

V. Dirty hands

1. CONFUCIUS FACED THE PROBLEM

The dirty hands dilemma 'is typically stated by the Communist leader Hoerderer in Sartre's play of that name: "I have dirty hands right up to the elbows. I've plunged them in filth and blood. Do you think you can govern innocently?" My own answer is no, I don't think I could govern innocently; nor do most of us believe that those who govern us are innocent.' (WALZER 1973: 161, 174.)

According to Stocker the dirty hands cases are in some ways wrong, but still they are justified and even obligatory. Stocker reserves the concept 'dilemma' for those cases in which there is no right act possible for the agent to choose, and every option is wrong. Stocker notes that not every wrong act is a dirty act 'nor does every conflict involving wrong acts involve dirty hands'. (STOCKER 1990: 10.)

In the following we will trace the Confucian attitude towards the dirty hands problem, and discover whether he allows this issue to be chosen or asked, and what his attitude towards the possible dirty hands action is.

The passage about the Upright Kung, which we discussed above, reveals that the Analects recognized such a problem. The passage shows that Confucius allows the problematic question to be asked. To punish one's father would be wrong in terms of filiality, which was valued very highly by Confucius. Even the worst person would choose to avoid killing his father (AN. 11:23). To screen him is equally wrong in terms of justice and obligation to the moral community of citizens. Each action is dirty from the other point of view. Both solutions are somehow wrong, and both are justified, even obligatory, as Stocker puts it. Stocker points out that almost every act has costs, and these costs are justified. In addition, the dirty hands acts have 'impossible oughts', and these are regrettable. (STOCKER 1990: 15. See also HOWARD 1977: 38; O'NEILL 1993: 116.)

The story above about the Upright Kung shows that Confucius faced the dirty hands problem, which in this case is connected with enforcing of the law. The issue can also be seen in the following, where Confucius can avoid poverty if it does not involve doing wrong. Confucius even approves an occupation which involves the use of coercion.

2. COMPELLING AND DIRTY HANDS

The Master said, If any means of escaping poverty presented itself, that did not involve doing wrong, I would adopt it, even though my employment were only that of the Gentleman who holds the whip 雖執鞭之士. But so long as it is a question of illegitimate means, I shall continue to pursue the quests that I love. (AN. 7:11.)

This means that Confucius is ready in principle to choose an occupation in which one is entitled to inflict corporal punishment, if it is legal. The occupation in itself involves actions of dirty hands. However, the saying allows us to understand that this use of force and coercion, which would include the dirty hands act of beating, was not valued highly by Confucius. The idealized Confucian community would be without 'coercion or imposition of one person's will upon another'. (FINGARETTE 1979: 136.)

The attitude in the Analects is not contingent in this matter of the use of force. Tzu-kung, the disciple of Confucius, said about Confucius that if he had been put in control of a State or of a great family, he could be described with the words:

He raised them, and they stood, he led 道 them and they went. He steadied them as with a rope, and they came. He stirred them, and they moved harmoniously. (AN. 19:25; CHENG Shu-te 1974: 1162-1163.)

This passage appears in the less reliable parts of the Analects. It reflects the opinions of those disciples of Confucius, who speak about their Master. The passage does not necessarily include an idea of dirty hands, although some type of coercion is included. Coercion involves forcing an agent to act against his own will. A similar case to this is when one refuses to do something, and this refusal prohibits someone from realizing their wish. Confucius made such refusals when choosing students.

3. REFUSAL AND DIRTY HANDS

Confucius prized the eager student, but required a high level of intellectual ability when he said: 'If I hold up one corner and a man cannot come back to me with the other three, I do not continue the lesson.' 舉一隅, 不以三隅反, 則不復也 (AN. 7:8.)

If we assume that not only Confucius valued learning very highly, but that his students must have done so as well, the above method of choosing students must have been very disappointing for those who failed. For the student this also meant a sudden change in his future plans and the destruction of his hope of one day being able to work in a good and highly appreciated job. From the student's point of view this act was a dirty hands act against him. This kind of attitude on the point of the teacher does not follow the Confucian idea of the Gentleman or *jen*, Goodness. If Confucius had followed *jen*, the Golden Rule, he would have exchanged roles with the student. In so doing, he would have been helping the student to understand, and to learn to understand. His moral principle and practical behavior are in contradiction in this case. We can even judge that the dirty hands act is not necessary here, it is avoidable, and thus it is immoral.

This interpretation insults those who regard Confucius as a Holy Sage. A milder interpretation can be given by explaining that Confucius only did not want to repeat his words mechanically. He thought that it is most important for the students to understand his views by themselves. However, this interpretation does not take into account the fact that Confucius has the proud attitude of a 'schoolmaster' who lets some students fall out without helping them properly and even less to change roles with the unsuccessful student. This attitude can be seen in the long Confucian tradition of a rigorous examination system in which only the most talented could be successful and only those who could afford to spend enough time in their studies were able to reach the satisfactory standard. This did not lead to high education of the common people, but it produced well educated officials for the government.

4. AVOIDING DIRTY HANDS

Confucius regarded Yen Hui as his best student. He prized him because he avoided dirty hands in the following way:

He had a great love of learning. He never vented his wrath upon the innocent nor let others suffer for his faults. 好學，不遷怒，不貳過 (AN. 6:2.)

Here the character 貳 is translated by Waley as referring to another person and by Legge and Lau to another fault. (LEGGÉ 1969: 185; LAU 1979: 81.) In the first part of the sentence, 不遷怒, there is Yen Hui's negative action which does not influence another person. In the second part of the sentence, 不貳過, according to Waley there is a similar case (WALEY 1964: 115). This kind of parallelism is natural and appears frequently in the Analects.

This avoidance of wrath and letting others suffer for one's faults does not necessarily mean the avoidance all dirty hands actions, since according to this, there is the possibility of letting some suffer, but not because of one's own faults, but for some other reasons.

On one occasion Confucius was brought close to succumbing to the temptation to agree to strict measures to get rid of crime, and thus came close to accepting dirty hands actions.

Chi K'ang-tzu was troubled by burglars. He asked Master K'ung what he should do. Master K'ung replied saying, 'If only you were free from desire 不欲 they would not steal even if you paid them to.' (AN. 12:18.)

To punish burglars does not necessarily involve dirty hands, since punishment is due to criminals and is morally well legitimated (GERT 1988: 116–118). From the burglar's point of view, this would be a dirty hands act, however, because the burglars would not like the punishment. Despite the legitimation of punishment, Confucius turns the issue upside down by pointing out that the real criminal is someone other than the person who has committed the crime. Here Confucius does not regard punishments as a part of the moral system. (GERT 1988: 116.)

The fault is rather Chi K'ang-tzu's than the burglars'. Confucius wants to point out that it is Chi K'ang-tzu's attitude which causes someone to be a burglar. If we remember that Chi K'ang-tzu was in a high position, and therefore his attitudes influenced people, we are able to expand the idea, and formulate the theory that in Confucius' mind the social system itself produces the need for punishments. If the most influential person in the social system would behave in a different way, that is, without desires, it would be possible to avoid crime and any need for dirty hands. In this way the leader would act as a good example for the people. (NIKKILÄ 1992: 77, 79.) The following discussion exposes a similar idea of a good example:

Fan Ch'ih asked the Master to teach him about farming. The Master said, You had much better consult some old farmer. He asked to be taught about gardening. The Master said, You had much better go to some old vegetable-gardener. When Fan Ch'ih had gone out, the Master said, Fan is no Gentleman! If those above them love ritual, then among the common people none will dare to be disrespectful. If those above them love right, then among the common people none will dare to be disobedient. If those above them love good faith, then among the common people none will dare depart from the facts. If a Gentleman is like that, the common people will flock to him from all sides with their babies strapped to their backs. What need has he to practise farming? (AN. 13:4.)

Confucius did not advice governing by force. This principle appears clearly in the following:

The Master said, Govern the people by regulations, keep order among them by chastisements, and they will flee from you, and lose all self-respect (or shame 恥). Govern them by moral force 德 keep order among them by ritual 禮 and they will keep their self-respect and come to you of their own accord. (AN. 2:3.)

In this the shame 恥 is a 'moral response'. Fingarette notes that this comes close to the concept of 'guilt', but 'it is not, as is guilt, a matter of the inward state.' It is 'a matter or 'face', of embarrassment, of social status. Shame says, 'change your ways; you have lost honor or dignity.' Guilt says, 'change yourself; you are infected.' (FINGARETTE 1972: 29–30. See also SMILEY 1992: 171; FUNG Yu-lan 1978: 39.)

In the course of his administrative duties the Gentleman 君子 ought to choose the sort of methods and measures that do not require the use of dirty hands. The Gentleman has to win the confidence of his subordinates before putting burdens upon them. Otherwise they feel that they are being exploited. (AN. 19:10.)

Confucius wants to avoid strict measures. If the Gentleman rules by his charismatic ability, *te* 德 (NIKKILÄ 1992: 53), he can succeed in ruling without resorting to the use of dirty hands acts. Even civil suits or litigation should be avoided (AN. 12:13; FINGARETTE 1972: 33). This is the 'virtuous government' 德政 (FUNG Yu-lan 1978: 39). Confucius' mood is revealed by the following: 'The Master said, In vain have I looked for a single man capable of seeing his own faults and bringing the charge home against himself.' (AN. 5:26.)

Confucius also compared the strict and more lenient methods with each other:

The Master said, Where Gentlemen, set their hearts upon moral force (*te*), the commoners, set theirs upon the soil. Where gentlemen think only of punishments, the commoners think only of exemptions. 子曰, 君子懷德, 小人懷土, 君子懷刑, 小人懷惠 (AN. 4:11.)

In this comparison Confucius recognizes that the effectiveness of these methods is different. When the leader has the charismatic ability of *te*, then the commoners stick to their jobs, but when the method is negative, that of relying upon punishments, the people try to avoid their duty and are less motivated in their jobs.

When he was in office, Confucius fulfilled the minimum expectations of his society in regard to the use of strict measures and punishments, but nevertheless he adhered to his more lenient way of administration. This can also be seen also in the following passage, according to which he rejected the elimination of those who did not 'have the way'.

Chi K'ang-tzu asked Master K'ung about government, saying, Suppose I were to slay 殺 those who have not the Way 無道 in order to help on those who have the Way 有道 what would you think of it? Master K'ung replied saying, You are there to rule, not to slay. If you desire what is good, the people will at once be good. (AN. 12:19.)

The motive for slaying people suggested here is not to force the disobedient to obey through the threat of a slaughter (RAPHAEL 1970: 72–73), or thinking that the disobedient are morally guilty and that there should be a punishment as a moral retribution (FINGARETTE 1972: 27), but rather to remove them and in this way to promote those who have the Way.

Confucius wants to eradicate all cruelty and slaughter, irrespective of the reasons for their occurrence. This includes cruelty which is bound up with dirty hands acts, as well as cruelty which takes place on any other grounds. It seems that Confucius does not want to make a distinction between these cases.

The Master said, Only if the right sort of people had charge of a country for a hundred years would it become really possible to stop cruelty and do away with slaughter. (AN. 13:11.)

Nevertheless, Confucius is not always consistent and does not always prefer to avoid dirty hands, but sometimes views punishments in a positive light. He advised people to 'meet resentment with upright dealing' 以直報怨 (AN. 14:36). This may or may not refer to punishments. The issue seems to become clearer, however, in what the Analects tell about T'ang, who formulated his principle of governing as 'those who are guilty I dare not spare; but God's servants I will not slay' (AN. 20:1). There is a problem with this, however, for it appears in the least reliable part of the Analects and as such cannot solely be regarded as reflecting Confucian attitudes, as it contradicts Confucius' position against slaying. In a passage which possibly is an insertion by the Legalist school (FINGARETTE 1972: 27) into the less reliable parts of the Analects, Confucius recognized the value of mutilations and lesser punishments. (AN. 13:3. See also AN. 14:22.)

There is also a tradition according to which Confucius killed an official from Lu state in 498 BC. Chao Chi-pin has written a monograph about this (CHAO Chi-pin 1973: 1, 32, 88) but the Confucian Analects do not provide materials according to which we could draw this kind of conclusion. This would be in sharp contradiction with Confucius' principles of avoiding cruelty and slaughter.

The importance of punishments is implicitly revealed in the following:

Tzu-kung asked, saying, What would you feel about a man who was loved by all his fellow-villagers? The Master said, That is not enough. What would you feel about a man who was hated by all his fellow-villagers? The Master said, That is not enough. Best of all would be that the good people in his village loved him and the bad hated him. (AN. 13:24.)

The background of this conjecture is that the bad people in the village feel antipathy against the Good Man, because the Good Man is against them. This most probably concerns a man who has some kind of important position or authority in the village so that the bad people are moved to hate because of his indignation and possibly because he had punished them.

When one is living in retirement and is not serving as a minister or in any other public position of responsibility, if the Way does not prevail, then one prefers to avoid situations in which one should use dirty hands acts. (AN. 3:27, 5:20, 8:13.)

Avoiding dirty hands will, in some cases, lead to the necessity sacrifice oneself rather than cause suffering to others. One should be ready for suffering, and for death for one's good cause (AN. 18:1), 'be ready to die for the good Way' (AN. 8:13). In these cases the object of a dirty hands act is the moral agent himself. As a matter of fact, in principle one wins nothing by this method, since someone has to suffer anyway. However, this shows an admirable ability to change the roles, as belongs to the Confucian ideal of *jen*.

For Confucius, the avoidance of dirty hands acts means preferring to rule by good example and by moral force, *te*, which is the characteristic of a charismatic lord, the Gentleman. One has to gain the confidence of the ruled so that they do not feel they are being exploited. In his own administrative practice Confucius several times fulfilled the requirement to punish offenders, but he retained his principal point of view of not emphasizing punishments and dirty hands acts. He did not really see the necessity of such acts. To some extent, however, it seems that Confucius had to admit that strict measures are necessary, but these sayings are not necessarily genuine Confucian, because most of them appear in the less genuine parts of the Analects and some reflect this opinion only implicitly. One can avoid dirty hands by not approving the sort of position where one would be obliged to do dirty hands acts, or by causing suffering to oneself rather than to other people.

A more strict requirement of administration appears in a situation of war, which can be said to require the most dirty acts. While Confucius could quite successfully maintain his principle of avoiding dirty hands acts in ordinary civil life, in the following we will see how he dealt with the question in connection with war.

5. WAR AND DIRTY HANDS

Those who are involved in political activity during time of war are often confronted with the problem of dirty hands (WALZER 1973: 161). Stocker says about immoral situations such as war:

If dirty hands involve a violation of a person, principle, or value, two related issues must be addressed. It must be shown how, given that it is a violation, it can be justified, and also how, given that it is justified, it can be a violation... in at least many cases, the circumstances which justify the dirty hands are, themselves, immoral. In Aristotle's case of having to do what is base to save one's family, there are the tyrant's immoral threats. (Nicomachean Ethics 3.I, 1110a6 ff.) In Walzer's torture case and in Nagel's case of bombing enemy civilians to break their country's will, there are the immoralities of war. And in another of Walzer's cases, that of acceding to a corrupt ward boss's demands for a bribe, there are the immoral demands and implied threats.

I think it is difficult to overestimate the importance of the role of immorality in creating situations which necessitate and justify acting with dirty hands. (STOCKER 1990: 19; RACKHAM 1947: 1110a. See also NAGEL 1972: 130–131.)

Although war can be regarded as the most dirty of dirty hands action, Confucius gives great attention to war.

The rites to which the Master gave the greatest attention were those connected with purification before sacrifice, with war and with sickness. 子之所慎，齊，戰，疾 (AN. 7:12.)

Lau translates 慎 as 'care' and Legge as 'caution'. 齊 denotes 'the whole religious adjustment, enjoining before the offering of sacrifice, and extending over the ten days previous to the great sacrificial seasons.' (LAU 1979: 87; LEGGE 1969: 198.) The sacrifice could in this context even mean rites of purification before war and rites to heal sickness.

If he had been consistent with his belief in rooting out crime by means of a good example, he would have stressed avoidance of war and not the rites of war. However, it may well be that the aim of performing the rites of purification before war is to minimize the immoralities of war and to make the dirty hands act less dirty by means of the symbolic actions of rites.

Confucius regarded production of weapons 兵 as important, but he regarded food 食 and the confidence 信 of common people as being more important than weapons. In this preference, weapons could be neglected first and the confidence last. (AN. 12:7.)

Confucius had a more critical view towards war when he criticized a lord who had a thousand teams of horses, but of whom, when he died, the people could not 'think of no good deed for which to praise him.' (AN. 16:11–12. See also AN. 14:6.)

The Analects contain one passage which discusses at some length the complications of war. It is one of the earliest writings about the principles of war in China. Although it is not in the most reliable parts of the Analects, it still reflects the attitude towards war of the early Confucians and maintains the genuine Confucian attitude of avoiding war and influencing people and events by the virtue of *te*.

(1) The Head of the Chi Family decided to attack 伐²² Chuan-yu. (2) Jan Ch'iu and Tzu-lu came to see Master K'ung and said to him, The Head of the Chi Family has decided to take steps with regard to Chuan-yu. (3) Master K'ung said, Ch'iu, I fear you must be held responsible for this crime. (4) Chuan-yu was long ago appointed by the Former Kings to preside over the sacrifices to Mount Tung-meng. Moreover, it lies within the boundaries of our State, and its ruler is a servant of our own Holy Ground and Millet. How can such an attack be justified?

(5) Jan Ch'iu said, It is our employer who desires it. Neither of us two ministers desires it. (6) Master K'ung said, Ch'iu, among the sayings of Chou Jen there is one which runs: 'He who can bring his powers into play steps into the ranks; he who cannot, stays behind.' Of what use to anyone are such counsellors as you, who see your master tottering, but do not give him a hand, see him falling, but do not prop him up? (7) Moreover, your plea is a false one. For if a tiger or wild buffalo escapes from its cage or a precious ornament of tortoise-shell or jade gets broken in its box, whose fault is it?

(8) Jan Ch'iu said, The present situation is this: Chuan-yu is strongly fortified and is close to Pi. If he does not take it now, in days to come it will certainly give trouble to his sons or grandsons. (9) Master K'ung said, Ch'iu, a true Gentleman, having once denied that he is in favor of a course, thinks it wrong to make any attempt to condone that course. (10) Concerning the head of a State or Family I have heard the saying: 'He is not concerned lest his people should be poor, But only lest what they have should be ill-apportioned. He is not concerned lest they should be few, But only lest they should be divided against one another.'

And indeed, if all is well-apportioned, there will be no poverty; if they are not divided against one another, there will be no lack of men. (11) If such a state of affairs exists, yet the people of far-off lands still do not submit, then the ruler must attract them by enhancing the prestige (te) of his culture; and when they have been duly attracted he contents them. And where there is contentment there will be no upheavals. (12) To-day with you two, Yu and Ch'iu, acting as counsellors to your master, the people of far lands do not submit to him, and he is not able to attract them. The State itself is divided and tottering, disrupted and cleft, but he can do nothing to save it and is now planning to wield buckler and axe within the borders of his own land. I am afraid that the troubles of the Chi Family are due not to what is happening in Chuan-yu, but to what is going on behind the screen-wall of his own gate. (AN. 16:1.)

Confucius by no means advocates or prefers war here. The attack is in his opinions a crime, which is the fault of the counsellors themselves, who were former disciples of Confucius. (LEGGE 1969: 307). The necessity of attacking Chuan-yu is made clear in the reasoning of this passage, however: 'Chuan-yu is strongly fortified and is close to Pi. If he does not take it now, in days to come it will certainly give trouble to his sons or grandsons.' According to this reasoning this is a typical dirty hands case in which the situation is immoral, as Stocker requires, and the immoral action of attacking is justified, even necessary to avoid future harm, which could be even greater than the present action. (STOCKER 1990: 10; NAGEL 1972: 127; BRANDT 1972: 156.) The reasoning does not attract Confucius. He wants to see the real problems elsewhere and does not regard taking Chuan-yu as important. His suggestion might have some general interest. A dirty hands situation is a kind of dilemma in which one is coerced to choose one from two or more artificially limited bad alternatives. Other alternatives are not considered. (STOCKER 1990: 20, 25.)

In Chuan-yu's case Jan-Ch'iu and Tzu-lu's employer did not see any other option but to act with dirty hands and to attack. Confucius wanted to avoid this and find a moral

²² The term used here means 'to attack and punish'. It is 'an excuse of judicial authority, which could emanate only from the sovereign. The term is used here, to show the nefarious and presumptuous character of the contemplated operations.' (LEGGE 1969: 307.) The ideogram consists of a 'man' and a 'sword'. 伐 means to attack 擊. (LIU Pao-nan & LIU Kung-mien 1973: 350.)

option. He tried to reason that the problem is not Chuan-yu, but some political problems which possibly could be forgotten or overlooked, if the attack on Chuan-yu had been realized.

Because Confucius was an outsider, it was comparatively easy for him to take another point of view. It appears that this was hardly possible for Jan-Ch'iu and Tzu-lu, who were under their lord and had to follow his 'immoral coercion'. It is unlikely that Confucius' reply was regarded as satisfactory by them.

Apparently Confucius sees no dilemma in this situation of war or armed aggression, or generally in a situation where one has 'to choose between two courses of action both of which it would be wrong for him to undertake' (WALZER 1973: 160). Such a situation is to have a choice-set (DAN-COHEN 1992: 222) in which both options are bad, and in which one is entitled to choose one option. Nagel suggests that it is possible to be faced with this kind of dilemma (NAGEL 1972: 123-144). Hare shares Confucius' view. According to him, 'sometimes the precepts and principles of an ordinary man, the products of his moral education, come into conflict with injunctions developed at a higher level of moral discourse. But this conflict is, or ought to be, resolved at the higher level; there is no real dilemma.' (HARE 1972: 166-181; cf. WALZER 1973: 161; ALLEN 1988: 92-94.) Brandt's opinion is that the dilemma 'could not possibly happen, for there were guidelines we might follow and calculations we might go through which would necessarily yield the conclusion that one or the other course of action was the right one to undertake in the circumstances (or that it did not matter which we undertook).' (BRANDT 1972: 145-165; cf. WALZER 1973: 160.)

It is, however, interesting to see, that amongst the modern specialists of moral theory there is the same sort of disagreement over this issue as there was during Confucius' time between the Master and his disciples. Confucius tries to discover a general principle which can be applied in all similar circumstances without causing harm.

According to Hare, the general principle is the 'universal prescriptivist theory' which holds 'that when I am making up my mind what I ought to do, I am making up my mind what to prescribe for all cases exactly like this one in their universal properties.' According to this theory 'I shall have to find out, first of all, just what I *am*, in effect, prescribing.' 'Impartiality is guaranteed by the fact that my prescription has to apply to all cases resembling this one in their universal properties.' 'Benevolence is secured by the element of prescriptivity... I am bound to treat the interests of other as of equal weight to my own.' (HARE 1972: 167, 171. See also HARE 1989: 44-45; 1993: 1-17; GERT 1988: 77; Cf. PERRY 1987: 160-167; ALLEN 1988: 144-147; SLOTE 1985: 11.)

In the case of attacking Chuan-yu, Confucius tries to solve the problem at the higher level to avoid the dilemma. Confucius' 'higher level' in this case was to re-analyze the situation and to discover that there was no real reason for the military activity, but that the problems needing to be solved lay elsewhere.

Confucius, of course, has not elaborated his ideas to as sophisticated a level as to be comparable with Hare's way of presenting his ideas, but Confucius tries to preserve impartiality, at least in principle: In this case of an attack upon Chuan-yu, he wants to see the situation of Chuan-yu and treats its interests of equal weight to those of them who want to attack, thus realizing his moral ideal of benevolence, *jen* 仁.

6. ALLOWING A SECOND EFFECT

Another issue related to dirty hands is not to prevent something which causes harm to someone else from happening. Quinn says about this:

In order to benefit one person, sometimes we have to harm or fail to help another. In extreme cases the other person would even die. The moral question is that would the benefit justify the harm? One may balance the good against evil, or think that not only the consequences are morally relevant. It is also relevant whether the harm is caused by action or by inaction, for example, by not saving someone. The good ends would properly legitimize a certain amount of evil. Some people also see moral significance in the distinction between what we intend as a means or an end and what we merely foresee will result incidentally from our choice. In some situations we could cause some harm, if it is only foreseen, but not intended. In the case of the distinction between the intentional and the merely foreseen, this view is central to what is usually called the Doctrine of Double Effect (DDE) or the Principle of Double Effect (PDE). In the case of the distinction between action and inaction the view has no common name, so for convenience we may call it the Doctrine of Doing and Allowing (DDA). (QUINN 1989: 287. See also LEVY 1986: 29; NAGEL 1972: 130; OLIVER 1956: 94.)

Mackie discusses similar problems: He quotes Anscombe:

If someone innocent will die unless I do a wicked thing, then on this view I am his murderer in refusing, so all that is left to me is to weigh up evils. I might be forced to kill one innocent person to save the lives of several others. But if we use the principle of double effect we can retain absolute moral rules; for example, we can say that the doctor can save one of the two persons at the cost of the death of the other, provided that this death is a second effect and not a means. Even under duress, I can refuse to kill an innocent person, though I know that others will die as a result of my refusal, for this too will be a second effect. (MACKIE 1990: 161. See also WALTON 1980: 325; LEVY 1986: 29.)

The Confucian Analects has a discussion about this problem of a second effect:

Tzu-lu said, When Duke Huan put to death (his brother) Prince Chiu, Shao Hu gave his life in an attempt to save the prince; but Kuan Chung²³ did not. Must one not say that he fell short of Goodness? The Master said, That Duke Huan was able to convene the rulers of all the States without resorting to the use of his war chariots was due to Kuan Chung. But as to his Goodness, as to his Goodness!

Tzu-kung said, I fear Kuan Chung was not Good. When Duke Huan put to death his brother Prince Chiu, Kuan Chung so far from dying on Chiu's behalf became Duke Huan's Prime Minister. The Master said, Through having Kuan Chung as his Minister, Duke Huan became leader of the feudal princes, uniting and reducing to good order all that is under Heaven; so that even today the people are benefiting by what he then did for them. Were it not for Kuan Chung we might now be wearing our hair loose and folding our clothes to the left. We must not expect from him what ordinary men and women regard as 'true constancy' – to go off and strangle oneself in some ditch or drain, and no one the wiser. (AN. 14:17–18.)

²³ 'Under the leadership of Duke Huan and his famous minister Kuan Chung, the state of Ch'i in the Shantung Peninsula had established a kind of league of states ratified by the sacred authority of the Chou king (during the years 649–639). This was a kind of collective security system whereby the general peace of the Chinese world was maintained by an overwhelming preponderance of power. Later, the presidency of the league passed to the state of Chin, and gradually the effectiveness of even this limited security system simply faded away. By the time of Confucius, it had largely collapsed; all that remained was the utterly ineffective spiritual authority of the dynasty.' (SCHWARTZ 1985: 57.)

Confucius' reply to this problem is, that preventing the death of the prince would have cost the life of Kuan Chung, who then later, when alive, could benefit the people greatly. We saw above that Confucius solves the problem from purely a utilitarian point of view; the benefit justified the harm. Because of the result, Confucius does not want to condemn Kuan Chung. (A. R. WHITE 1980: 9; LEVY 1986: 29.) It is possible that what was in Tzu-kung's mind was that Kuan Chung was responsible and liable to blame for the death of his prince. Because of this moral responsibility he should have prevented the death. (SMILEY 1992: 105–117, 219–224; WHITELEY 1966: 223; HAKSAR 1966: 187.) And even more, by not preventing the death Kuan Chung he rose to the position of prime minister under the brother who killed the prince Chiu. If we want to defend Confucius' position, we have 'to distinguish positive acts from omissions and frame absolute rules only about positive acts' (MACKIE 1990: 162; cf. WALTON 1980: 325). Kuan Chung let the killing happen; it was a result of inaction, but Kuan Chung's positive act was not that of killing the prince. The death could be foreseen as a second effect, but Kuan Chung's intention was not to kill his prince. (QUINN 1989: 287. See also A. R. WHITE 1980: 9.) Because of this, his behavior was not condemned by Confucius.

The question arises of to what extent Confucius regards the agent as responsible for inaction or neglect; does his ethics distinguish positive acts from omissions. If there are indications of this direction elsewhere in his thought, we may conclude that he has this intention here, too.

Failures are often omissions. Confucius' notions about failure relate to this issue in dirty hands ethics. His general statement about failure is:

The Master said, Every man's faults belong to a set. If one looks out for faults it is only as a means of recognizing Goodness. (AN. 4:7.)

A more concrete failure appears in a case which involves Confucius as well:

Ch'u Po Yü sent a messenger to Master K'ung. Master K'ung bade the man be seated and asked of him saying, What is your master doing? He replied, saying, My master is trying to diminish the number of his failings 過 but he has not hitherto been successful. When the messenger had gone away, the Master said, What a messenger, what a messenger! (AN. 14:26.)

The background to this exchange is that Ch'ü Po Yü had failed to get a position for Confucius. The message allows Confucius to understand that Ch'ü Po Yü is still trying to help him. Here the positive acts are not distinguished from omissions. The omission is seen as a failure. Above we noted to Yen Hui's ability to learn to avoid causing suffering because of his own faults.

Duke Ai asked which of the disciples had a love of learning. Master K'ung answered him saying, There was Yen Hui. He had a great love of learning. He never vented his wrath upon the innocent nor let others suffer for his faults. (AN. 6:2. See also the present study, p. 13.)

In these quotations Confucius regards the agent as responsible for his faults (cf. FINGARETTE 1972: 35–36). The positive acts are not distinguished from omissions (SMILEY 1992: 107; WALTON 1980: 323), as is done in Kuan Chung's case. It is advisable that one acts so that no other person suffers because of one's own faults. Confucius seems to

be inconsistent in his attitude towards Kuan Chung. He should have regarded Kuan Chung as responsible for his inaction, as it seems Tzu-kung did, who doubted the Goodness of Kuan Chung.

It is important to recognize here that this kind of discussion is recorded in the Analects. This shows that Lun yü is not a monistic ideological compilation, but a document which includes several kinds of values and contradictory views and critical questions put to Confucius, who apparently advocated the contradictory or inconsistent views. Here we can see indications of critical thinking. Even the master himself can be questioned.

The second effect should be avoided according to Confucius. This appears in what he says about the 'four ugly things' 四惡. These are:

Putting men to death, without having taught them (the Right); that is called savagery 虐. Expecting the completion of tasks, without giving due warning; that is called oppression 暴. To be dilatory about giving orders, but to expect absolute punctuality, that is called being a tormentor 賊. And similarly, though meaning to let a man have something, to be grudging about bringing it out from within, that is called behaving like a petty functionary 有司. (AN. 20:2.)

The four ugly things allow us to understand that Confucius thought that the leader is responsible if he neglects instructing his subordinates, does not warn them or does not give orders properly. In this passage Confucius wants the leader to be active in his duties, and he regards the leader as being responsible for the harm caused by his inactivity or laziness. (Cf. FINGARETTE 1972: 35.)

Confucius criticized Tzu-lu for causing a second effect. He had made Ch'ai a Warden of Pi. Confucius said to Tzu-lu: 'You are doing an ill turn to another man's son', which shows that he took the sufferer's point of view. Confucius finally understood, however, when Tzu-lu explained this as a part of training. (AN. 11:24.) One could cause harm to the son in order to train him. Education was therefore regarded as a sufficient reason to cause the second effect.

In the case of second effect, Confucius wanted to study the situation and to find the real cause and motive for the actions from somewhere other than in what was told to him. In this way he tried to find a means of avoiding the kinds of acts which could cause the second effect. This problem can also be found in contemporary moral thinking.

Confucius regards the agent is equally responsible for his faults, omissions and actions. No one should suffer for one's own faults. However, he is not consistent in this, since in Kuan Chung's case Kuan Chung let his prince be killed. Finally the result of this in Confucius' view was positive, and the second effect in this case could be regarded as correct by him. Confucius allows the second effect to happen when it is seen as useful in one's training.

We have seen above that Confucius had to face the issue of dirty hands. However, he wanted mostly to avoid the problem and to emphasize that one should keep 'the hands clean', or not to participate in acts which would involve dirty hands. It seems likely that those who asked Confucius about acts which would involve dirty hands actions were not satisfied with his replies. He did not want to face the problem intellectually. However, the Analects do include the questions to which Confucius replied in an unsatisfactory way.

Confucius' attitude towards dirty hands acts was not this simple. He could choose such an act, in the form of letting it happen, when Kuan Chung let his prince die. Confucius sees the legitimation of this from an utilitarian point of view, because Kuan Chung saved his life and later could benefit the people on a large scale. Even in this case, Confucius does not touch the problem of remorse, which is closely linked with dirty hands actions. (STOCKER 1990: 32; HARE 1981: 28–30; WILLIAMS & NAGEL 1976: 126; ATKINSON 1965: 128–129.) He does not suggest that Kuan Chung should feel sorry (SKORUPSKI 1993: 131–132) for his neglect. In this case Confucius shows himself to be a utilitarian rationalist.