

# A Commentary on Leif Wenar, "Property Rights and the Resource Curse"

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## **Natural resources, tainted trade, and global reform**

Global political philosophy has seen an important methodological shift in recent years. Theorists reflecting on global affairs have been giving increasing weight to manifest injustices and their practical dimensions, often independently of any visions of perfect global justice. The desire to “make a palpable difference to urgent problems of global deprivation” has generated, in the words of one scholar, a “growing pre-occupation with practical problem-solving,”<sup>1</sup> to the disappointment of some theorists and to the delight of others.

I belong quite firmly in the latter camp. I believe that a philosophical emphasis on concrete, practical and urgent global concerns has much to commend it. But I also believe that political philosophers must assess concrete practical problems in ways that allow them to make distinctive contributions, and without giving up on rigorous normative analysis.

This kind of philosophical balance is not easy to achieve. My aim here is to reflect on what this balance requires in the case of one important global problem: the ongoing trade in natural resources between dictators and corporations based in liberal democracies. I will focus my remarks on Leif Wenar’s framework for addressing this “tainted trade.”<sup>2</sup> More specifically, I will discuss two ways in which Wenar’s framework is minimalist: in its view of the property rights that tainted trade violates (section 1); and in its focus only on the very worst dictatorships violating property rights (section 2).

### **1. Wenar’s minimalism about property**

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<sup>1</sup> Flikschuh, 2014, 2.

<sup>2</sup> Wenar, 2008. I will use this term throughout, in line with Wenar’s frequent references to consumers in liberal democracies being “tainted” with oil illicitly bought from severely oppressive regimes.

Social scientists have repeatedly found correlations between the abundance of point-source natural resources on the one hand,<sup>3</sup> and, on other hand, civil war, political repression, and poverty. Disagreement persists on the degree to which a causal relationship underlies these correlations. Yet despite these disagreements, both social scientists who believe that resource abundance causes political and economic maladies, and their critics who insist that natural resource endowments have no independent causal force, agree on the following key point: *once* a situation exists where a dictatorship controls abundant natural resource reserves, there is a clear danger of a *vicious cycle*, with the regime using natural resource wealth to perpetuate its grip on power, and (in particularly extreme cases) also perpetuate the people's destitution.<sup>4</sup>

Wenar proposes policy mechanisms that will help break this vicious cycle, by legally prohibiting resource corporations based in liberal democracies from purchasing natural resources controlled by severely oppressive regimes. Building on Thomas Pogge's argument,<sup>5</sup> Wenar contends that democracies' recognition of severely oppressive regimes as legitimate vendors of natural resources is morally indefensible. Such recognition, Wenar agrees with Pogge, renders democracies and their corporations complicit in dictators' *theft* of natural resource wealth.<sup>6</sup>

One immediate question here is theft from *whom*? Wenar has an explicit answer: dictators are stealing state-owned natural resources from the peoples living under them. But Wenar does not commit himself to any specific conception of property as a basis for this idea of national ownership. He merely suggests that "the idea that the natural resources of a country belong to the people of that country is so

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<sup>3</sup> Jonathan Isham and his colleagues define "point-source" natural resources as "those extracted from a narrow geographic or economic base, such as oil, minerals (*e.g.*, copper, diamonds), and plantation crops." See Isham et. Al, 3-4. When speaking of "natural resources," throughout, I will focus on point-source resources so defined, traded as highly valuable commodities in global markets.

<sup>4</sup> See, *e.g.*, Haber and Menaldo, 2011; Acemoglu and Robinson, 2012; Ross, 2012.

<sup>5</sup> See *e.g.* Pogge 2002, chap. 6; Pogge 2005.

<sup>6</sup> Wenar, 2008, *passim*.

intuitive that most will need no more proof than its statement.”<sup>7</sup> Furthermore, along the same minimalist route, Wenar contends that even cosmopolitan egalitarians who *reject* the idea of national ownership can endorse a prohibition on natural resource transactions with severely oppressive regimes. Wenar attempts to elicit the support of such cosmopolitans as follows:

...some philosophers may hold to the idea that the earth in some way belongs to all humans equally. There are deeper theoretical issues here that we cannot take up, but simply as a practical matter...global egalitarians will certainly condemn dictators and civil warriors seizing natural resources by force in underdeveloped countries. The approach here will push the highly unequal pattern of control over resources toward greater equality among individuals around the world, and so will make progress toward the global egalitarian ideal.<sup>8</sup>

I want to raise some doubts about both of the points Wenar is making here. I believe the first point - that even cosmopolitan egalitarians will “certainly condemn” the means by which dictators and civil warriors obtain control over natural resources – is insufficient to ground the dramatic reform Wenar wishes to defend. Or at least, this is the case as long as one follows a dominant strand of contemporary political philosophy, which (often under Rawls’ influence) espouses a deontological foundation for political morality.<sup>9</sup> From a deontological viewpoint, if the affluent are not to be treated as mere means to the ends of the poor, there needs to be *some* cut-off point to the material sacrifices which can be required of them for the sake of alleviating poverty.<sup>10</sup> However, Wenar’s own calculations suggest that reforming tainted natural resource trade with dictators will require massive sacrifices from the affluent. Wenar’s explicitly conservative estimate is that American resource corporations alone, for example, would have to give up

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<sup>7</sup> Wenar, 2008, 10.

<sup>8</sup> Wenar, 2008, 12.

<sup>9</sup> This foundation is of course compatible with taking consequences as an important factor. See, e.g. Kagan, 1998, and below.

<sup>10</sup> Thus Wenar writes: “The [r]ich cannot in fairness be required to give up huge amounts of resources just to provide the smallest gains to the [p]oor...considerations of sacrifice are part of our thinking about our moral duties, and so...the complaint of sacrifice will have a place in any plausible moral theory. The complaints of the poor cannot have absolute priority.” Wenar, 2003, 288-289.

600,000,000 (six hundred million) oil barrels they currently purchase every year – *more than one eighth* of U.S oil imports.<sup>11</sup> When we move to other affluent democracies and other resources, the requisite sacrifice becomes even more extraordinary. In order to justify such monumental sacrifices from a deontological perspective, it is not enough to merely “condemn,” as Wenar puts it, the foreign practices which the sacrifices might help reform. Recognizing that A is wronging B through some practice, and should be condemned for doing so, does not yet entail that C has a duty to make dramatic sacrifices to help reform the practice or to improve B’s situation.

Hence the appeal to violated property rights seems essential – because this appeal, if successful, *can* ground the duty that is sought here. After all, if we hold that by transacting with dictators, democracies and the resource corporations they regulate are materially complicit in massive scale theft from foreign peoples, then appeals to heavy sacrifices become irrelevant. Hardly anyone thinks, for example, that affluent colonial powers could excuse their offenses simply by saying that ending colonialism will require sacrificing tremendous wealth. Such a claim would assume an entitlement to affluence that has been obtained illegitimately. The same point applies with regards to the violation of national property rights.<sup>12</sup> But of course, it could only apply *if* one affirmed such rights. As long as one insists - as at least some cosmopolitans do - that the idea of national property rights is simply “false” and “harmful,”<sup>13</sup> “an obstacle rather than a boon from the point of view of justice,”<sup>14</sup> then the problem of justifying the sacrifice involved in reforming tainted trade with dictators re-asserts itself.

What, then, of the other, “ideal cosmopolitan” justification at which Wenar gestures – the thought that his proposal aligns with global egalitarian ideal theory? Withdrawal of dictators’ trading privileges

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<sup>11</sup> Wenar, 2008, 25.

<sup>12</sup> Compare: if I accumulate a fortune by robbing you every day, can I plausibly complain to the police or courts that stopping the robbery will require that I make huge material sacrifices?

<sup>13</sup> Casal, 2011, 317.

<sup>14</sup> Armstrong, 2014a, 18.

might very well be compatible with cosmopolitan ideal theory. But it is unclear that cosmopolitan ideal theory alone can justify a stringent and weighty duty, incumbent upon each liberal democracy in the real, highly non-ideal world that we currently inhabit, to pursue “clean trade” reforms. Indeed, this problem would arguably hold even if the (not obvious) claim were established that cosmopolitan ideal theory *requires* such reforms. Even in this case, many challenges would remain: one would still need a deontological theory of transition from the present world to the ideal one, specifying what sacrifices can reasonably be required of individual and collective agents simply in the name of the cosmopolitan ideal.<sup>15</sup> One would also need a deontological theory explaining what sacrifices towards the global ideal can be expected of specific agents given the deep suspicion that other agents will not necessarily make similar sacrifices – a suspicion that is particularly pervasive in the anarchic global context.<sup>16</sup> Finally, we would need a deontological theory explaining what sacrifices can be demanded of agents who reasonably dispute the cosmopolitan ideal.<sup>17</sup> In the absence of such a compelling theory, there is ample reason to be skeptical that an appeal to cosmopolitan ideal theory can really replace an appeal to national property rights, as a cosmopolitan grounding for reforming dictators’ ability to sell natural resources.

It therefore seems to me that if Wenar wishes to defend his proposed prohibition against cosmopolitan egalitarian skepticism, he needs to do one of the following things. Wenar can elaborate some of the fundamental disagreements with cosmopolitan egalitarianism to which he alludes, perhaps at a meta-theoretical level.<sup>18</sup> Alternatively, Wenar can attempt to establish, against cosmopolitan opposition,

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<sup>15</sup> Wenar himself (1998, 816) emphasizes that Rawlsian liberals need “a theory of transition” with regards to property holdings.

<sup>16</sup> For such a theory on the consequentialist side see Murphy, 2000.

<sup>17</sup> As Rawls writes, “A theory of justice must work out from its own point of view how to treat those who dissent from it.” (Rawls, 1999, 325) Pogge, for example, (1989, 213) agrees.

<sup>18</sup> When defending the internal coherence of Rawls’ statism against Rawlsian cosmopolitans, for instance, Wenar appeals, among other things, to meta-theoretical claims regarding the Rawlsian procedure for constructing a normative political theory. But Wenar does not make explicit whether he also endorses these claims as a general matter, external to the unity of Rawls’ corpus. See Wenar 2004, Wenar 2006.

that the special claims of separate sovereign peoples to the natural resources encompassed within their territories are sufficiently significant so as to outweigh the general claims of humanity as a whole upon these resources. However, as Chris Armstrong shows, such an attempt would be difficult to carry out successfully.<sup>19</sup> A final, more promising strategy would proceed at a more applied level. This strategy would focus on showing that the replacement of national ownership with more cosmopolitan forms of natural resource ownership will be counter-productive for the global poor (at least in the context of point-source natural resources): specifically, that the classic cosmopolitan call for a global redistribution of natural resource revenues would do *less* for the poor than a prohibition on natural resource transactions with severely oppressive regimes, which national ownership would support.<sup>20</sup>

Let me close this section by noting three related points that the latter strategy would emphasize (given space constraints, I can only sketch these points). First, there is no empirical support for the thought (which at least some cosmopolitans have entertained<sup>21</sup>) that scarce natural resource endowments are a significant cause of poverty, especially when it comes to point-source resources.<sup>22</sup> This means that there is no empirical reason to think that, if nothing else changed in the world, a global redistribution of natural resource revenues will achieve significant poverty gains: if natural resource scarcity is not an important cause of poverty in our world, then the redistribution of natural resource wealth will not address any root cause of global poverty.

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<sup>19</sup> Armstrong, 2014a.

<sup>20</sup> Such reasoning would also align well with Wenar's "vector sum" approach to property. See Wenar, 1998.

<sup>21</sup> See for example Beitz, 1979, 137; Tan, 2000, 161-162.

<sup>22</sup> On a very conservative estimate, 300 million people who suffer from extreme poverty (more than a quarter of the global poor, and more than half if one excludes India and China [Ravallion and Chen, 2012]) live in resource-rich countries. Employing the IMF's definition of resource rich countries (countries where oil, gas/and or minerals make up at least a quarter of GDP, exports or government revenues), *Revenue Watch* data for 2012 indicate that 26 resource-rich countries alone "have more than 300 million people (or 50 percent of their combined populations) live on less than two dollars a day." In other resource-rich countries, another 159 million people live on less than two dollars a day. On this estimate, Resource-rich comprise about half a billion of the global poor. See *Revenue Watch* 2013, 11.

Second, it is much more plausible to think that *independently* of natural resources, accountable, transparent and effective political institutions are a necessary condition for addressing poverty, and in many cases also a sufficient condition.<sup>23</sup> As many poverty-stricken countries show with tragic vividness, natural resource abundance is not a sufficient condition for addressing severe material deprivation. Even more clearly, natural resource abundance is not a necessary condition for avoiding severe deprivation (consider the many resource-poor countries enjoying high standards of living).<sup>24</sup>

Third, at least in countries where the vicious cycle of the resource curse is already in place, the key task is not to take bring more natural resource wealth *in*, as familiar cosmopolitan proposals would (for instance, by redistributing sovereign wealth funds globally<sup>25</sup>). Rather, the key task is to take natural resource wealth *out* - that is, out of the hands of dictators and civil warriors who abuse it in such destructive ways. If a resource-rich people ruled by a kleptocrat could choose between a huge flow of natural resource wealth coming into the country from the outside, *without* changing political conditions, or having the kleptocrat go into exile, *taking with him* all of the country's natural resource wealth, there are very strong reasons to think that the former option will not make any serious long-term dent in the population's poverty, but that the latter option – assuming it leads to a much more accountable, transparent and responsive government - very much will.

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<sup>23</sup> See, e.g., Amartya Sen's claim that no democracy has allowed famine to occur within its borders. Sen, 1999.

<sup>24</sup> Some might object that *in conjunction* with deeper reforms, a global redistribution of natural resource wealth could significantly reduce global poverty (see, e.g., Pogge 2011, 338). But then the *other* reforms will be doing all the work. Consider an analogy. Suppose we seek new policies to curb traffic accidents. I suggest making some of the driving lanes less narrow. You point out that accidents have been entirely uncorrelated with narrow lanes, and were far more significantly correlated with drunk driving, which should therefore be our focus. I object that "in conjunction" with more effective policies against drunk driving, extending the lanes will significantly reduce traffic accidents. But such a response will clearly be beside the point: it is the policies against drunk driving that will be making all the difference.

<sup>25</sup> See, e.g., Armstrong 2013.

## **2. The minimalist focus on the very worst regimes**

Let us move to the second important sense in which Wenar's proposal is minimalist: its explicit focus only on those regimes which can safely be described as the "worst of the worst." Wenar's main justifications for this focus are pragmatic. As a general matter, Wenar suggests that a "feasible" proposal for reform of international institutions must be based on the most minimal premises possible.<sup>26</sup> More specifically, Wenar emphasizes that if we are truly going to pursue legal reform to end tainted trade in natural resources we must expect "vigorous and well-funded challenges," and so our "legal framework must be solid."<sup>27</sup> Focusing our efforts on those regimes which can be seen as "the worst of the worst" – which cannot *possibly* claim consent from their peoples to sell state-owned natural resources - will be the best way to construct a foolproof legal framework.

Wenar's minimalism here is intuitive. Yet it does have costs. First, this minimalism limits the added value of normative theory. If we simply take for granted a condemnation of the worst dictators and civil warriors "seizing natural resources by force in underdeveloped countries," and accordingly take for granted a need for policy mechanisms that will destabilize their rule or push them to reform, then we seem to be quite squarely in the realm of very concrete institutional design rather than normative political philosophy: the challenges become entirely practical rather than principled.

Second, the most significant moral complexities of tainted trade arise precisely when we move *beyond* the worst of the worst: when we examine the many dictatorships that limit their use of force, that distribute much of the revenue from state-owned natural resources to the population, and that generally try to ensure decent (sometimes even high) standards of living for the population. Even here, we may think that customary trade is morally tainted: even "distributive dictatorships," after all, do not let their people

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<sup>26</sup> See Wenar 2011.

<sup>27</sup> Wenar 2008, 19.

control state-owned property through elected representatives, and so trade even with them seems to constitute an infringement of the property rights of their peoples. But here there are intricate normative questions.

Most obviously, there is a clear danger that legal reform to end customary trade will make the peoples living under distributive dictatorships *worse-off* in comparison to the status quo. For one thing, this danger deepens the need to inquire just how seriously we ought to take national property rights, and whether respect for these rights (if we ultimately take them seriously) mandates that we end customary trade, even if this will harm the rights-bearers. Furthermore, this danger should push us to inquire about intricate types of consent that peoples may offer to tainted trade continuing. Many peoples living under distributive dictatorships, for example, may truly believe that their rulers are violating national property rights, but may nonetheless meaningfully consent to tainted trade persisting between their rulers and democracies' resource corporations, precisely because of the fear that reform will make them worse off. It may be that the possibility of such lower-order consent should not prevent us from ending tainted trade. But this is the kind of complex issue that requires sustained normative analysis, and where normative theorists have a distinct contribution to make.

Wenar might respond that it makes good practical sense to start not with distributive dictatorships, but solely with the most depriving dictatorships, where it is hard to see how peoples can be any worse off than they currently are, and where it truly seems implausible that there will be popular consent of any sort to tainted trade persisting. The thought here would be that "getting a foot in the door," by enacting legal reform regarding the most extreme cases, will set a legal precedent that can gradually be applied to more complex and contested cases.<sup>28</sup> Such a gradual strategy will also avoid an immediate

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<sup>28</sup> In similar spirit, Wenar suggests that "the potential for disqualification [from customary trade with democracies] will exert upward pressure on public accountability in many resource-exporting countries." See Wenar, 2013, 301.

appeal to democracy as a standard for legitimate transactions of national property, which is important, according to Wenar, because democracy is “too strong a value to ground a feasible proposal for reform of international institutions.”<sup>29</sup>

This legal rationale is, again, quite sensible. But I nonetheless wonder whether we should not aim higher, for at least two reasons. First, “getting a foot in the door,” starting with the most minimal requirements, is only one way to try to convince agents to undertake reform. Another way is what social psychologists call the “door in the face”<sup>30</sup> technique, where one starts with much more demanding requirements, and aims to push even reluctant agents to comply at least with bare-bone minimal standards (“if you do not live up to all that you ought to do, the *least* you can do is...”). Indeed, insofar as “vigorous and well-funded” legal challenges can be expected to any proposal to reform tainted trade, no matter how minimalist, why not start by setting the bar where it truly ought to be, even if in practice, the eventual legal bar will be set much lower?

Second, it seems at least plausible to think that calls to transform existing legal practices ultimately depend on straightforwardly moral reasoning, no matter how much they are framed in terms of legal codes and precedents. When it comes to liberal democracies’ internal affairs, most if not all emblematic legal advances towards the realization of rights can (arguably) be traced to profound changes in moral views, rather than to the interpretation of existing law as such.<sup>31</sup> The same point would apply to dramatic legal changes in the foreign and trade policies of liberal democracies. If tainted trade with severely oppressive regimes were to be declared illegal, this would not truly be because this is what

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<sup>29</sup> Wenar 2011, 137.

<sup>30</sup> For the classic experiment see Ciladini et al., 1975; see also Cialdini, 2009.

<sup>31</sup> To take only one historical example, if the U.S. Supreme Court, for instance, had a different view of racial segregation in 1954 (the year of the landmark *Brown* ruling), then it did in 1896, this is ultimately not because the Court realized that earlier rulings “misinterpreted what the law allows,” but rather because the Court came to think that morally speaking, the law ought not allow the violation of the rights of blacks.

existing law requires. Rather, the ultimate cause would be the view that morally speaking, this is what the law *ought* to require. That is another reason to argue on a more straightforwardly normative terrain, and to run with our normative conclusions as far and deep as they would go – even if our aim is indeed extremely practical.

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