

The Ethics of Intervention

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Abstract: A restrictive just war framework is used to assess French intervention in Mali. In cases of failing states, the moral presumption should be for UN intervention, but unilateral interventions are justifiable when the UN lacks capacity and will. While French intervention to defend against Muslim extremists could be justified, the “war on terror” can obscure the roots of conflicts and privilege military over political solutions. Thus, a remedial rights approach should be used to assess Tuareg secession, with a high threshold for independence and clear criteria for ensuring that a new state can meet its sovereign responsibilities. Intervention more akin to policing than war-fighting should be preferred, and when war-fighting is necessary, interveners should give priority to protection of civilians over self-protection.

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Interventionsethik, gerechter Krieg, Mali

The ethical implications of the 2013 French intervention in Mali can be defined in various ways. *Operation Serval* could be considered a legitimate intervention by invitation to help defend a struggling but legitimate government against disparate threats posed by Muslim extremists and Tuareg separatists. If Mali was a failed state or its government lacked legitimacy, intervention could be justified, as it was in Afghanistan, as an act of collective self-defense or collective security in a regional and global war on terror, or as a humanitarian intervention to stop widespread killings and human rights abuses by Muslim extremists imposing sharia law. Intervention could also be justified to protect some 6,000 French nationals as well as French interests, including access to uranium in neighboring Niger. Finally, the intervention could be considered a relic of French colonialism, another in a long line of military interventions justified, at least in part, as necessary to fulfill France’s historical responsibilities and its family-like ties with its former colonies.¹

Mali is typical of the variety of motives, justifications, and objectives – sometimes conflicting, often opaque – involved in military interventions. Consequently, a prudential moral assessment requires a deep analysis of the particular case. This article does not attempt to provide that in-depth analysis, but offers a moral framework for doing so. My analysis is grounded in a restrictive approach to the just war tradition that is informed by a Catholic cosmopolitan ethic centered on human dignity and human rights, and the common good.

First, I locate my overall ethical approach in the context of four general approaches to the ethics of intervention. I then consider the legitimacy of the Mali government, and the legitimacy of unilateral versus UN-sanctioned intervention. Third, I assess the principal French justifications for intervention – to defend against Muslim extremists and to prevent Tuareg secession. Finally, I consider the ethics of the means used in relation to the ends of the intervention.

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1 Benedikt Erforth and George Deffner, “Mali: Old Wine in New Bottles,” *Think Africa Press*, March 18, 2013; accessed on February 13, 2014 at <http://www.globalpolicy.org/qhumanitarianq-intervention/52363-mali-old-wine-in-new-bottles.html?itemid=id#26087>.

1. Approaches to Intervention Ethics

Four major ethical approaches to intervention are discernible in contemporary policy debates about intervention in Mali and elsewhere.² The first, that of *moral skeptics*, holds that French intervention in Mali could ultimately be justified only if it served French national interests. Moral rights and duties arise out of community. Since there is only a minimal degree of shared global values and a very weak sense of international community, France and other countries bear no or only minimal moral obligations to Malians or other foreigners.³ Intervention in Mali was morally justified, therefore, primarily because it defended French national security interests by combating the rise of Muslim extremism, protecting access to key resources, stabilizing a friendly government, and maintaining historic French influence in Mali and the region.

One need not be a skeptic to acknowledge that France would have been shirking its moral responsibilities to its own people if it had intervened in Mali without consideration of its national interests. There are no cases of purely altruistic interventions. Interests matter. The issue is the relationship between French interests and fundamental norms. Because intervention to pursue national interests so easily sacrifices the rights of the weak for the interests of the strong, and risks undermining sovereignty, human rights and other norms, French interests must not have been the principal justification for intervention.⁴

The second approach to intervention is an *ethic of sovereignty*, with its corresponding norm of non-intervention.⁵ Sovereignty and non-intervention are considered pillars of international order for several reasons. First, by defining sovereignty in territorial terms, it rejects justifications for intervention based on the nature of a government, such as its religious or undemocratic character.⁶ Second, respect for sovereignty protects weak states, like Mali,

2 The delineation in this section is based on that in Pierre Laberge, “Humanitarian Intervention: Three Ethical Positions,” *Ethics & International Affairs* 9:1 (Spring 1995): 15-35.

3 Cf. Joseph S. Nye, *Understanding International Conflicts: An Introduction to Theory and History* (New York: Pearson, Longman, 2009): 23-24.

4 Cf. Paul Ramsey, *The Just War: Force and Political Responsibility* (Lanham: Rowman & Littlefield, 1983, 1968): 27-33.

5 See, e.g., the UN Charter’s “principle of the sovereign equality of states” (art. 2(1)) and prohibition of “the threat or use of force against the territorial integrity or political independence of any state” (art. 2(4)).

6 James Turner Johnson, *Morality and Contemporary Warfare* (New Haven: Yale University Press, 1999): 103.

from neo-imperialist and neo-colonialist interventions by strong states, like France. Third, for state moralists, like Michael Walzer, sovereignty and non-intervention are essential to protect the right of self-determination of political communities, such as Mali.⁷ An ethic of sovereignty does not preclude all interventions, but it insists that they must be exceptional cases, such as by invitation of a legitimate government, for collective- or self-defense, or when authorized by the UN Security Council. Increasingly, sovereignty is being reinterpreted as an instrumental, not absolute, norm. If, for example, respect for Mali's sovereignty had become an impediment to protecting fundamental human rights due to a failed government, the UN or another legitimate entity could fill the void.⁸

A third approach to intervention is an *ethic of peace and security*. Mali reflects a proliferating pattern of UN and UN-sanctioned interventions since the end of the Cold War which have been justified as responses to threats to or breaches of international peace and security under chapter VII of the UN Charter. Many unilateral interventions, such as the U.S. in Grenada, have also been justified as protecting international order. This ethic rightly emphasizes the importance of international order as a fundamental value, in itself, and as a precondition for protecting other values, such as human rights and development. But this ethic can be vague and overbroad, and used to justify interventions in what are essentially internal conflicts. It can so enlarge the justifications for intervention that the principles of sovereignty and non-intervention lose their ability to protect vulnerable states against self-interested and illegitimate interventions.⁹

A final approach to intervention is an *ethic of human rights and the common good*. Rooted in a cosmopolitan approach to international affairs, an ethic of human rights and the common good does not reject the legitimacy of the pursuit of legitimate national interests, respect for sovereignty, and the need for international peace and order. But the focus is human-centric, not state-centric. The ultimate value is respect for the human rights and common good of the Malian people and others affected by the conflict and instability in Mali. Intervention in pursuit of French national interests, to protect Mali sovereignty, and to ensure peace and stability in the region are judged, in the end, by whether they served human rights and created the conditions for community that are the *raison d'être* of sovereignty and non-intervention.¹⁰

Using an ethic of human rights and the common good, I now consider the French intervention in Mali. I first look

7 Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977): 53-55, 86.

8 See, e.g., Pope Benedict XVI, Address to the U.N. General Assembly, April 18, 2008 ("If States are unable to [protect their own population]... the international community must intervene.... The action of the international community and of its institutions, provided that it respects the principles that underlie international order, should never be interpreted as an unwarranted imposition or a limitation of sovereignty."). Cf. Michael Smith, "Humanitarian Intervention: An Overview of the Ethical Issues," *Ethics & International Affairs* 12:1 (March 1998): 76.

9 Robert Johansen, "Limits and Opportunities in Humanitarian Intervention," in *The Ethics and Politics of Humanitarian Intervention*, S. Hoffmann, ed. (Notre Dame: University of Notre Dame Press, 1996): 64-66.

10 Drew Christiansen, S.J., and Gerard Powers, "The Duty to Intervene: Ethics and the Varieties of Humanitarian Intervention," in *Close Calls: Intervention, Terrorism, Missile Defense, and "Just War" Today*, Elliott Abrams, ed. (Washington, D.C.: Ethics and Public Policy Center, 1998): 197.

at questions of legitimate authority: the legitimacy of the Mali government, and the legitimacy of unilateral versus UN-sanctioned intervention.

2. Authority for Intervention

In international law, the legitimacy of intervention depends upon the nature of the conflict. The French could intervene at the invitation of the Mali government if the conflict was merely internal unrest and did not rise to the level of a full-scale belligerency or civil war. If it was a full-scale civil war, the French had a duty not to intervene, even at the request of the Mali government, unless intervention was authorized by the UN or a regional organization, or if there was a prior foreign intervention on behalf of the rebels. If foreign intervention was substantial enough to be considered an armed attack, French intervention could also be considered legitimate collective defense. If the conflict was over Tuareg secession, the law traditionally has permitted intervention only on behalf of the Mali government, but that law is evolving since the end of the Cold War.¹¹ The problem with these distinctions is that they are overly formalistic, too detached from what should be the primary concern: a normative evaluation of the parties to the conflict and the legitimacy of their claims.¹²

Various criteria could be used to determine the legitimacy of the Mali government. The Mali government did not have control over much of its territory and people, as required by the legal concept of effectivity. But the UN, the African Union, and most governments recognized the interim Mali government, headed by Dioncounda Traoré, as well as its request for French intervention. A more substantive – and more subjective – analysis, one increasingly used by the UN Security Council in authorizing interventions since the end of the Cold War, considers the extent to which the government had the intent and capacity to fulfill the purposes of sovereignty, that is, to protect the basic human rights and common good of its people, and to participate responsibly in international affairs.¹³ Prior to the military coup in 2012, Mali was considered a stable democracy with strong protections for civil and political rights, but was plagued by the corruption common in many developing countries. The moral legitimacy of Traoré's interim government was considerably less clear due to serious human rights abuses and dominance by the military.¹⁴ But, in conflicted states like Mali was in 2013, moral legitimacy is a relative concept. Governments and rebels are more or less legitimate and their causes are more or less just. As I explain in the next section, compared to the Muslim and Tuareg rebel movements they faced, the Mali government, though deeply flawed, was comparatively the most legitimate authority at the time France intervened and remains so.

11 Christine Gray, *International Law and the Use of Force* (Oxford: Oxford University Press, 3rd ed., 2008): 67-113.

12 Johnson, *Morality and Contemporary Warfare*, 84.

13 Gray, *International Law and the Use of Force*, 99.

14 Amnesty International, *An Agenda for Human Rights in Mali* (2013): 29-36, accessed March 26, 2014, at: <http://www.amnesty.org/en/library/asset/AFR37/006/2013/en/1558b2eb-004c-4357-98f7-a3498c7e0c52/af370062013en.pdf>; Freedom House, "Mali," *Freedom in the World 2013*, accessed March 26, 2014, at <http://www.freedomhouse.org/report/freedom-world/2013/mali#.UzQtNfLJAo>.

Even if the Mali's government was illegitimate or Mali was a failed state, the legitimacy of French intervention was enhanced by the UN Security Council's blessing and its authorization for the African-led International Support Mission to Mali (AFISMA), which accompanied the French intervention. The same would have been true had the French intervened for humanitarian reasons without the Mali government's consent. In these cases, the moral presumption would be that the UN should be the intervener, or at least the authorizer, of choice.

This presumption is based on a number of prudential judgments. UN Security Council authorization clearly enhances the *legal* legitimacy of an intervention and serves the broader obligation to strengthen international law and institutions. Despite the fact that the UN Security Council is an oligarchy, its decisions can enhance *political* legitimacy because the collective decision-making process, even with its flaws, can help ensure that intervention is not an act of neo-colonialism and will have the broad support needed for success.¹⁵ Finally, UN action can enhance *moral* legitimacy, but that depends upon the extent to which the UN action (or inaction) is consistent with substantive moral norms.¹⁶

One normative concern is whether intervention may be not only a right but also a duty. With the exception of the Genocide Convention and the Responsibility to Protect, intervention is a matter of rights in international law. In ethics, however, intervention may also be a duty. The French intervention could be justified as an act of solidarity with a former colony; an act of collective defense against terrorism; an act of beneficence on behalf of a weak and threatened state; an obligation to address the unintended consequences of the NATO intervention in Libya; or an act of justice to address the legacy of French colonial policies that contributed to the injustices underlying the Mali conflicts.

The language of duty is problematic, however, because it is an imperfect duty.¹⁷ Except for duties arising out of the colonial legacy, it is not obvious who had an actual duty to intervene in Mali. That is a prudential judgment. Since 'ought' implies 'can', it is partly a matter of capacity and will. While the range, scope, sophistication and effectiveness of UN and regional peace operations have risen dramatically in the past two decades, the unwillingness or inability to take timely and effective action in Darfur, Syria, and Mali (at least prior to French intervention) is symptomatic of the difficulties the UN and regional bodies face in responding to grave humanitarian crises. The French intervened a year after the insurgency began and only when the very survival of the Mali government was threatened.

Mali exemplifies Michael Walzer's contention that, "[i]n recent years, there have almost certainly been more justified unilateral interventions than unjustified ones." The problem, in his view, is the "[n]eglect of intervention rather than any excessive resort to it."¹⁸ It would be morally perverse to insist, in the name of respecting imperfect procedures of international

law, that even willing and able nations may not intervene for morally compelling reasons when the UN Security Council or an authorized regional body is unable or unwilling to do so. The moral obligation to obey international law and strengthen international institutions is primary. But law and institutions are imperfect, so other moral duties must sometimes prevail.¹⁹

To conclude, a strong case can be made that France had legitimate authority to intervene in Mali. It was invited by a government that, though weak and compromised, was comparatively more legitimate than the alternatives in Mali. And the French acted with broad international support only when the UN and regional bodies clearly were incapable of acting effectively. The next section assesses the principal French justifications for intervention – to defend against Muslim terrorists and Tuareg separatists.

3. Justifications for Intervention

As is so often the case, the French justifications for intervention in Mali were so interrelated that it would obscure rather than clarify to treat them as entirely distinct. In this section I will address the legitimacy of two of the main justifications, which were intimately related: combating Muslim terrorists and preventing Tuareg secession.

In the just war tradition, as in international law, it has traditionally been difficult to justify rebellion. Even where there is just cause, rebel groups are presumed to lack legitimate authority.²⁰ Revolutions pose a threat to order, often involving disproportionate and uncontrollable violence without serious prospects for success in creating a more just order. Yet even this conservative view of revolutions granted a right to rebel, as a last resort, in cases of tyranny and systematic repression.²¹ Because human rights and justice are increasingly seen as necessary for order, Johnson contends that contemporary ethics has, "significantly tilted toward favoring the right of rebellion."²² This more permissive approach subordinates legitimate authority to just cause. Yet, even when just cause trumps legitimate authority, justified armed rebellions are rare given the difficulty in meeting just war criteria.

3.1 Counter-Terrorism Intervention

I begin with the more straightforward of the two justifications for intervention: counter-terrorism. Mali was the new front in the global "war on terrorism." Two of the three main Muslim rebel groups were on the UN Sanctions Committee's terrorist list prior to the French intervention and the third was added

15 Robert A. Pape, "When Duty Calls: A Pragmatic Standard of Humanitarian Intervention," *International Security* 37:1 (Summer 2012): 58.

16 Gerard Powers, "The Meaning of War: An Ethical Analysis of Sanctions and Humanitarian Intervention," in *What is War? An Investigation in the Wake of 9/11*, Mary Ellen O'Connell, ed. (Martinus Nijhof, 2012): 232-233; See also Michael Walzer, *Just and Unjust Wars*, 3rd edition (New York: Basic Books, 1977, 2000): xiii-xiv.

17 Michael Walzer, *Just and Unjust Wars*, 3rd edition: xiii.

18 Ibid.

19 Gerard Powers, "The Meaning of War," 230-233.

20 James Turner Johnson, "Ad Fontes: The Question of Rebellion and Moral Tradition on the Use of Force," *Ethics & International Affairs* 27:4 (Winter 2013): 373 (The legitimate authority criterion of just war is the "first among equals, because only through order could justice and peace be established.").

21 Nigel Biggar, "Christian Just War Reasoning and Two Cases of Rebellion: Ireland 1916-1921 and Syria 2011-Present," *Ethics & International Affairs* 27:4 (Winter 2013): 399.

22 Johnson, "Ad Fontes," 375. A wide range of very different developments have contributed to this shift in favor of just revolutions, including the regime change at the heart of the Reagan Doctrine and the Bush administration's preventive war doctrine, the people power movements that have overthrown numerous dictatorships, and the emergence of the concepts of a responsibility to protect and a right to democracy.

two months after the intervention. The unlawful killings, rapes, use of child soldiers, brutal imposition of sharia law, destruction of churches and historic Islamic libraries and shrines, and similar grave violations of human rights and humanitarian law showed that these groups posed (and still pose) a serious threat to order, human rights, and justice in Mali, and the region.²³ French intervention was legitimate in the face of this threat. As the Tuareg National Movement for the Liberation of Azawad (MNLA), itself, understood in throwing its support behind the French, intervening on behalf of an insufficiently legitimate Mali government was better than the alternative: permitting Muslim extremists to control some or all of Mali.

While defending Mali against the threat posed by Muslim extremists was justified, the “war on terror” characterization can obscure and overshadow the deeper roots of the conflicts and the need to address legitimate, long-standing grievances of people in northern Mali.²⁴ It can provide a ready rationalization for demonizing and repressing opponents. Characterizing intervention as part of a clash of civilizations and defense against an existential threat to Mali, the region, and even France, itself, tends to privilege military over political solutions and can be a pretext for disproportionate force.²⁵ Olivier Roy contends that negotiations with nomadic, jihadist groups, such as Al-Qaeda in the Islamic Maghreb (AQIM), were not possible, but a political settlement was necessary and possible with the more nationalist MNLA. Consequently, the French intervened mainly against Muslim extremist groups. The Mali government was less discriminating.²⁶ If a political settlement with Tuareg secessionists was and is possible – and remains urgent in order to forestall a resurgence of Muslim extremism²⁷ – the Tuareg claims of secessionist self-determination require further examination.

3.2 Secession and Intervention

Self-determination is a highly-conflicted concept. For some, self-determination protects basic values, such as freedom from outside domination, and respect for basic individual and communal rights. For others, self-determination breeds conflict and disorder.²⁸

Still others consider it a vague, over-broad concept that should be discarded.²⁹ The traditional international law approach reflects this ambivalence. The principle and right of “self-determination of peoples” is the freedom „to determine their

political status and freely pursue their economic, social, and cultural development.”³⁰ Self-determination can include the right to an independent, sovereign state, but only when escaping colonial rule or foreign military occupation. When a colony seeks independence, under the principle of *uti possidetis*, it must retain its colonial borders.³¹ Since the end of the Cold War, the law has been in a state of flux. In non-colonial contexts, such as the break-up of Yugoslavia, the principles of effectivity and *uti possidetis* have been interpreted to allow recognition as an independent state when a sub-state entity has effective control over its territory and people, and maintains the internal federal boundaries of the original state.³²

This highly restrictive approach to secessionist self-determination prioritizes territorial integrity of existing states over secessionist claims. This approach presumes that self-determination can and should be achieved by means short of full independence, such as power-sharing, minority rights regimes, and various kinds of autonomy. Limiting self-determination to these “less-than-sovereign” alternatives protects order by preventing the violent Balkanization that could occur if the one-third of states with self-determination movements faced armed rebellions, as in Mali. A proliferation of new states could also replicate problems secession was meant to resolve, by creating unviable micro-states or transforming dominant majorities into trapped minorities, as in Crimea.

But this broad rejection of secession means tolerating violations of the right to self-determination in cases of tyranny, repression of a minority, or failed states. In some cases, the status quo is more violent than the alternative. It is inconsistent to permit secession in the colonial context but not in other cases where peoples suffer comparable kinds of subjugation. Moreover, denying the right to secede has not prevented violent secessionist movements and hasn’t encouraged states to accommodate legitimate minority rights and aspirations.

According to Allen Buchanan, there are two main alternatives to this overly rigid legal approach to unilateral secession. The *remedial right* approach limits secession to a remedy of last resort in the face of persistent, systematic, and grave injustice. The *primary rights* approach is more permissive because it does not require injustice but rather focuses on whether the secessionist group is a distinct political community – defined by historical, cultural, linguistic, and other characteristics; and by popular will to secede, typically shown in a referendum.³³ In practice, secessionist movements, like the Tuaregs, rely on a combination of both approaches, emphasizing the injustices they suffer within the current state, their distinctiveness, popular support for secession, and a claim to a territory based on versions of *uti possidetis* and effectivity.

Remedial rights should be the preferred approach. It acknowledges legitimate concerns for order while recognizing the need for a more consistent and coherent norm on secession. First, it does

23 Amnesty International, *An Agenda for Human Rights in Mali* (2013): 29-36.

24 Imad Mesdoui, “Mali: The Worst is Yet to Come,” *The Guardian*, February 20, 2013. Accessed on March 15, 2014, at: <http://www.globalpolicy.org/qhumanitarianq-intervention/52292-mali-the-worst-is-yet-to-come.html?itemid=id#26087>.

25 Olivier Roy, “The Intervention Trap,” *The New Statesman*, February 7, 2013. Accessed March 3, 2014, at: <http://www.globalpolicy.org/qhumanitarianq-intervention/52312-the-intervention-trap.html?itemid=id#26087>.

26 Karine Bannelier and Theodore Christakis, “Under the UN Security Council’s Watchful Eyes: Military Intervention by Invitation in the Malian Conflict,” *Leiden Journal of International Law* 4:26 (2013): 855-874.

27 Jacques Follorou, “Jihadists return to northern Mali a year after French intervention,” *Guardian Weekly*, March 11, 2014; accessed March 30, 2014, at <http://www.theguardian.com/world/2014/mar/11/mali-jihadists-return-after-france-mission>.

28 According to the Uppsala Conflict Data Program, of 32 armed conflicts in 2012, 13 included groups seeking secession. Lotta Themnér & Peter Wallensteen, “Armed Conflicts, 1946-2012,” *Journal of Peace Research* 50:4 (July 2013): 509-510.

29 Allen Buchanan, *Secession* (Boulder: Westview Press, 1991), 50-51.

30 UN Charter art. 1(2) (self-determination is a principle) and art. 1 of the human rights covenants (self-determination is a right); UNGA Res. 1514 (1960).

31 UNGA Res. 1514 (1960); UNGA Res. 2625 (Declaration on Friendly Relations) (1970).

32 Allen Buchanan, “Secession, state breakdown, and humanitarian intervention,” in Deon K. Chatterjee and Don E. Scheid, eds, *Ethics and Foreign Intervention* (Cambridge: Cambridge University Press, 2003): 189-192.

33 *Ibid.*, 198.

not assume that all peoples and nations have a right to, and can only protect their identity by, means of an independent state. Such an approach tends to reinforce insular and chauvinistic forms of ethno-nationalism, as opposed to more open forms of civic nationalism. Instead, the strong presumption should remain that the right to self-determination can and should be realized through “less-than-sovereign” alternatives or new concepts of shared sovereignty.³⁴ Unilateral secession should be a last-resort remedy, not a right, when these alternatives prove inadequate. Second, setting a high threshold for secession – i.e., only in cases of long-standing, systematic, grave injustice or self-defense amidst state breakdown or violent repression – should encourage central governments to respect basic rights of minorities as a way to avoid secessions. Third, a remedial rights approach involves a justice-based claim to a particular territory and population based on the central government’s forfeiture of its claim due to its failure to protect basic rights. It is not based on the “might makes right” principle of effectivity alone or a referendum in only one part of a state. Moreover, the secessionists who purport to control this territory must show that they have the will and capacity to fulfill the functions of sovereignty – i.e., to safeguard human rights and to promote the national and international common good. Fourth, consistent with a restrictive just war approach, the strong presumption should be for non-violent means, and foreign support for secession should privilege political and economic over military measures. If force is used, all just war criteria should be met.³⁵

Consistent with the traditional approach to secession, the UN Security Council condemned the MNLA’s declaration of a new Tuareg state, Azawad, and other states refused to recognize it. The remedial rights approach suggests a more nuanced analysis. Like many others in Africa, the Tuaregs long have felt like a trapped minority within arbitrary French colonial borders. They arguably meet the high threshold for remedial secession. France’s tactics of divide-and-rule led to institutional injustices that have marginalized the Afro-Arab Tuaregs in an underdeveloped region without adequate government services within a state dominated by black Africans.³⁶ They have not enjoyed the autonomy and minority rights they deserve. The MNLA’s moral case for secession is weakest insofar as its commitment and capacity to meet the purposes of sovereignty is in doubt. To insist that they embrace a highly secular, Western form of liberal democracy would be a form of neo-colonialism. But it is reasonable to insist that they, in fact, represent all the people in the area they claim, and that they be committed to a culturally-appropriate, inclusive, form of civic nationalism.

What of foreign intervention in response to Tuareg secession? If armed Tuareg secession was legitimate, French intervention on behalf of the Mali government was not justified. If, as I suggest, the Tuareg secessionist claim lacked essential elements of legitimacy, then the French were justified in intervening to help the Mali

government suppress it, not least because French support for Gaddafi followed by French and NATO intervention to topple his regime fueled the Tuareg rebellion.³⁷ But, just as with intervention to defend against the Muslim extremists, the insufficient legitimacy of the Mali government makes this a lesser-of-evils justification. French and UN interventions gain a more solid moral foundation to the extent that they prove, over time, not to have reinforced the ethnic-nationalist divisions and injustices that gave Tuareg secession its colorable claim of legitimacy. France and the international community have a heavy moral burden, akin to that under the Responsibility to Protect, to take affirmative measures to help the Mali government meet its obligations to all its citizens, not least the long-suffering Tuaregs. Concerted efforts could be made, for example, to broker a just political solution to the Tuareg issue that would include greater autonomy and to assist the Tuaregs in strengthening their capacity to exercise that autonomy.³⁸

If, as I have suggested, the French intervention to defend against Muslim extremists and to prevent Tuareg secession may be justified under the circumstances, the intervention still raises important issues related to the ethics of means and their relationship to the ends of intervention.

4. Morally Legitimate Means of Intervention

Given the wide variety of justifications, objectives, and means involved, where a particular form of intervention falls on a continuum of war and policing matters ethically. War-like interventions are generally harder to justify than police-type interventions because higher levels of force usually involve greater infringements of sovereignty as well as greater destruction and instability. But some peaceful means, such as the diplomacy and sanctions that forced coup leaders to accept an interim government in April 2012, arguably entailed a far greater infringement of Malian sovereignty than the French military intervention.³⁹

Gerald Schlabach highlights several differences between war and policing. The former tends to be untethered from the common good of the country in crisis because, unlike police forces, military interveners do not share the same commitment to protecting, and being held accountable by, the people being protected. Maintaining public support for war usually involves manufacturing “war fever” in ways that policing does not. In permitting the killing of the “enemy,” even if they are not responsible for the crimes of their leaders, as well as in permitting the “collateral” deaths of civilians, war permits the interveners to be both judge and executioner, something that policing does not permit. “Good” military strategy often involves the decisive use of overwhelming force, while “good” policing severely restricts the use of force.⁴⁰

34 See Christine Bell, *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2003): 167-191.

35 See *Ibid.*, 196-206; For a longer discussion of criteria for secession, see Gerard F. Powers, “Testing the Moral Limits of Self-Determination: Northern Ireland and Croatia,” *Fletcher Forum* 16:2 (Summer 1992): 38-49.

36 Owen Jones, “The War in Libya Was Seen as a Success, Now Here We Are Engaging with the Blowback in Mali,” *Independent*, January 13, 2013. Accessed March 5, 2014, at: <http://www.globalpolicy.org/qhumanitarianq-intervention/52183-the-war-in-libya-was-seen-as-a-success-now-here-we-are-engaging-with-the-blowback-in-mali.html?itemid=id#26087>.

37 Jean G. Tompiphé, “Mali: the Catastrophic Consequence of Humanitarian Intervention in Libya,” *The World Post*, April 18, 2012; accessed February 13, 2014, at http://www.huffingtonpost.com/jean-g-tompiph/mali-libya-intervention_b_1434965.html?view=print&comm_ref=false.

38 Cf. Bannelier and Christakis, “Under the UN Security Council’s Watchful Eyes,” 855-874.

39 For a more detailed analysis of these *jus in bello* issues, see Gerard Powers, “The Meaning of War,” 227-230.

40 Gerald W. Schlabach, “Warfare vs. Policing: In Search of Moral Clarity,” in G. Schlabach, ed., *Just Policing, Not War* (Collegeville, MN: Order of St. Benedict, 2007): 70, 73-77.

This effort to delineate the differences between war and policing is consistent with the distinction between most UN peacekeeping and collective defense. In Mali, as in Bosnia, Kosovo, East Timor, and Darfur, the level of military force that was required to fight Muslim extremists was qualitatively different from the policing-type operations (e.g., stabilizing population centers, demobilizing rebels, ensuring aid deliveries, and providing security during elections) of the follow-on UN force (MINUSMA). While interventions that are more akin to policing than war-fighting are far easier to justify morally, as Walzer notes, “In much of the world, bloodless interventions, peaceful peacekeeping is a contradiction in terms: if it were possible, it wouldn’t be necessary.”⁴¹ The solution, then, is not to hold to a bright-line distinction between legitimate policing and illegitimate military intervention. Rather, it is to treat intervention as a continuum of means and ends, with a strong preference (and a lower threshold of justification) given those which are more like policing than warfare.⁴² As I have suggested, Mali met that threshold.

In cases of war-like interventions, the *jus in bello* norms of discrimination and proportionality raise particularly challenging issues. The dilemma in Mali was similar to that in all counter-insurgency warfare: the means needed to succeed can undermine the legitimate ends of the intervention. The need to defend a failing state against rebel violence while garnering the support of a Tuareg population justifiably skeptical of the Mali government and French neo-colonialism demands a higher duty of care for civilians, a more restrictive approach to *jus in bello* norms (i.e., akin to norms for policing) than what might be required in inter-state wars. Valerie Morkevicius puts it another way: “the idea that a rebellion should be suppressed in a way that makes future peace possible can be imagined as creating a sort of ‘responsibility to reconcile.’”⁴³

The corollary of the duty to intervene in ways that take due care to avoid harm to civilians is the duty of interveners to take affirmative measures to protect the innocent, measures which will almost invariably entail increased risks to the interveners. NATO’s “zero-casualty” air wars in Kosovo and Libya, and many UN interventions have given priority to protecting the interveners over protecting civilians at risk. This reversal of the duty of care owed civilians is based, at least in part, on the assumption that it is easier to justify risking a soldier’s life to protect national security interests than to defend foreign civilians. Robert Pape, for example, argues that the risk to interveners in interventions under the responsibility to protect should be “effectively near zero.”⁴⁴ To its credit, France did not attempt to fight a zero-casualty war in Mali, but seemed to adopt a more nuanced approach akin to that proposed by James Turner Johnson. Citing the traditional Catholic principle that a state’s first responsibility is to its citizens but only if there is equal need, Johnson calls for a case-by-case balancing that permits assisting persons in great need abroad “when the cost to us is not too great.”⁴⁵ This approach provides a stronger standard of care for civilians than Pape’s, but, in practice, its proportionality criterion will give much greater weight to the intervener’s costs than the costs borne by foreign citizens.

What is needed is recovery of the original insight of the just war tradition: that the principal responsibility of a soldier is not self-protection but defense of the innocent. The failure to take affirmative steps to protect civilians when an intervener has the capacity to do so (sins of omission) may be less problematic morally than indiscriminate or disproportionate uses of military force (sins of commission), but it is still morally problematic. If France had a right to intervene in Mali, it had a duty to do so in a way that subordinated its own soldiers’ security and France’s own interests to the security and needs of the Mali people.

5. Conclusion

This article has offered a restrictive just war framework, informed by a human-centric cosmopolitan ethic, for evaluating the two principal justifications for French intervention – to defend a weak Mali government against Muslim terrorists and Tuareg secessionists. My argument can be summarized as follows. Complementing formal assessments of legitimacy with more substantive normative ones leads to the conclusion that the Mali government, though deeply flawed, was comparatively the most legitimate authority at the time France intervened. In cases of failing or failed governments, as in Mali, the moral presumption should be for the UN as intervener, or at least authorizer, of choice, but unilateral interventions should be permitted in exceptional cases when the UN is unable to intervene in a timely and effective manner. In Mali, French intervention enjoyed broad international support and was necessary in the face of the limited capacity of the UN and regional entities. French intervention was justified to help combat Muslim extremists, but the “war on terror” characterization risked obscuring the deep roots of the Mali conflicts and the need for a political solution to Tuareg secession. A remedial rights approach should replace the traditional opposition to non-colonial secessions. While the Tuaregs would seem to meet the high threshold for secession under this approach, a new MNLA-run state would have a difficult time meeting the responsibilities of a sovereign state. Finally, means of intervention more akin to policing than war-fighting should be preferred. When war-fighting is necessary, as it was in this case, interveners like France should embrace a robust duty of care for civilians, that gives priority to protection of civilians over self-protection.

Two additional issues that I have not addressed in this essay must be part of any ethical evaluation of intervention: the responsibility to prevent⁴⁶ and the *jus post bellum*.⁴⁷ From norms for conflict resolution and an ethics of good governance to an ethic of exit for interveners and norms for post-conflict reconciliation, a set of issues that go well beyond the justifiability of military intervention arise in Mali-type interventions. Attention to this wider range of issues is needed for a full moral assessment of intervention.

46 Alex J. Bellamy, “Conflict Prevention and the Responsibility to Protect,” *Global Governance* 14:2 (April-June 2008): 135-156.

47 See, e.g., Maryann Cusimano Love, “What Kind of Peace Do We Seek? Emerging Norms of Peacebuilding in Key Political Institutions,” in *Peacebuilding: Catholic Theology, Ethics, and Praxis*, Robert Schreiter, R. Scott Appleby, & Gerard F. Powers, eds (Maryknoll, N.Y.: Orbis, 2010): 56-91; Brian Orend, “Justice after War,” *Ethics and International Affairs* 16:1 (April 2002): 43-56; Trudy Govier, “War’s Aftermath: The Challenge of Reconciliation,” in *War: Essays in Political Philosophy*, Larry May, ed. (Cambridge, Cambridge University Press, 2008): 229-248.

41 Michael Walzer, *Arguing About War* (New Haven: Yale University Press, 2004): 72.

42 See Christiansen and Powers, “The Duty to Intervene,” 185-190.

43 Valerie Morkevicius, “Why We Need a Just Rebellion Theory,” *Ethics & International Affairs* 27:4 (Winter 2013): 408.

44 Pape, “When Duty Calls,” 54.

45 Johnson, *Morality and Contemporary Warfare*, 112.