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# Consent and the Resource Curse

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**Abstract**

The resource curse is paradoxical in the sense that an abundance of resource wealth typically hinders economic development for citizens of authoritarian regimes. Leif Wenar's (2008, 2016) proposal bans the purchase of natural resources from such governments on the grounds that these resources are sold without citizens' consent and thus violate property rights. In contrast, this paper argues that curse-ridden populations may have no reason to object to the trade in natural resources. They exhibit 'low-order' consent due to concerns that banning trade will make them worse off. I conclude that this undermines the case for Wenar's proposal.

**Keywords:** Leif Wenar; Resource Curse; Consent

The resource curse refers to the failure of citizens to fully reap the benefits of their country's natural resource wealth, as the wealth is controlled by the autocratic elite. Often, this adversely affects governance and development outcomes (Ross 2015: 239). Leif Wenar (2008, 2016) claims that by recognizing the property rights of autocratic regimes, other state governments become complicit in the autocratic governments' theft of natural resources from their populations. Foreign states are breaking the "first rule of capitalism in transporting stolen goods" on a huge scale (Wenar 2008: 2). Wenar's solution is to ban the import of resources sold by repressive governments which do not meet the minimal criteria necessary to authorize the sale (i.e. respect for basic civil and political liberties). I shall argue against Wenar's positions, concluding that curse-ridden populations may have no reason to object to the trade of their natural resources. I shall argue that Wenar's proposal cannot be justified because his conditions for authorisation do not track consent.

The resource curse is conditional (Caselli and Tesei 2016). In countries with inclusive institutions, natural resources are a blessing. Incentives for "participation by the great mass of people in economic activities" (Acemoglu and Robinson 2012: 144) are created by securing property rights, law and order, and markets. By contrast, extractive institutions concentrate power in the hands of a small self-serving elite (Robinson 2013: 2). Under these conditions, natural resource windfalls generate three overlapping curses (Wenar 2008: 3):

1. Increased likelihood and depth of authoritarianism;
2. Increased risk of civil conflict;

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3. Reduced economic growth.

Here, I focus on so-called *point source* resources such as oil. Isham et al. (2005) argues that countries with such resources are doubly disadvantaged by virtue of exhibiting concentrated and capturable revenue patterns. These resources are often extractable without the population's cooperation and flow directly to the government, increasing its repressive capacity. Accountability is thwarted as concealed income streams reduce the ability need for intrusive bureaucracies to raise tax revenue (Fearon and Laitin 2003: 81). Since natural resources yield transferable rents, opportunities for controlling primary commodity exports, referred to as "predation" (Collier and Hoeffler 2000), cause conflict. The prize value of capturing a state increases as greedy rebels sell future exploitation rights called "booty futures" (Ross 2002). Groups that gain income and funding directly from conflict (e.g. military personnel paid for security) may also prefer to fight than to win: they exhibit a "domestic conflict premium" (Humphreys 2005: 516). Poor governance leads to low investment in human development. Roberts and Robinson (2013: 73) classify entrepreneurs in two groups: *grabbers* maximise monopoly rents whilst producers use resources to generate additional wealth. Exclusive institutions produce grabber-heavy economies.

Wenar (2008: 3) claims that the resource curse is a "symptom of the violation of property rights." A valid sale requires that a vendor have the right to sell: he must either be the owner or have the owner's authorisation. Contracts facilitating theft or trade in stolen goods are void unless sellers or buyers acted in good faith, i.e. lacked awareness that the seller did not hold a clean title. Wenar extends legal rules governing private party conduct to the state. The principle of national ownership grounds his proposal: the people occupying a given political territory 'own', in the legal and moral sense, the resources within it. This principle conflicts with the "international resource privilege" principle (Pogge 2002: 22) which authorises rulers, regardless of how they attained power, to sell their domestic resources on the global market. Accordingly, the legal right to transfer property is acquired disproportionately by those who are lucky and strong; "might makes right" (Wenar 2008: 13). An inevitable by-product is that unaccountable governments are permitted to sell a territory's natural resources without their citizens' consent. By enforcing this right in courts, importing countries trade in stolen goods. The revenues generated provide means and incentives for oppression and conflict.

Wenar's solution is two-fold. First, his proposed Clean Trade Act bans the import of natural resources that do not meet the minimal criteria necessary to authorise the sale. The minimal criteria are that the exporting country's citizens must (Wenar 2008: 20):

i. Be able to find out about the sales.
ii. Be able to stop the sales without incurring severe costs.
iii. Not be subjected to extreme manipulation by the seller.

Wenar claims that these criteria are not satisfied by countries with a rating of 7 (the worst) on Freedom House civil and political rights rankings (Wenar 2008: 25). Underlying this claim is the issue of consent. Given that trade in natural resources may not be in citizens' best interest, or of sufficient value to them, their preferences should be taken as inputs for collective decision making. The second part of Wenar's solution is a Clean Hands Trust, which imposes equivalent-value duties on trade partners who buy stolen resources. Revenues are assigned to a trust held for the autocratic country's population until the minimal conditions are met.

Objections typically centre on Wenar's *minimalism*. His explicit focus on "depriving dictatorships" (Nili 2017: 317), violent regimes that rob their populations of the majority of all resource rents, ignores that compelling moral challenges also affect dictatorships that are not the worst of the worst (with a rating less than 7). It has been argued that his criteria therefore demands too little. However, by acknowledging the limited scope of Wenar's proposal, I arrive at the opposite conclusion: his minimal criteria demand too much. I identify two main justifications for Wenar's limited scope. First, a "feasible" reform should be based on the most minimal premises possible in order to get a foot in the door (Wenar 2008: 17). This sets a legal precedent that can progressively be applied to more contested cases. Second, given severe hardship, it is difficult to see how reform could impoverish inhabitants of depriving dictatorships any further. Hence, Wenar assumes that:

(A) Autocrats cannot obtain actual consent from their people for continuing tainted trade.

On this basis, trade in natural resources violates property rights. The rest of my discussion concerns the validity of assumption (A). My point is clearest when applied to what the literature calls *distributive dictatorships* (Nili 2011: 105). A population can either ask the regime to sell ('explicit' consent) or acquiesce by remaining silent ('tacit' consent). Significantly, the ability to prevent the sale of natural resources like oil is valuable only if there is a reason to object to it. Schaber (2011: 188) argues that, unlike historical monuments, oil is not something you could wish to preserve in the same way. It becomes interesting only once it is sold. Distributive dictatorships often divide resource rents amongst their population, rarely employ the naked use of force and guarantee a baseline standard of living (Nili 2017: 317). In such countries, citizens can maintain that property rights violations occur but still credibly consent to tainted trade (hereinafter referred to as 'low-order' consent) because they fear that reform could make them worse off (Allen and Lektzian 2013: 122). Indeed, bans are likely to produce relative deprivation in the short-run (Nili 2017: 315). These points make Wenar's assumption less plausible.

I extend this reasoning to *depriving dictatorships*. Under President Obiang, 77% of Equatorial Guinea's population lives below the poverty line despite inhabiting Sub-Saharan Africa's fourth largest crude-oil producing country (Schaber 2011: 185). Arguably, Equatorial Guineans may also have no reason to want their oil to remain unsold. Nili (2014: 7) constructs a hypothetical scenario in which citizens of curse-ridden nations face a choice between inflows or outflows of resource-derived wealth. Whereas the former leaves political conditions unchanged, the latter involves the dictator going into exile. Provided that exile leads to "a much more accountable, transparent and responsive government" (Nili 2014: 7), long-term poverty rates should fall significantly, making it the favoured option. In reality, it is difficult to convince citizens that the key task is initially to take resource wealth out. Firstly, conforming to Kuran's (1991: 2) notion of the "predictable unpredictability of dictatorial breakdown," uncertainty about how trade reform will affect a dictatorship's internal power structures abounds. Secondly, it takes an estimated 59 years for a failed state to turn around and sustain itself (Chauvet and Collier 2005: 1). This means that revenues could sit in the Clean Hands Trust for much longer than an average citizen's lifetime. Therefore, Nili's choice is not so clear-cut; citizens are in fact choosing between maintaining the status quo or a transitionary period marked by high uncertainty. Given this economic risk, citizens in depriving dictatorships may similarly exhibit 'low-order' consent.

It follows that Wenar's argument suffers a fatal blow because his conditions for authorisation does not track consent; his minimal criteria are overly-demanding. This is worrisome given that his key premise (i.e. trade in natural resources violates property rights in depriving dictatorships) rests on (A). I use the following example to fully illustrate this point. Imagine that, on a whim, a benevolent dictator decides to launch a school-building programme. He engages in this secretly; without asking for consent or allowing the public to ever find out. Even if information were leaked, no one could stop the programme without incurring severe costs. If we conform to Wenar's minimal criteria, our Benevolent Dictator would not be authorised to build schools, despite our hunch that his country's citizens would never object to him doing so.

A rebuttal could be that this is not the notion of property that Wenar deems worthy of protection. Ownership is the state of exclusive control over property. It is self-propagating to the extent that the owner also decides "what to do with any benefits that accrue" from it (Nili 2011: 106). Wenar implies that control, not only benefits, constitute legitimate ownership: "the curse results from a defect in the rules that allocate control over these resources" (Wenar 2008: 8). The examples above suggested that rather than focus exclusively on rights to sell ('control'), one should be equally concerned with whether citizens' interests are being served by the sale of natural resources ('benefits'). Problematically, this can blur the distinction between promoting interests and respecting property rights. However, this rebuttal bolsters my argument against Wenar. Recall that the ability to block sales only becomes relevant once there is a reason to object to it. In making the relevance of his minimal criteria contingent on outright objection, Wenar unintentionally places more value on benefits than control.

Arguably, not every instance of actual consent is valid. According to Nili (2017: 320), consent might stem from duress. This should be understood as either having no choice or as having no acceptable choice (Wood 2014: 21). Ensuring that consent is valid becomes more important as the dangers to which it exposes the owner increase. In this particular case, the danger is substantial: continued subordination to the dictatorial regime. Whilst I agree with this point, Wenar does not sufficiently account for duress in criterion (iii). He indicates that to be able to authorise a transaction, an owner cannot be "hypnotised, brainwashed or subject to extraordinary psychological manipulation", as in North Korea (Wenar 2008: 21). Nonetheless, this misidentifies the wrong committed: manipulation is the steering of others' choices in morally problematic ways. Criterion (iii) should be weakened to incorporate the importance of citizens' bargaining power vis-à-vis the state, including the ability to exit. In short, given that citizens have no acceptable alternative, they consent to tainted trade because reform could make them worse off. Once again, Wenar's minimal criteria demand too much.

To conclude, Wenar's proposal fails because his minimal criteria for the authorisation of sales do not track consent. I have argued that Wenar's thesis rests on the mistaken assumption that autocrats cannot obtain consent from their people when engaging in resource trade. I showed that this was problematic insofar as the ability to prevent the sale of natural resources is only valuable if there is a reason to object to it. In distributive dictatorships this reason may not exist. Concerns that trade reform could make citizens worse off, particularly given the uncertainty of dictatorial breakdown and the pay-out timeframe of the Clean Hands Trust, explain why there may be no reason to object. I then examined the counterargument that granting the validity of low-order consent masks the distinction between promoting interests and respecting property rights. However, I concluded that by making the relevance of his minimal criteria contingent on a capacity for outright objection, Wenar is responsible for placing a higher value on ownership of benefits than control. In doing so, he ignores the role played by duress, which differs markedly from the manipulation mentioned in his third criterion.

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