with the onset of dusk.*”³ Philosophy as a “normative” activity concerned with the best regime or the best way of life was declared to be nothing more than a reflection on its time and place. Philosophy has a place only in a world where there is a conflict – a “contradiction” – between the claims of reason and the realities of social life, but in the rational world now coming into sight where the institutions of civil society will provide a home for free men and women, philosophy as a speculative enterprise will simply wither away.⁴

From the other end of the spectrum, the logical positivists and empiricists regarded philosophy as an “under-laborer” to science. Scientific thought with its empirical modes of verification was believed to set the standard for all meaning. In A. J. Ayer’s *Language, Truth, and Logic*, all meaningful statements were divided into analytical truths like those of logic and mathematics and empirical propositions like those of the natural sciences. Moral and political language was declared a species of “emotive” talk that expressed nothing more than the personal attitudes or “ejaculations” of the speaker. Philosophy in this view had to adapt itself to the modest task of clarifying the status of different propositions or clearing up conceptual confusions that stand in the way of future scientific progress. Ludwig Wittgenstein captured the ascetic quality of this scientific empiricism when he declared at the end of the *Tractatus Logico-Philosophicus*, “*Whereof one cannot speak, thereof one must be silent.*”⁵

According to what might be described as the dominant view of the period, political philosophy was likewise on its way to being replaced by the modern behavioral sciences. These sciences – economics, psychology, political science – are concerned with discovering empirical regularities in human behavior that can then be tested and put forward as general theories or covering laws. These sciences are concerned not with normative questions about what ought to be, but with strictly empirical matters of what is. As Max Weber, the greatest expositor of social scientific positivism, declared: “*Science today is a ‘vocation’ organized in special disciplines in the service of self-clarification and knowledge of interrelated facts. It is not the gift of grace of seers and prophets dispensing sacred values, nor does it partake of the contemplation of sages and philosophers about the meaning of the universe.*”⁶

³ G. W. F. HEGEL, *ELEMENTS OF THE PHILOSOPHY OF RIGHT*, 23 (Allen Wood ed., H.B. Nisbet trans., Cambridge University Press, 1991).

⁴ See G. A. Cohen, *Karl Marx and the Withering Away of Social Science*, in *KARL MARX’S THEORY OF HISTORY: A DEFENCE* 326-44 (Princeton University Press, 1978).

⁵ LUDWIG WITTGENSTEIN, *TRACTATUS LOGICO-PHILOSOPHICUS*, sect. 7 (D. F. Pears and B. F. McGuinness trans., Routledge, 1971).

⁶ Max Weber, *Science as a Vocation*, in *FROM MAX WEBER: ESSAYS IN SOCIOLOGY*, 152 (H. H. Gerth and C. Wright Mills eds., Oxford University Press, 1958).

Weber's endorsement of the fact-value distinction did not rule out the possibility, even the necessity, for making value judgments. His point was that there was simply no rational or scientific warrant for our moral and political choices, that these choices were acts of will, like matters of religious faith. Rationality would be henceforth limited to determining the means to achieve the goals that individuals and societies set for themselves. As for substantive reflection on the goals themselves, social science must remain mute. A social scientist, on this account, may prefer a liberal tolerant society to that of a closed authoritarian one, but this remains merely a personal wish or preference; social science cannot prove the superiority of one type of society over another. The great efforts of the classical philosophers to legislate what states of affairs ought to exist was declared officially over. In a widely-quoted statement from the introduction to the first series of *Philosophy, Politics and Society*, Peter Laslett proclaimed, "*For the moment, anyway, political philosophy is dead.*"⁷

Laslett's weasel term "for the moment" suggested rather weakly that the obituaries for political philosophy may have been premature. While admitting what was evident for all with eyes to see, that political philosophy was, if not dead, at least on life support, Laslett's view was that the preoccupation with methodological and epistemological questions was at most a temporary phase, a period for improving the tools of philosophy, until such time as philosophers could return to the business of advancing substantive theories about politics and ethics. He was silent on how long this transitional period might last or when we would know that it was over, but he did not have to wait for long.

The publication of John Rawls' *A Theory of Justice* in 1971 is often claimed to have marked the rebirth of political philosophy after a period of somnolence.⁸ Rawls' work drew on the classical social contract tradition, especially Kant, but combined it with insights gleaned from contemporary game theory and rational actor models of behavior derived from economics. Most importantly, Rawls set out to address one of the deepest, most enduring, and most intractable problems of political philosophy, the problem of justice. The famous first sentence of his book reads as follows: "*Justice is the first virtue of social institutions, as truth is of systems of thought.*"⁹ And rather than confining himself to the task of conceptual analysis or

⁷ Peter Laslett, ed. *PHILOSOPHY, POLITICS, AND SOCIETY* 7 (Macmillan, 1956).

⁸ For a characteristically enthusiastic endorsement, see Marshall Cohen, "The Social Contract Explained and Defended," *The New York Times Book Review*, July 16, 1972; for a somewhat less than stellar reception, see Allan Bloom, *Justice: John Rawls Vs. The Tradition of Political Philosophy*, 69 *AMERICAN POLITICAL SCIENCE REVIEW* 648-62 (1975).

⁹ JOHN RAWLS, *A THEORY OF JUSTICE* 3 (Belknap Press, 1971).

clarification, Rawls laid down a gauntlet for an entire generation. From this first principle, he went on to claim that any law or institution that failed to pass the test of justice must be “reformed or abolished.”

Rawls’ statement on the priority of justice is a perfect illustration of what is often called Ideal Theory. Ideal theories are, to use the traditional term, utopian. They specify the principles of a comprehensively just political order. Plato’s *Republic* is generally taken as Exhibit A of this mode of theorizing. These principles must generally be conceived as impartial, atemporal, and universal, standing at a remove from the social conditions of which they are a part. The advantage of such a theory has less to do with its practical viability – Plato harbored deep reservations about whether his “city in speech” could ever be realized in practice – but in its ability to guide political deliberation and decision-making. Ideal Theory, so it is claimed, provides a standard by which to critically evaluate existing institutions and practices without which theory could serve only a justificatory role.¹⁰

The revival of this mode of Ideal Theory over the past generation would be difficult to over-estimate and yet a backlash has begun to set in. Despite his claims to universality, Rawls drew his principles from our ordinary “intuitions” about freedom, justice, and equality with little reflection on how these intuitions came to be accepted as bedrock. *A Theory of Justice* came to see much more like an Anglo-American theory of justice or what Canadian critic, George Grant, called *English-Speaking Justice*.¹¹ For some readers, Rawls offered a radical form of egalitarianism according to which a social order is legitimate only if it is engaged in the arduous task of redressing inequalities. This seemed to cast a pall of illegitimacy over virtually the entirety of political history where no one ever considered the achievement of equality to be the mark of a flourishing civilization. For others, Rawls did little more than employ a complex conceptual architecture to defend a slightly idealized version of the late twentieth-century welfare state. Rawls set sail like a modern-day Christopher Columbus only to discover Genoa!

Rawls’ well-oiled machine has already begun to show signs of rust. Two sets of arguments seem to me especially important. The first is that Rawls and those who have followed in his wake have reduced political theory to a kind of applied ethics or what Bernard Williams has called “political moralism.”¹² The idea here

¹⁰My description here owes much to WILLIAM GALSTON, *JUSTICE AND THE HUMAN GOOD* 14-16 (University of Chicago Press, 1980).

¹¹ GEORGE GRANT, *ENGLISH-SPEAKING JUSTICE* (Anansi, 1985).

¹² Bernard Williams, *Realism and Moralism in Political Theory*, in Geoffrey Hawthorn (ed.), *IN THE BEGINNING WAS THE DEED* 1-18 (Princeton University Press, 2005); for a related view, see Raymond Geuss, *PHILOSOPHY AND REAL POLITICS* (Princeton University Press, 2008).

is that political problems are viewed as subordinate to moral theory and that the best way to address these problems is by first elaborating an ideal theory of justice or rights that can then be applied to politics. This “ethics-first” approach is characteristic not only of Rawls but even many of those who disagree with him. Robert Nozick, who accepted Rawls’ framework while rejecting his conclusions, believed that the problems of politics can be answered by first determining the correct theory of individual human rights from which all else can be made to follow. Whether from the social democratic left or the libertarian right, each view adopts what it believes to be the correct and unassailable moral theory from which all the issues of institutional reform can be deduced.

A second problem with Ideal Theory is that it radically underestimates the role of moral conflict in political life. Justice is, to be sure, an invaluable good, but it is not the only good and it must contend with other equally valuable goods. Justice and rights must respond to the need for order and peace, the claims for liberty and autonomy must confront the demands for community and the need to belong, the call for more equality must answer the equally valid call for the recognition of excellence. Which of these is truly primary? It is useless to try to say. The idea that all political problems can be solved by turning them into issues of justice or rights or liberty is not only utopian but anti-political. It selects one good from among the panoply of human ends and sees it as a solution to the problems posed by all the others. This is based on a refusal to confront the difficult, often agonizing and intractable, decisions underlying political life.

To return, then, to my question: how are political philosophy and political education related? I want to consider this by posing the question of the social responsibility of philosophy and its relation to the city. This problem, most famously explored in Plato’s image of the cave, forms the backdrop to Michael Walzer’s influential conception of philosophy as “connected criticism.” I want to show how this idea of philosophy requires an appreciation not only for the high principles of justice and freedom but for the problem of order which remains the first and primary political good. Order in turn requires attention to the “dark arts” of politics -- espionage and intelligence-gathering -- without which political life, as we understand it, would not be possible. How are such activities justified? Standards of political justification, I argue, derive not from some top-down moral theory but from the art of practical judgment – what I believe is best captured by the Yiddish word *Sechel* – by never forgetting the most important question, rarely asked by the philosophers, namely, “what would I do?”

II. THE SOCIAL RESPONSIBILITY OF THE PHILOSOPHERS

One theme rarely alluded to by the advocates of Ideal Theory but that has been central to the long tradition of political philosophy is the question of audience. To whom is the theory addressed or what is the relation of the philosopher to the city? To put the matter in a different way, what is the social responsibility of the philosophers? The term “responsibility” means something like “accountability.” A person is responsible in the legal sense if she can be held accountable for what she does. In British English, the term means something like “decency” in that very understated way the English have when they say of someone who has just performed an act of heroic self-sacrifice, “that was very decent of you.” We can speak of responsible government when it is held accountable to the electorate. But to whom is philosophy responsible?

The classic answer is that the responsibility of philosophy is to truth and truth alone. The work of philosophy is difficult enough; the social consequences of philosophy are a secondary consideration at best. The philosopher is a *theoros*, a spectator in the original sense of the term, one who stands alone and apart from events and looks on in order better to understand a spectacle or performance of some kind. In fact, the Latin verb *spectare* is the translation of the Greek verb *theorein* both of which mean “to look on.” The philosopher here is a disinterested spectator who views himself and the world almost like a visitor from another planet. Only this kind of distance can ensure impartiality.

And yet this self-denying conception of philosophy conveys only part of the story. “*To covet the truth is a very distinguished passion,*” Santayana wrote, but it is rarely the whole story.¹³ Political philosophy, no matter how abstract or aloof it may seem, is an engagement in the world of politics. Whatever its commitment to the discovery of the truth – the “Idea” of justice or the best regime -- its investigations take place in real time against the backdrop of real politics. This invariably forces the question of the philosopher’s relation not just to the best city but to the real one that he or she inhabits. Should the philosopher judge the city harshly with exclusive reference to the best regime or should the philosopher defend her own city knowing that all real-world politics will fall far short of the best? Will the philosopher be a revolutionary or a conservative?

¹³ GEORGE SANTAYANA, *THE GENTEEL TRADITION* 48 (University of Nebraska Press, 1998).

How is philosophy to balance the search for the one best political order against the messy and disordered world in which that investigation takes place?

The most famous and durable metaphor for this problem is the image of the cave proposed in the seventh book of Plato's *Republic*. The image of the cave has acquired a few notable followers one of whom is Michael Walzer.¹⁴ In *Spheres of Justice*, Walzer begins by considering the relation of the philosopher or social critic (he uses the terms synonymously) to society. Walzer's book was written in part as a response to Rawls and others who propose elaborate thought experiments in which impartial spectators – shorn of their individual identities -- choose moral principles from behind a "veil of ignorance." The core idea behind Rawls' revival of the idea of the social contract was to create a procedure that could perform the alchemical feat of transforming our biased and partial understandings into moral principles that can provide a firm foundation for justice.

Walzer's book stands in stark contrast to this method. "*My argument,*" he writes, "*is radically particularist*":

*I don't claim to have achieved any great distance from the social world in which I live. One way to begin the philosophical enterprise – perhaps the original way – is to walk out of the cave, leave the city, climb the mountain, fashion for oneself . . . an objective and universal standpoint. Then one describes the terrain of everyday life from far away, so that it loses its particular contours and takes on a general shape. But I mean to stand in the cave, in the city, on the ground.*¹⁵

The task of philosophy is "to interpret to one's fellow citizens the world of meanings that we share." The details of Walzer's argument need not detain us. It is his method of operating from within the cave of our self-understandings that is important. This has, of course, been subject to the criticism that a procedure beginning from shared understandings is not one that can adjudicate between rival interpretations of the same social good. It is claimed that unless he can develop some procedure for determining impartial standards of justice, his theory will remain mute in the face of serious moral controversy.¹⁶

¹⁴ MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* (Basic Books, 1983); for another creative use of the Platonic image, see MICHAEL OAKESHOTT, *ON HUMAN CONDUCT* 27-31 (Clarendon Press, 1975).

¹⁵ *Id.* at 14.

¹⁶ James Fishkin, *Defending Equality: A View from the Cave*, 82 *UNIVERSITY OF MICHIGAN LAW REVIEW* 755-60 (1984); a similar point is made by Galston in his review complaining that Walzer has "no transcultural understanding of the good": William Galston, *Spheres of Justice: A Defense of Pluralism and Equality. Michael Walzer* 94 *ETHICS* 329-333 (1984)

This criticism is misplaced. “*My purpose in this book,*” Walzer writes, “*is to describe a society where no social good serves or can serve as a means of domination.*”¹⁷ The idea of non-domination -- a view of equality that is consistent with liberty -- need not be derived from the murky waters of neo-Kantianism or hypothetical premises drawn from the Rawlsian “original position” but are implicit within the cultural universe we already inhabit. “*A society of equals is within our own reach,*” Walzer predicts, by which he means that it is drawn from within the sources of our tradition and need not resort to putatively universal principles that are applicable to all possible social worlds.¹⁸ This understanding of equality, Walzer believes—and I agree—is all that is needed to respond to rival or competing standards of justice, even those drawn from the same tradition.

Walzer would go on to develop this argument from inside the cave in a short book titled *Interpretation and Social Criticism*.¹⁹ Here he begins by distinguishing three forms of moral philosophy. The first he calls the path of discovery where the philosopher believes he has discovered the structure of the moral universe in the same way that a scientist might make a discovery in physical nature. The second is the path of invention that claims to create moral rules or imperatives out of the operations of the mind and then impose them on society. And finally, there is the path of interpretation which is the one that Walzer endorses.

On this account, morality is not the kind of thing that is either discovered or invented because it is already implicit in our everyday conduct and practices. Moral practices are the not the result of design but are more like a family home that has been added onto rather haphazardly over many generations and now has come to have a very “lived-in” feel. In fact, moralities that claim to be discovered or created often turn out to be very much like the morality we already have. They are simply “disguised interpretations.” “*The moral world,*” Walzer writes, “*is authoritative for us because it provides us with everything we need to live a moral life, including the capacity for reflection and criticism.*”²⁰

The question confronting Walzer or any defender of morality from within the cave is whether the said interpretation provides sufficient critical distance from existing practices and beliefs to count as criticism at all. Our idea of the social critic is usually that of the alien, the stranger, or the spectator who precisely because of his outsider status is able to announce new truths or see behind old ones. The critic must be

¹⁷ *Supra* note 14.

¹⁸ *Id.*

¹⁹ MICHAEL WALZER, *INTERPRETATION AND SOCIAL CRITICISM* (Harvard University Press, 1987).

²⁰ *Id.* at 21.

one who stands alone and is not afraid “to speak truth to power” (in that very fashionable phrase). But for Walzer, this heroic idea of criticism amounts to adopting the idea of philosophy as “the view from nowhere.” It remains intellectually and emotionally detached from the very people whose reform it would seek to undertake.

Walzer’s ideal is that of the “connected critic.” “The critic is one of us,” he writes. “*Perhaps he has traveled and studied abroad, but his appeal is to local or localized principles*” and “*if he has picked up new ideas on his travels, he tries to connect them to the local culture, building on his own intimate knowledge.*”²¹ Walzer’s examples of such connected critics are Alexander Herzen among the Russians, Ahad Ha-am among Eastern European Jews, Gandhi in India, and Orwell in Britain. These critics did not think of themselves as bringing moral truths from the outside but rather as working within their own national and religious traditions to revise and reform them.

The kind of criticism that Walzer most admires is that which deals in inches rather than yards. Such a view of the critic may appear overly cautious, so Walzer deliberately picks a fight with Michael Oakeshott. Oakeshott, too, held the view that moral principles are embedded in particular traditions of behavior. Every moral tradition consists of a variety of “intimations” – habits, manners, sensibilities – that defy reduction to a single rule or formula. Yet Walzer finds Oakeshott’s understanding of interpretation as the “pursuit of intimations” ultimately too tepid. “*Oakeshott is right,*” Walzer writes, “*to insist that ‘there is no mistake-proof apparatus by which we can elicit the intimations most worthwhile pursuing,’*” but he goes on, “*this is not to say that the pursuit might be (has not been) more adventurous than he allows.*”²² Walzer’s metaphor for interpretation is less a conversation than an argument between rival and competing interpretations.

Walzer’s harshest judgments, however, are directed against radicals like Lenin and Sartre who view critique as a form of principled opposition or radical negation.²³ The flaw derives from their common root in Marxism. Marx cannot properly be called a critic of bourgeois society because his goal was precisely the overthrow of bourgeois society. What Lenin imputed to Russia or Sartre to Algeria was not a critique of local values but rather doctrines that had no local roots and hence no real understanding of local

²¹ *Supra* note 20 at 29

²² *Id.*

²³ For a view of this kind of criticism, see STEVEN B. SMITH, *MODERNITY AND ITS DISCONTENTS: MAKING AND UNMAKING THE BOURGEOIS FROM MACHIAVELLI TO BELLOW* 243-66 (Yale University Press, 2016).

conditions. “I am tempted to say of Lenin and his friends that they were not social critics at all,” Walzer writes. “But it is probably better to say that they were bad social critics, looking at Russia from a great distance and merely disliking what they saw.”²⁴ Unless the critic is connected to society by common ties of loyalty, sentiment, and patriotism, critique easily lends itself to manipulation and coercion.

III. THE PROBLEM OF ORDER

Walzer’s views on politics with which I have so far been in agreement are based on an idea of society as an “argument” around rival and competing conceptions of justice. How much liberty and how much equality are compatible with the prospects for a just or decent society? There is no algorithm for solving this problem other than allowing different views to contend with one another for public approval. This conception of politics, however, presupposes a largely democratic society where rival points of view can be freely and fairly contested in the public sphere and where competitive elections determine winners and losers. This conception of a pluralistic political framework provides the background conditions for Walzer’s theory of justice. It does not, however, sufficiently consider the preconditions for this kind of pluralism and how they are maintained over time. Before we can even think about justice, it is necessary to consider the conditions of political order.

The establishment of order—the Hobbes Problem as it has been called—is the first and primary good of political life.²⁵ Rawls’ statement that justice is the first virtue of social institutions sounds good as an ideological slogan for mobilizing activists but is simply not true. To the old union chant, “no justice, no peace,” a Hobbesian would reply, “no peace, no justice.” This does not mean that the problem of order is the only question with which politics is concerned, but without the basic preconditions of order, nothing else is possible. The grounds for establishing political stability are easily overlooked, especially if you already enjoy them. “*The art of survival is a story that never ends,*” the character of Irving Rosenfeld remarks at the conclusion of David O. Russell’s film *American Hustle*.

The creation of political order is rarely achieved through peaceful agreement and consensus as the social contract tradition maintains but is more often the result of violence, conquest, and usurpation.²⁶ The

²⁴ *Supra* note 19 at 63.

²⁵ See William, “Realism and Moralism,” 3-4; for an interesting analysis, see Amanda R. Greene, “Can Power be Self-Legitimizing? Williams’s Critique of Hobbes and Weber” (in progress).

²⁶ See for example Hume’s classic essay: David Hume, Of the Original Contract, *Essays Moral, Political and Literary* 465-87 (Eugene F. Miller ed., Liberty Fund, 1987).

ratification of the U.S. Constitution was achieved only after the forced expulsion of the native Americans and an agreement to disagree about slavery, regrettable facts that are often overlooked in our history books.

These examples could be multiplied for virtually every country that has ever existed. Presumably such acts are justified -- if they can be justified at all -- because they establish the conditions for all later peace, trust, and co-operation. This can give rise to the pleasing illusion that once such actions are undertaken, they can be safely set aside and politics can absolve itself of its sordid beginnings. Yet the reality is that the problem of order is not something that can be solved once and for all and then set on the shelf, but must be re-established every day. The presence of police even in the most civilized communities is a testimony to the fragility of political order and the need for visible symbols of its authority.

These extreme measures necessary for the survival of society are the dark arts on which politics depends. These arts include the need for surveillance and national security that are indispensable for the survival of modern states. When the premises of political order are under assault—one might call these existential moments in politics—there are no clear limits on what can be done in the name of self-preservation.²⁷ Consider the following passages taken from quite different sources:

1. *I had been greatly interested in the processes of secret intelligence during the war. These always are processes of deception, intrigue, treachery, and mystification. The deception and intrigue sometimes go so far that any normal interest in literal truth is lost along the way, because the truth is buried beneath layer after layer of corrupt intention. Deception and concealment in politics, and the complexity of motive that leads to treachery, have always attracted me, both in reading history and occasionally in actual experience during the war. I have difficulty in imagining that purity of intention and undivided purposes can be the normal case in politics.*²⁸

The first passage from the moral philosopher Stuart Hampshire testifies to the existence of two contending moralities, private and public or what he describes as “innocence and experience.” The morality of innocence, derived in part from Christianity, extols the virtues of conscience, simplicity, and integrity. The

²⁷ I examine this in Steven B. Smith, “Why Did Lincoln Go to War?” *The Political Thought of the Civil War* (Alan Levine, Thomas Merrill, and James Stoner ed., University of Kansas Press, forthcoming).

²⁸ STUART HAMPSHIRE, INNOCENCE AND EXPERIENCE 10-11 (Harvard University Press, 1989).

morality of experience, derived at least nominally from Machiavelli, stresses the importance of loyalty to institutions like the state and the expectation that compromise and “dirty hands” are the inevitable accompaniment of political life. Hampshire’s point is that these two moralities stand in sharp contrast with one another and that life will inevitably involve some trade-off between the two. What he denies is that either side of the moral equation provides the answer for the correct thing to do under all circumstances. Whether the balance tips toward public or private morality, experience or innocence, is always a matter for practical reason to decide.

2. *“The most just society cannot survive without “intelligence,” i.e., espionage. Espionage is impossible without a suspension of certain rules of natural right. But societies are not only threatened from without. Considerations which apply to foreign enemies may well apply to subversive elements within society. . . . Natural right must be mutable in order to be able to cope with the inventiveness of wickedness.”*²⁹

The second passage from Leo Strauss describes in uncommonly vivid language the conditions of “natural right.” *“All action,”* Strauss writes, *“is concerned with particular situations. Hence justice and natural right reside, as it were, in concrete decisions rather than in general rules.”* His argument is that natural right is relative to circumstance: *“There is not a single rule, however basic, which is not subject to exception, he adds.”*³⁰ In other words, nothing is off the table. This is especially true in times of crisis when natural right must be prepared to cope with *“the inventiveness of human evil.”* Under these circumstances, Strauss contends, *“the exceptions are as just as the rules.”* What Strauss claims distinguishes this view from pure Machiavellianism is that the “true statesman” takes his bearings from the normal situation and what would be considered normally or conventionally right, while the Machiavellian hopes to take the extreme situation and turn it into the norm.

3. *“The secret services are the only real measure of a nation’s political health, the only real expression of its sub-conscious.”*³¹

The third passage is spoken by the character of Bill Haydon, a British double agent modeled on Kim Philby, in John Le Carré’s spy thriller *Tinker, Tailor, Soldier, Spy*. Haydon is a Soviet mole in the highest

²⁹ *Supra* note 28 at 160-61.

³⁰ *Id.* at 159-60.

³¹ JOHN LE CARRÉ, *TINKER, TAILOR, SOLDIER, SPY* 342 (Knopf, 1974).

rungs of the British secret service who for years has been passing classified materials to his handler in Moscow. During his debriefing while awaiting his expatriation to Russia, he reveals his reasons for betrayal to his former colleague, George Smiley. “He hated America very deeply,” Smiley recalls, and saw the coming struggle between East and West as an opportunity to take sides, to play a part in a world historical drama. “It’s an aesthetic judgment as much as anything,” Haydon explains. “Partly a moral one, of course,” he adds. The nonchalant “of course” says everything. It is a statement of utter cynicism that regards acts of betrayal as secondary to choosing the winning side.

4. *‘I have to tell you Edward, despite how much we need it, I have some real problems with this whole thing [the CIA]. I’m concerned that too much power will end up in the hands of too few. It’s always in somebody’s best interest to promote enemies real or imagined. I see this as America’s eyes and ears. I don’t want it to become its heart and soul. Do you know who gave Hitler his power? The clerks and book-keepers, the civil servants. I have this one weakness. I believe in a just God. I always seem to err on the side of democracy.’*³²

The final passage is spoken by Robert de Niro and based on the character of William (“Wild Bill”) Donovan in the film *The Good Shepherd*. Donovan was the legendary founder of the CIA who is seen in the film recruiting a former OSS officer (a Yale graduate and Bonesman) played by Matt Damon by appealing to his patrician sense of duty to act as a spy for his country. Sullivan is an American patriot who is torn between his understanding of the need for a professional intelligence service and his fear that such an agency will become an end in itself. He accepts the necessity to do evil, but still believes that a “just God” will come to the assistance of American democracy. His attempt to balance to these two beliefs displays a certain nobility of character that the film suggests is lost on others once the agency is established.

These four passages, illustrating quite different points of view, all attest to the need for extraordinary measures – measures that may begin in times of crisis but inevitably spill over into normal times -- but none quite explain how to justify them. I now want to turn to that problem.

³² ERIC ROTH, *THE GOOD SHEPHERD: THE SHOOTING SCRIPT* 94 (Newmarket Press, 2007).

IV. THE DIRTY HANDS PROBLEM

In a classic article “Political Action: The Problem of Dirty Hands,” Michael Walzer offered three possible sources of justification for the necessity to do evil in politics.³³ The first solution, alluded to earlier, is to appeal to the good effects that evil actions may acquire over time. The prince must learn “how not to be good” is the standard Machiavellian formula or to use the cruder Maoist version of the same idea, you cannot make an omelet without breaking eggs. On this account, all actions carry costs and political actors should be prepared to regard those who are sacrificed along the way as so much collateral damage. We know if an action is justified if it is rewarded by the only tribunal that counts, the tribunal of history. “*World history*,” Hegel wrote, “*is a court of judgment.*”³⁴ The only reward for committing evil in the present is the praise and honor that will be bestowed by posterity, but whether one’s action will be judged well or ill by future generations is something the agent acting in the present can never know in advance. It is this leap into the darkness that is the supreme test of political will.

The second option is represented by Max Weber who treats the political actor as a hero, even a “tragic hero,” for his decision to enter the political fray and get his hands dirty. Rather than regarding the political world as providing for posthumous political fame, Weber treats it as standing in irreconcilable conflict with the desire to achieve goodness. “*He who seeks the salvation of the soul, of his own and of others,*” Weber writes, “*should not seek it along the avenue of politics, for the quite different tasks of politics can only be solved by violence.*”³⁵ The person entering politics must regard it as an all-or-nothing proposition. It is an existential choice on which hangs the very fate of one’s soul.

Weber presented the decision for the political life as an anguished choice between God and the Devil, but he in effect turned it into a proof of the primacy of a tortured conscience. The cost of entering politics is the burden of guilt one assumes for the hard, often brutal, choices one is often forced to make. Whatever one chooses, one has to accept ultimate responsibility for one’s deeds. But it is precisely this guilt that elevates the Weberian statesman beyond a Machiavellian glory worshiper. As a life-long student of the Protestant Reformation, Weber elevated to tragic heights the image of Martin Luther nailing the 95 Theses on the door of the Wittenberg Cathedral. “*It is immensely moving,*” he writes, “*when a **mature** man – no matter*

³³ Michael Walzer, *Political Action: The Problem of Dirty Hands*, 2 PHILOSOPHY AND PUBLIC AFFAIRS 160-80(1973).

³⁴ *Supra* note 3 at 341.

³⁵ *Supra* note 6 at 126.

whether old or young in years – is aware of responsibility for the consequences of his conduct . . . and somewhere he reaches the point where he says: ‘Here I stand; I can do no other.’”³⁶

The third option and the one Walzer finds most attractive is depicted in Albert Camus’ *The Just Assassins*, a play about nineteenth century Russian anarchists who commit an act of murder and then accept the judicial consequences for their crime. “*The heroes are innocent criminals,*” Walzer writes, “*because, having killed, they are prepared to die – and will die.*”³⁷ Unlike the Weberian statesman who pays the price for violence in terms of a guilty or tortured conscience, Camus’ assassins are prepared to pay with their lives by submitting themselves to the Czarist executioners. It is the willingness to accept the judgment of the law that is simply the price one pays for entering politics.

None of these attempts to justify the dirty hands problem is really convincing. The Machiavellian solution is based solely on the good judgment of posterity but the judgment of the future is highly manipulable and provides no guarantees that present sacrifices will produce future benefits. When asked how he would be judged by history, Churchill remarked that it would treat him kindly because he intended to write it.³⁸ This has proved to be largely true, but history is simply too unstable a standard on which to predict moral outcomes. “*History will absolve me*” were the final words of Fidel Castro’s four-hour defense speech at his trial for the attack on the Moncada Barracks in 1953. But what if history doesn’t? Then what? Machiavelli’s answer is that the unsuccessful leader will be treated with scorn and contempt by history or, if she is lucky, she will simply be forgotten, but as far as the victims are concerned, he has nothing really to say.

The Weberian tragic hero with the guilty conscience is just too self-absorbed to be a model for political responsibility. There is simply no way of testing whether what such a person feels is genuine moral anguish at the need to commit evil or a self-righteous façade intended to deflect from his own misdeeds. Weber wrote with passionate conviction about choice and responsibility, but he ultimately assumed a statesman who, like himself, embodied a Calvinist synthesis of politics and conscience.

Walzer’s favored example of the repentant terrorist, I find similarly unconvincing. The problem is that the “just assassins” of Camus’ drama are not really political at all. John Wilkes Booth and Lee Harvey Oswald

³⁶ *Supra* note 6 at 127.

³⁷ *Supra* note 33 at 178.

³⁸ For the full quotation, see Fred R. Shapiro, ed. *The Yale Book of Quotations* 154 (Yale University Press, 2006).

were not political actors, even if their actions carried immense political consequences. Such individuals are not elected by anyone, are responsible to no one, but are self-appointed advocates for the causes they believe in. They have chosen for reasons of their own to put themselves outside of politics and whether they accept responsibility for their actions or not is really irrelevant. Their status as alienated outsiders make them unfit for political life. The idea of the good assassin, just like the good Stasi agent in the film *The Lives of Others*, is a romantic fiction that has never been known to exist. There is no such thing as a just assassination and no amount of moral repentance will make it so. Walzer says that just assassination is “like civil disobedience,” except, I would add, for this one difference: Rosa Parks never killed anyone.

The problem with the dirty hands problem is that it is not really a problem at all. The analogy is not fitting. The very term “dirty hands” presupposes a rift between those who seek out and accept positions of political responsibility and the moral compromises that go with it and those who prefer to remain in private life with their scruples intact. The distinction is misleading. People do not suddenly become greedy, cruel, or corrupt on entering public life. Those who are prone to cheat, steal, and betray do so just as easily in private life as in the public sector. More likely, they were already that way to begin with. Ted Cruz was apparently as loathsome in college and law school as in the U.S. Senate. Furthermore, those who prefer to avoid politics are just as likely do so not from a concern for their moral integrity but out of laziness, ineptitude, ignorance, or just the desire to “free ride” on the backs of others. Our freedom not to be political – one of the cherished benefits of a liberal society – presupposes the existence of others who are prepared to act and accept responsibility on our behalf. We call them our representatives.

The more fitting or appropriate analogy is that politics is a skill or a craft. The craft analogy made famous by Plato was intentionally deflationary. It intended to remove political activity from all forms of glory-seeking and heroic striving for immortality. How could the art of politics bring fame and renown if the proper comparison set was to prosaic activities like shoe making and carpentry? Politics is a skill and like any skill requires training, insight, imagination, and judgment, especially judgment. Burke told his electors at Bristol that he owed them his judgment, nothing more.³⁹ This is not to deny that politics entails making hard choices, often involving matters of life and death, but these are matters of practical judgment, not moral self-sacrifice. Harry Truman’s decision to drop the atomic bomb on Japan to end World War II is a case in point. Looking back, Truman never shied away from accepting responsibility for his decision but neither did he feel the need to apologize or second-guess himself. Given the circumstances and the

³⁹ Edmund Burke, *Address to the Electors of Bristol*, in Philip B. Kurland and Ralph Lerner (ed.) *THE FOUNDERS’ CONSTITUTION* 446-48 (University of Chicago Press, 1987).

available choices, he did what he thought best. Once the statesman has meditated or deliberated over the proper course of action to the best of his ability, there is nothing more to be done. He has fulfilled his duty to his office and no additional moral hand wringing is necessary.

V. IN DEFENCE OF SEHEL

The responsibility of the philosopher today – indeed has always been – the cultivation of political judgment. By judgment I mean the art of practical reasoning. It is not knowledge of the ideal or of a rule that is applicable in all situations but requires a feel for particulars and the nuances of a situation. It is rather knowledge of the appropriate or the fitting thing to do in a given situation. Such knowledge will always be provisional; it will be true only for the most part and will always admit of exceptions. Practical knowledge is a matter of knowing *how*, not knowing *that*, and such knowledge can only be acquired through experience, through immersion in a practice. Judgment means knowing how to operate within the constraints imposed by a practice but also the knowing how to improvise and expand upon the limits of the possible.

Political judgment should be distinguished from technique or technical knowledge. Technical knowledge begins with a process of abstraction from the particularities of a situation and asks what rule or method can be learned and applied to all like circumstances. In modern moral and political philosophy, Kantianism is the dominant form of this kind of reasoning. Kant sought a rule – the Categorical Imperative – that by its very simplicity and transparency could provide a standard by which to act and judge. The procedure of “universalization” – ask yourself whether the principle informing your action could be universally applied – was hoped to provide for the moral universe what the laws of gravity were for physical nature. The chief virtue claimed for this method is that it can provide an impartial standard – a kind of technology of justice – by which political actors can orient their behavior and serve, if not for immediate purposes, at least as a pole-star for our long-term goals.

The art of political judgment is based on virtually the opposite assumptions of the approach sketched above. Most importantly, judgment entails a willingness to tolerate ambiguity and an awareness that no set of principles taken alone will be sufficient to serve as a guide for life. It is at this moment that philosophers like to invoke the Aristotelian term *phronesis* to describe this capacity, but I prefer instead the quality

conveyed by the modest Yiddish word *Sechel*. Sechel is an all-purpose term that conveys common sense, practical wisdom, and street-smarts. The term is defined in the authoritative *Eben-Shoshan Hebrew Dictionary* as “*the spiritual ability to think, to weigh, the strength to judge and come to a resolution.*”⁴⁰ It is different from wisdom or *Chochma* that can take a life time to acquire. Sechelis is the ability to weigh up the pros and cons, the costs and benefits, of a course of action. The gravest obstacle to the exercise of Sechelis the demand for absolute consistency, that there be a single standard or rule applicable to all circumstances.

There are three examples of Sechel that I would like briefly to recommend. The first is Winston Churchill’s famous article “Consistency in Politics” from his book *Thoughts and Adventures*.⁴¹ Like almost everyone else who has written on this subject, Churchill begins by quoting the famous passage from Emerson’s “Self-Reliance” to the affect that “*a foolish consistency is the hobgoblin of little minds.*” There are two kinds of consistency, Churchill writes. One consists in total commitment to a rule, law, or principle (never lie, never cheat, and so on) and using it as a guide for conduct. But consistency in politics is more complicated. It consists in knowing how to adapt principles to changing circumstances and to adjust them as the situation warrants.

This may sound like inconsistency or flip-flopping, but it amounts in fact to the oldest of all policies known as “trimming” recommended by the seventeenth-century political writer, George Savile Marquis of Halifax.⁴² Writing at the time when the first two political parties, Whigs and Tories, were just taking shape, Halifax sought to provide a defense for the trimmer who had previously been regarded as synonymous with betrayal and opportunism. Halifax argued that the policy of trimming represents an ethic of moderation and puts a premium on political stability. In politics, the ship of state will always be endangered by people of opposing parties who cause the vessel to list from side to side. Halifax’s extreme empiricism in politics prevented him from dogmatically endorsing either side. It is best, he opined, to adopt a “third Opinion” of those who conceive that “it would do well, if the Boat went even, without endangering the passengers.”⁴³

Churchill invokes the spirit of Halifax when he, too, employs the nautical metaphor of the ship of state:

⁴⁰ George E. Johnson, *The (Jewish) Sixth Sense, Moment* (November-December, 2013) available at <http://www.momentmag.com/jewish-word-sechel/>.

⁴¹ Winston Churchill, *Consistency in Politics*, in *THOUGHTS AND ADVENTURES* 35-44 (James W. Muller ed., ISI, 2009).

⁴² George Savile Marquis of Halifax, *The Character of a Trimmer*, in *THE COMPLETE WORKS OF GEORGES SAVILE MARQUESS OF HALIFAX* 47-103 (Clarendon Press, 1912); for a valuable discussion, see JOSEPH HAMBURGER, *MACAULAY AND THE WHIG TRADITION* 89-94 (University of Chicago Press, 1976); AURELIAN CRAIUTU, *FACES OF MODERATION: THE ART OF BALANCE IN AN AGE OF EXTREMES* 26, 181 (University of Pennsylvania Press, 2017).

⁴³ *Supra* note 42at 48.

“A distinction should be drawn between two kinds of political inconsistency. First, a Statesman in contact with the moving current of events and anxious to keep the ship on an even keel and steer a steady course may lean all his weight now on one side and now on the other. His arguments in each case when contrasted can be shown to be not only very different in character, but contradictory in spirit and opposite in direction; yet his object will throughout have remained the same. His resolves, his wishes, his outlook may have been unchanged; his methods may be verbally irreconcilable. We cannot call this inconsistency. In fact it may be claimed to be the truest consistency.”⁴⁴

Churchill’s point is that the world of moral and political experience is too complex to be reduced to a single rule or principle whether this is Thomas Aquinas’ Natural Law, Kant’s Categorical Imperative or the Utilitarian’s principle of the greatest happiness for the greatest number. Just as there is no single wine that goes equally well with all foods, so is there no single moral rule that can be used for all cases. The principle of practical judgment should be thought of not as an inflexible moral imperative but as a rule of thumb, that is, a useful but nevertheless inexact standard that will have to be continually modified to fit the circumstances. In each new case the standard will be determined by the person best capable of capturing the nuance, color, or texture of the particular situation.

The art of practical reason --- a shrewd sense of know-how or political savvy – is also the theme of Isaiah Berlin’s essay “Political Judgment.”⁴⁵ Here Berlin speculates on what it is that distinguishes practical judgment from other forms of human excellence and what separates the greatest statesmen – Talleyrand, Bismarck, Roosevelt – from those of more abstract or theoretical genius – Einstein, Russell, or Freud. “*What are we to call this capacity?*” Berlin asks:

“Practical reason, perhaps a sense of what will work and what will not. It is a capacity for synthesis rather than analysis, for knowledge in the sense in which trainers know their animals, or parents their children, or conductors their orchestras, as opposed to that in which chemists know the contents of their test tubes, or mathematicians know the rules that their symbols obey. Those who lack this [quality of practical wisdom],

⁴⁴ *Supra* note 41 at 35-36.

⁴⁵ ISAIAH BERLIN, *THE SENSE OF REALITY: STUDIES IN IDEAS AND THEIR HISTORY* 40-53 (Farrar, Straus, and Giroux, 1999).

*whatever other qualities they may possess, no matter how clever, learned, imaginative, kind, noble, attractive, gifted in other ways they may be, are correctly regarded as politically inept.*⁴⁶

What is necessary for political judgment is what Berlin calls a “sense of reality.” This does not mean simply knowledge of what will work and what will not, but a sense of what is possible and what is not. Judgment is not just a matter of fitting means to ends, but of knowing what is the fitting or appropriate thing to do under the given circumstances. Good judgment in politics, just like the ability to discern good character in individuals, is not necessarily a matter of having more information or access to a larger body of facts, but the ability to see something before others do, knowing whom to trust and who not to, and a willingness to accept responsibility for one’s (inevitable) mistakes.

A final example of the fine art of Sechel can be found in Leszek Kolakowski’s essay “In Praise of Inconsistency.”⁴⁷ Kolakowski’s essay is a register of his discontent with the absolutism of Marxist orthodoxy which he had formerly embraced, yet it is a protest against absolutisms of all sorts. In this extraordinary text, he begins by defining the consistent person as “*one who, possessing a certain number of general, absolute concepts, strives earnestly in all he does, and in all his opinions about what should be done, to remain in the fullest possible accord with those concepts*”. As examples he uses, somewhat ironically, the pacifist who refuses military service, the convinced monogamist who never cheats on his spouse, and the police officer who issues summonses for the most trivial infractions of the law. “*We may salute this fine example of consistency, of strict application of principle,*” Kolakowski writes in mock praise. “*On the other hand, we must note that humanity has survived only thanks to inconsistency*”.⁴⁸

For Kolakowski, inconsistency – “*a secret awareness of the contradictions of this world*” – is the well-spring of tolerance and humanity. “*Inconsistency as an individual attitude,*” he writes, “*is merely a consciously sustained reserve of uncertainty, a permanent feeling of possible personal error, or if not that, then of the possibility that one’s antagonist is right*”. By inconsistency, he is not praising a kind of lazy acceptance of all values that derives from the denial of truth. To the contrary: he treats inconsistency as a heroic value precisely because it is committed to the truth of the

⁴⁶Berlin, “Political Judgment,” 47.

⁴⁷Leszek Kolakowski, “In Praise of Inconsistency,” *Toward A Marxist Humanism: Essays on the Left Today* 211-20 (Jane Zielonko Peel, trans., Grove Press, 1978)

⁴⁸ *Id.* at 211-12.

contradictory nature of all values. “*A clear awareness of the eternal and incurable antinomy in the world of values is nothing but conscious inconsistency, though inconsistency is more often practiced than proclaimed*”.⁴⁹

For Kolakowski, then, we have no choice but to embrace the contradictory world we inhabit. This means giving up on the dreams of perfection – of absolute justice – that are the fruits of Ideal Theory. But this leaves us with a paradox. Can we consistently insist on inconsistency or is it inconsistent to do so? “*We live in a world of extremes*,” Kolakowski admits.⁵⁰ But are there not times – Lincoln in 1860, Churchill in 1940 – that require firmness of will, resoluteness in action, and the strength of character, in other words, the need to be consistent? Of course, there are and it would be inconsistent to say otherwise.

Churchill, Berlin, and Kolakowski all provide a profound insight into the kind of political education that I want to recommend. It could be called an education in political judgment. Judgment is an art and like all arts it must be learned. It is not a formula but a disposition. It is a skill possessed by the great political actors faced with life-and-death decisions but also by everyday citizens engaged in the ordinary business of deliberation and debate whether on a jury or in a voting booth. But, exactly, how is judgment acquired? The art of judgment is perhaps best compared to the art of reading. It is not just the passive absorption of words on a page but requires intelligence, imagination, and insight into character and motive, of seeing the world from the standpoint of another. We can learn this art or at least come to appreciate it by reading the works of its supreme practitioners among whom I would include Aristotle, Machiavelli, Montesquieu, and the Federalist authors.

The great works of political theory need to be supplemented by a reading of the most psychologically astute novelists among whom I would include Tolstoy, James, and Austen. A great novel will contain instances of moral reasoning and deliberation equal to the theories of the greatest philosophers. A dozen pages of Austen’s *Persuasion* will introduce us better to the art of Sechel than a shelf of books written in the dominant spirit of the age. These in turn should be supplemented by a careful study of the deeds and words of the most important statesmen from around the world, from Pericles, Bismarck, and Disraeli to Jefferson, Madison, and Lincoln, to Ben-Gurion, Nehru, and Mandela.

⁴⁹ *Supra* note 47 at 214.

⁵⁰ *Id.* at 216.

The art of judgment is, above all, an education in political responsibility. It requires a disciplined imagination and a willingness to settle for less than best. Those who prefer critique to judgment have renounced politics in favor of utopia where,

*There's a land that's fair and bright,
Where the handouts grow on bushes,
And you sleep out every night.*⁵¹

To accept responsibility for judgment means always to ask the question “What is to be done?” or -- to avoid the faux impersonality of the passive voice – “What would I do?” Responsibility means taking ownership for one’s judgments rather than simply engaging in radical denunciation and critique. This attitude of mind is brilliantly captured in a characteristically self-deprecating story told by the great French sociologist, Raymond Aron. In 1932 after spending a year in Berlin as a young doctoral student, Aron was alarmed at the rise of National Socialism and on his return to Paris, he arranged, through an intermediary, for a meeting with the French Minister of Foreign Affairs to inform him about what he had seen. When asked to give his opinion about the situation in Germany, Aron reports that he delivered a brilliant lecture “in the pure style of student from the [École Normale Supérieure].” After listening politely, the minister asked, “*You have spoken so well about Germany and the dangers appearing on the horizon, what would you do if you were in my place?*” Aron admits that no one had ever asked him this before and in fact the question had never occurred to him, but that he took away a life-long lesson always to keep this question in mind – what would I do?⁵²

So, I suggest, should we.

⁵¹ Harry McClintock, *The Big Rock Candy Mountain*, in THE PENGUIN BOOK OF AMERICAN FOLK SONGS, 131 (Penguin, 1964).

⁵² RAYMOND ARON, MEMOIRS: FIFTY YEARS OF POLITICAL REFLECTION 41-42 (George Holloch trans., Holmes & Meier, 1990); I had the pleasure of hearing Aron tell this story in Paris at a lunch in his honor at the apartment of Allan Bloom.