

# Intervention, Rectificatory Justice and Immigration: France and Ben Ali

Written by Jakob Mckernan

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JAKOB MCKERNAN, JAN 8 2016

A recent United Nations report on the worldwide displacement of people has noted that 'wars, conflict and persecution have forced more people than at any other time since records began to flee their homes and seek refuge and safety elsewhere' (UN, 2015). Records show that at the end of 2014, 59.0 million people have been 'forcibly displaced'. Ten years ago this figure stood at below 38.0 million (Ibid). Moreover, the problem is only going to get worse in the future. Immigration, and how we deal with it, will likely become a defining issue of our time. The flow of immigrants, by and large, moves from south to north, from the developing world to the developed world. Therefore, the response of the developed world is a crucial factor in how we confront this issue. Broadly speaking, this paper will focus on how the developed world ought to respond.

Utilizing the example of France, and its relationship with Tunisia, I will argue that past interference in the political and social life of a country should be considered as one of the criteria when assessing an immigrants right to entry.

There are good reasons for choosing Tunisia.[1] Under the dictatorship of Zine El Abidine Ben Ali, Tunisia successfully cultivated the reputation of a 'benevolent dictatorship'. Its apparent economic success and its willingness to aid in the 'War on Terror' meant that it often escaped scrutiny, with France, in particular, willing to 'look the other way' in the face of rights abuses. Issues of boarder security and regional political stability seemed to take precedence over issues of human rights. I, therefore, believe that it makes a good 'test-case' in determining instances where 'corrective justice' is appropriate. Additionally, there has been an explosion in the numbers of Tunisians attempting to enter the EU following the collapse of the Ben Ali regime, often 'illegally'. The urgency with which Tunisian immigrants attempted to leave the country after the 'Jasmine Revolution' was particularly striking. Within two months of the fall of Ben Ali, 20,000 Tunisians had crossed the Mediterranean in an attempt to reach the Italian island Lampedusa (Squires, 2011). Following their arrival on European soil, the French government immediately blocked their border with Italy, stating that unless proof of adequate funds could be proven, Tunisians would not be granted access (The Guradian, 2011). Accordingly, the case of Franco-Tunisian relations is particularly suited to a study of the link between rectificatory justice and immigration.

The paper will proceed as follows: First, I will begin by situating this line of enquiry within the relevant literature, as well as detailing how it will make a contribution to the academic debate. Secondly, I will establish the empirical foundations of my theoretical claim by detailing how France has intervned in Tunisian affairs. Following this, I will argue that such an intervention brings 'duties of assistance'. Moreover, France has compensatory duties owing to the principles of rectificatory justice. To conclude, I will posit that one way that France can fulfill these duties of assistance and rectificatory justice is by offering a 'favourable immigration policy'.

### Academic and Social Significance

At the risk of stating the obvious, the need for Europe and its member states to address issues of immigration is urgent. This sense of urgency stems from the current crisis playing out in the Mediterranean. Since January of this year (2015), more than 1,800 people (UNHCR, 2015), fleeing the Middle East and North and Sub-Saharan Africa, have drowned in the Mediterranean attempting to reach Europe. Thus far, the debate on developing an adequate

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policy, upon which every state can agree, has proven difficult. While there has been broad support for a 'military solution' to the problem (Barigazzi & von der Burchard, 2015), it seems issues of burden sharing have hampered cooperation when it comes to accepting immigrants in member states (Politico, 2015). This is reflective of the wider immigration debate, as Mathias Risse has argued, 'debates on immigration are often held from the standpoint of 'what is good for us' without regard for what is ethically justifiable to those we exclude' (Risse, 2008). Accordingly, when the EU and its member states are devising an immigration policy for the future, ethical concerns should be central.

This paper will also make a contribution to the ongoing academic debate. Literature examining immigration from a standpoint of distributive justice is extensive. An exhaustive account cannot be supplied here,[2] and this paper will not evaluate the relative merits of these positions. Rather, it will leave them to one side[3] and focus on immigration through the lens of rectificatory justice. In essence, I argue that principles of rectificatory justice should supplement, rather than substitute, namely principles arising out of distributive justice.

In contrast to the literature dedicated to distributive justice and immigration (as briefly discussed in footnote two), the enquiry into the rights of immigrants stemming from compensatory duties has been virtually absent. Attention, however, has been afforded to the wider issue of corrective justice (Thompson, 2002) (Winter, 2003) (Collste, 2010) and to various groups who have suffered in the past (Boxil, 2003) (Lyons, 1982) (Kok-Chor, 2007). What connects all of these works is their focus on the 'inter-generational' duties of compensation. Theoretical accounts which focus on a 'favourable' immigration policy as suitable compensation for injustices are, however, rare. One such contribution comes from Göran Collste (Collste, 2010). Yet, this work is also centered on making amends for the 'sin of our fathers'. As of yet, there has been no exploration of the justifiability of rectifying moral transgressions in the present through a more generous immigration policy.

## **France and the Regime of Ben Ali**

Before examining the extent and limits of compensatory justice in this case, it is first necessary to substantiate some factual claims. An appeal for rectification assumes that one party has, in some sense, suffered an injustice at the hands of another. How, then, have the Tunisian people suffered an injustice, and what was the role of France in it? The answers to these questions are closely tied up with the dictatorial regime of Zine El Abidine Ben Ali.

Coming to power through a constitutional coup in November of 1987, Zine El Abidine Ben Ali initially embraced human rights, promising to eradicate the abuses that characterised the former regime. In hindsight, this promise was a veneer to obfuscate the true nature of the regime. Constraints on space dictate that a full appraisal of Ben Ali's regime is not possible, but the following summation of the human rights abuses that marked his time in power should adequately illuminate the nature of his government. Although his arrival to power was initially welcomed, both domestically and internationally, Ben Ali's actions soon caused concern. As early as 1992, an Amnesty International report criticised the regime for 'mishandled arrests and detention procedures, torture, and death in detention.' (Ritter, pg.76). These early examples of 'misconduct' became commonplace in Ben Ali's regime. For the purpose of brevity, I will refer to a 2008 U.S State Department report, which is representative of other appraisals[4] of the regime. The report states:

Local and international nongovernmental organisations (NGOs) have reported that security forces tortured and physically abused prisoners and detainees and arbitrarily arrested and detained individuals. Security forces have acted with impunity sanctioned by high-ranking officials. There have also been reports of lengthy pretrial and incommunicado detention. The government infringed on citizens' privacy rights and continued to impose severe restrictions on freedoms of speech, press, assembly, and association. The government has remained intolerant of public criticism, and there have been widespread reports that it used intimidation, criminal investigations, the judicial system, arbitrary arrests, residential restrictions, and travel controls to discourage criticism by human rights and opposition activists. (U.S State Department Report, 2008)

It is clear then that the people of Tunisia have suffered under the reign of Ben Ali, but how did actions of France contribute to this suffering? I will argue that their contribution came through the form of diplomatic assistance,

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economic aid and generous trade relations with the regime.

Again, space constraints mean that only a cursory discussion of Franco-Tunisian relations during Ben Ali's reign is possible. What must be noted, however, is that throughout Ben Ali's dictatorship he received public and financial support from every French government from 1987 until 2011. In her evaluation of France's support for the dictatorial regime, Amy Kallander noted that 'successive French government officials adopted a policy of non-interference in domestic political affairs, facilitating loans, foreign-aid and free-trade agreements, thereby proposing economic solutions to problems that were essentially political and social' (Kallander, 2013). Support for the regime came from the highest level. Ignoring reports of gross human rights abuses, President Mitterrand congratulated Ben Ali on his successful coup, describing him as an 'author of a peaceful transition and democratic renovation' (as quoted in; Kallander, 2013). His successor, Jacques Chirac, described Ben Ali as 'a man of peace' (Ibid). Human rights abuses also had little impact on the level of financial aid. Although these aid packages 'came with clauses whereby allocation of funds were dependent on Tunisia's respect for human rights...Tunisia continued to receive more aid per capita than any other country' (Kallander, 2013). Naturally, French aid was not purely altruistic, as 'economic progress, political stability and French national-security interests were considered sufficient to ignore the lack of democratic political reforms, the censorship of the media and the problems of human rights (Ibid)'.

At this point I have established that the people of Tunisia suffered gross violations of their human rights under the dictatorship of Zine El Abidine Ben Ali and that France, not only failed to make meaningful efforts to prevent ongoing abuses but also actively supported the regime through foreign aid, diplomatic support and generous trade agreements. I will now posit that many, if not all, of the societal and economic problems motivating Tunisians to flee their country have been caused, directly or indirectly, by France in their support of the Ben Ali regime. It is therefore my contention that they now have duties of assistance to these people.

## Post-intervention Obligations

I will support my claim by way of appealing to two principles. First, I will argue that, just as in the case of a 'just' military intervention, economic and political intervention aimed at influencing the make-up of a state's government also requires the intervening actor to assist states in the post-intervention period. Secondly, I will posit that owing to the principle of corrective justice, France has a moral obligation to further compensate Tunisia for its support of the Ben Ali regime.

It is necessary to stress, in this instance, that the rights abuses of the Ben Ali regime are not morally relevant. What is relevant, however, is the intervention in the political and social life of Tunisia. Even if the regime had been 'benevolent', the fact that France intervened in Tunisia, thereby contributing to current conditions there, is of moral significance. To illustrate my point, I will refer to the 'just war' literature.

The literature on *just war* is extensive. It is not only concerned with the issue of motivation, but also the issue of obligations to assist following a military intervention. In regard to motivation, it is relatively clear that illiberal wars of aggression are morally impermissible. The obligations of the intervener, following an intervention, are less clear however.[5] Although there are number of positions taken, with regard to this issue, I would like to point to work of (Walzer, 2000) (Orend, 2007) and (Bellamy, 2006) in support of my position.

Michal Walzer was an early advocate of the 'in-out' position on intervention, that is to say that any 'just' war or intervention is characterised by the intervener rejecting any duties of assistance after the cessation of combat. However by the third edition of *Just and Unjust Wars*, Walzer had revised his position, even going so far as to say that even 'humanitarian interventions', which are altruistically motivated, require the actor to 'stay on, keep the peace, and ensure to safety of the rescued community (Walzer, 2000). For Walzer, this duty stemmed from the fact that intervention is 'morally optional' (ibid). Therefore, once the decision to intervene is made, the burdens of assistance following the intervention cannot be eschewed (ibid). The appeal of this position, echoed by (Bellamy, 2006) and (Orend, 2007), is that the duty to assist or 'reconstruct' is non-transferable. Once you commit to intervention, you must be willing to commit to all associative duties, no matter how supererogatory the original intervention was. How, then, does this relate to the case of French interference in the political and social life of

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Tunisia?

Can these interventions be described as qualitatively different to the military interventions under discussion within the just war debate?

On a fundamental level, there is no distinction. Admittedly, a military intervention may be costly in terms of human life. But like military interventions, as discussed by Walzer, the economic and diplomatic interventions which characterised Franco-Tunisian relations, were fundamentally concerned with shaping and influencing the internal political make-up of a sovereign state. In a sense, military and economic/diplomatic interventions are two sides of the one coin. Both aim to alter or preserve the domestic political structures of a state. In this instance, France had a clear interest in preserving the status quo in Tunisia. The willingness to protect these strategic interests resulted in France significantly altering the political and social trajectory of Tunisian life.

Consider for a moment the following counter-factual: Instead of ignoring the humanitarian abuses committed by the Ben Ali regime and instead of dismissing the regimes denial of democratic rights, France, in line with its rhetorical commitments to defend and support human rights, militarily intervened in Tunisia. As discussed above, such an intervention, given that it is 'morally optional', would carry duties of 'reconstruction', or more broadly speaking, post-intervention 'assistance'.

Therefore, it would seem reasonable to suggest that France also has post intervention obligations. While the intervention of France may not have caused collateral damage or a direct loss of life, it did, to a lesser or greater extent, contribute to the current political and social conditions in Tunisia.

It could of course be argued that these duties of assistance are not particularly stringent and do not extend beyond the borders of Tunisia. In line with this argument, France simply has a duty to repair the 'social' and 'political' damage within Tunisia. Through financial and structural assistance they should aim to aid Tunisia in reaching such a stage where the factors that motivate people to migrate – social and political unrest, economic stagnation, high unemployment etc. – are no longer present. There are two problems with such a view. Firstly, the feasibility of such a task is contentious. Processes of economic and social reconstruction are complex and are by no means guaranteed to succeed. Secondly, even if it were likely to succeed it would be reasonable to suspect that it would take at least one generation for such a process to be successful. Therefore, the benefits of such an undertaking would bypass the majority of the Tunisians wanting to escape these conditions today, thereby failing to assist them directly. It follows, that France should develop a way to assist the Tunisian population at the earliest possible opportunity.

## Rectificatory Justice

What, then, are the extents and limits of rectificatory justice and how do these apply to the case under consideration here? In his work on global rectificatory justice, Göran Collste (Collste, 2010) identified three prominent strands of what can be more broadly described as corrective justice. In this section, I will briefly explore two of these, the 'Lockean' and 'Aristotelian' variances. Owing to its specificity<sup>[6]</sup>, I will not consider Robert Nozick's account here.

Both Aristotle and John Locke conceived rectificatory justice to be a matter of 'righting' the 'wrongs' of the past. Where to two accounts differ, however, is in how wrongs should be 'righted'. For Aristotle, for justice to be done in this regard a judge [should] try to equalise things by means of the penalty, taking away from the gain of the assailant' (as cited in Collste, 2010). In essence, the Aristotelean position holds that for justice to be served, we must take away any gain from the perpetrator of the injustice. It seems to me that, for our contemporary purposes, this 'retributive' form of justice is inadequate. Issues of feasibility notwithstanding, the central problem with this account of justice is that it fails to adequately address the issues of the victim(s). While it may act as a deterrence to future acts of injustice, the victim(s) in this case, reap no benefit.

In contrast, the Lockean conception of corrective justice, can be said to be more 'victim centered'. Succinctly expressed, Lockean justice implies a right to reparation. For the purposes of brevity I will here refer to Bernard Boxhill's analysis of the Lockean position. Boxhill, taking *T* to be the transgressor and *V* to be the victim, has

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identified three key points of distinction.[7] Two of which are important for our case. Firstly, and as mentioned above, 'if *T* commits a transgression and *V* is harmed as a result, *V* has a right to seek reparations from *T*.' Furthermore, 'reparation is not the same as punishment. Punishment is to deter the wrong doer and warn others; reparation is to "make satisfaction" for the harm that *V* suffered.' (Boxil, 2003). What, then, are the consequences of viewing Franco-Tunisian relations through the prism of Lockean rectificatory justice?

I would suggest that even though France cannot be considered the principal offender, it must be considered morally culpable. Financially and diplomatically supporting a regime, while knowing of its human rights abuses is a moral transgression. Under the principles of corrective justice, punishing France would not be adequate and for justice to be served, reparations would need to be made.

## Duties of Assistance and Compensation and the Role of Immigration

Having established that France has duties to assist and compensate Tunisia following its intervention and support of the Ben Ali regime, the question is, now, how such duties should materialise in practice? In this concluding passage, I will make the case that a favourable or generous immigration policy towards Tunisia is one of the ways in which France could fulfill these duties.[8]

As I proposed above, in order to meet its duties of assistance to the people of Tunisia, France should act at the earliest possible opportunity. Following the collapse of the Ben Ali regime, the Tunisian economy has been hampered by stagnation, high unemployment and corruption (Zabis, 2012). Although one would think the collapse of a dictatorial regime would be greeted with optimism for the future, this has not been the case in Tunisia. In 2011 alone, 40,000 Tunisians took upon themselves to undertake the risky journey across the Mediterranean, 2,000 of which did not survive (Ibid). In response to the wave of immigration, French officials made it clear that although these migrants are now on European soil, they will have no right of entry to France (Squires, 2011). Given that the societal, economic and political problems that motivate these Tunisians to immigrate were, directly or indirectly, caused by France, is it not just that they now assist them with this process of immigration? Again, it could be argued that the duty to assist should not extend beyond changing the conditions that drive immigration. However, while this may be a more long term duty, I would argue that it would need to be supplemented with the duty to assist the people who are currently facing these hardships.

Duties of reparations can also be met by implementing an advantageous immigration policy in regard to the people of Tunisia. In support of my claim, I will refer to Collstes' work on compensatory measures designed to address colonialism. In order for reparations to be adequate, Collste posits that they meet the following three criteria. First, an 'acknowledgment of the past wrongs on the side of the victimiser', Secondly, 'that something of value is offered the former victim as compensation' and finally, 'that the motive behind the offer is to apologise'. In regard to the first requirement, I would contend that David Cameron's expressions of 'regret', in relation the Western-Arab relations, have opened a dialogue in which the French government could take part in the future. With respect to the requirement of something of value being offered, I would suggest the extension of membership rights to the French state, could certainly be considered a valuable offer. The right to include and exclude is a foundational principle upon which the modern sovereign state is built upon. Beyond significant financial remuneration and a sincere apology, it is difficult to think of anything which a state could offer that has more 'value'.

While the discussion above relates to a very particular set of circumstances, involving complex interstate relations, I believe this instances highlights issues which are of wider concern to developed nations. The acceleration in migratory flows has meant that immigration will have implications for the environment, our security and the global economy. If the Western world wants to meet these challenges in a just fashion, it must consider what is 'ethically justifiable to those we exclude' (Risse, 2008). In that respect, it must look to rectificatory, as well as distributive justice as guiding principles.

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## Footnotes

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[1] That is not say other examples are not worthy of further investigation. Even a cursory glance at the EU's involvement with the Arab regimes which have fallen in the 'Arab Spring' may cause discomfort in the West. Particularly western involvement with the dictatorial regimes of Muammar Gaddafi in Libya and Hosni Mubarak in Egypt, may also merit further analysis in this regard.

[2] However, some notable examples include; Joseph Carens, who argues that the states control of admission is inconsistent with democratic principles. To achieve a just global order, he argues, we must have open borders. Along similar lines, Philip Cole has argued that the immigration control is incompatible with 'the core moral principles of liberal theory, in particular the principle of moral equality among humans'. Broadly speaking, these two arguments represent the conventional 'freedom of movement argument', that is that people have a fundamental right to travel across borders without hindrance. Mathais Risse, has contended that the earth is subject to the common ownership of humanity, and therefore the globe should not be arbitrarily divided along historical (state lines). Elsewhere, Shelly Wilcox has posited that the 'Global Harm Principle' should be used as guiding principle when constructing a just immigration policy.

[3] Likewise, it will leave the arguments for 'closed borders' to one side. Prominent works arguing for this position include Michael Walzer, who appealed to a state's discretionary right to include and exclude (Walzer, Membership, 1983). Another prominent position, that of immigration as a threat to a 'successful welfare state' has been articulated by David Miller (Miller, 2005).

[4] (Human Rights Watch, 2011) (Amnesty International, 2010)

[5] For an overview of the 'just war' debate refer to, *Just Wars? in The Ethics of War and Peace: An Introduction* (Frowe, Helen. 2011)

[6] Robert Nozick's interpretation of the rectificatory justice stems from his 'entitlement theory', and relates in particular to property rights. In short, Nozick posits that people have a right to their own property, provided they 'acquired it in a just way' (Collste, 2010). This line of reasoning has been adopted in the argument for compensation for colonial abuses.

[7] The final point relates to profit or harm incurred by the transgressor. Boxhill argues it is irrelevant that T get any satisfaction from his transgression or from harming V. T could have been harmed as a result of his own transgression and from harming V, and his harms could be greater than V's harms. V is still entitled to seek reparation from him.' (Boxhill, 2003).

[8] To reiterate, extending comparatively favorable immigration rights to Tunisia is just one possible way France could meet these duties. Perhaps a more appropriate starting point would be the issuing of an official public apology. Such an official apology has precedence. In 2012, French President François Hollande apologised on behalf of the French government for its part in the rounding up and deportation of Jews during the Second World War. Indeed, tentative steps in this direction, have already been made by other Western leaders, with David Cameron public stating that he 'regrets' his government's involvement with Arab dictators (Kirkup, 2011).

*Written by: Jakob McKernan  
Written at: University of Groningen  
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