



Should We Ban Buying Oil from Autocrats?

Edgar Akopyan*

* Philosophy, Logic and Scientific Method, London School of Economics, Houghton Street, London, WC2A 2AE, UK. Email: edgar1996.96@gmail.com URL: <https://www.linkedin.com/in/edgarakopyan/>

Abstract

Leif Wenar (2008, 2016) argues that by purchasing goods produced from the natural resources of repressive regimes, Western consumers share responsibility for repression in those autocratic countries. To address this problem, he proposes a Clean Hands Act, which would restrict the purchase of natural resources from these states, and a Clean Hands Trust, which would tax third-party countries that buy natural resources from those regimes. This paper demonstrates how practical limitations, such as sanction avoidance and secret trade, make this proposal untenable. The paper further argues that Wenar's framing of the problem as a 'property rights violation' is insufficient and it is more appropriate to frame the problem as a lack of legitimacy.

Keywords: Sanctions; Legitimacy; Property Rights; Consumerism; Autocracy

Autocrats in many developing countries are able to sustain their regimes through selling natural resources, particularly oil. By buying products that are derived from these natural resources, Western consumers contribute to the sustained repressions in autocratic countries. Many solutions have been proposed to alleviate this problem, from sanctions to military interventions. I shall argue that the solution Leif Wenar proposes in *Blood Oil* (2016) is both practically infeasible and philosophically unsatisfactory. I shall first present a summary of Wenar's argument. Next, I shall outline the practical difficulties encountered by his proposed Clean Hands Act and Trust, including that the Clean Hands Act is not significantly different from standard economic sanctions. Finally, a philosophical challenge will be raised: is the central moral problem a property rights violation or is it the illegitimate nature of political regimes? Wenar limits his ethical objection to the support consumers lend dictators by buying illegally-acquired resources, but there is no reason to limit this objection to natural resources or property rights.

The resource curse refers to the phenomenon in which countries that have an abundance of natural resources tend to have lower economic growth, worse human capital indicators, and autocratic governments. There is evidence that the resource boom in autocracies entrenches dictatorial leaders and makes their regimes even more oppressive (Caselli and Tesei 2016). The resource curse provides autocrats with easy access to revenue, which

they use to oppress their populations, rig elections and to personally profiteer. Wenar's chief contention is that by upholding demand for those goods, consumers, especially in the developed world, are morally responsible for the consequences of the resource curse. To alleviate the problem, Wenar (2008) proposes a Clean Hands Act, making it "illegal the purchase of resources from a disqualified country" (Wenar 2016: 284) where disqualified states are resource-cursed states. Wenar's ban is not extended to other resources, applying only to natural resources. Wenar's sentiments are shared by John Bolton, the current National Security Advisor of the U.S. who has urged people not to trade with Venezuela in gold and oil as these are "being stolen from the Venezuelan people" (Bolton 2019).

The Clean Hands Act is problematic. Wenar (2008: 30) notes that previous sanctions have not been effective, yet he introduces a proposal that is similar to sanctions in terms of the mechanism which is employed to produce an effect. While Wenar's proposal is not an embargo, it is an example of a targeted sanction which focusses on specific segments of society and is meant to reduce collateral damage to other parts of society and to third-party countries (Hufbauer and Oegg 2000). Wenar's proposal simply limits the ability to trade natural resources with specified countries, as usual sanctions do. As a result, the proposal is susceptible to the same shortcomings as sanctions.

One of the main concerns is the role which third-party countries can play in helping to alleviate the cost of sanctions, known as *sanction-busting techniques*, which allows sanctioned states to circumvent sanctions to some extent (Early 2015). One example of sanction busting is the use of an intermediary to conduct trade. For instance, after the Nobel Prize was given to a Chinese dissident, China imposed sanctions on Norwegian salmon. Private actors avoided these sanctions through rerouting, falsifying country-of-origin certification and smuggling (Chen and Garcia 2016). Another example is the sanctions imposed by the West on Iran. After Iran was disconnected from the EU-based SWIFT (Society for Worldwide Interbank Financial Telecommunication) financial transaction network, there was a surge of gold transportation from Turkey to the United Arab Emirates to Iran and vice versa (Early 2015). This way, Iran could still trade in gold without relying on the SWIFT system. In fact, imposing sanctions incentivises third-party countries to participate in sanction busting as they tend to profit, even when they are allies of the sanction imposing state. When the US imposed sanctions on South Africa, trade of the latter with West Germany, Great Britain, Japan and Italy increased (Early 2015). Thus, sanctions do affect the welfare of the sanctioned entity, in this case the autocrat, but the possibility of avoiding sanctions through diverting trade means that this impact is at best partial.

Wenar (2008) defends his proposal against this charge by presenting a case for the Clean Hands Trust, which he claims makes approach more efficient than traditional sanctions by correctly aligning incentives. The idea behind the Trust is that countries would tax third-party countries up to an amount equivalent to the illegal trade that the third-party country does with the sanctioned country. For instance, if China buys \$2 billion worth oil from Equatorial Guinea then Chinese imports will be sanctioned by the amount of \$2 billion. However, this defence is flawed for three reasons. Firstly, similar sanctions against other countries have harmed people in those countries more than their autocratic leaders (Van Der Ploeg 2017). Wenar could respond that this would be alleviated by the Trust as the money would be given back to those people after the country satisfies minimum requirements of civil liberties and political rights (Wenar 2016). In essence, the burden on people will be temporary as the money will be given back to them. The problem is that it is possible for the dictator to manipulate ratings to become marginally freer and then, after the money is received, slide back into a dictatorship.

Secondly, a greater concern is that in such a system intermediaries and other countries will be incentivised to hide their trade with sanctioned states. Historically this has been the case with many sanctions. For example, after Napoleon forced Russia to impose an embargo on Britain, Russians kept trading with the British, but the official government policy was that the government was unaware of the trade (Roberts 2016). A contemporary example is North Korea. China is said to be North Korea's biggest trade partner, but Russia also conducts trade with this sanctioned country (Lukin and Zakharova 2018). This is conducted in a secretive manner due to the North Korean regime's reputation. The willingness to support sanctioned states through trade is partly because trade between autocratic governments is motivated not only by material gains but also by the desire to maintain similar regimes against the pressures of the liberal West (Blackwill and Harris 2017). In an environment of secrecy it will be extremely challenging for countries to decide how much tax to levy on other countries, which makes the proposal unfeasible.

Thirdly, Wenar's initial argument assumes institutions that work and that external incentives can drive countries towards less autocratic politics. This lies at the very core of Wenar's proposal – to some extent the idea behind the Clean Hands Trust is to incentivise citizens in autocratic countries to fight for accountability from their governments and for governments to relax oppressive actions to allow trade. However, this may not be the case in low state-capacity countries that have weak legal and fiscal infrastructure and cannot properly ensure rule of law or collect taxes (Besley and Persson 2013). By virtue of being poor, having high political instability and high revenue from resources, those countries have a vicious circle: low capacity and low social cohesiveness ensure low tax revenue which in turn incentivises low investment in state capacities such as the ability to uphold the rule of law and low levels of development. Instead of investing in state institutions, governments will simply try to stay in power, often by authoritarian means, collecting as much money as possible through trading illegally acquired resources.

If one implements Wenar's proposal, then one would expect lower revenue from resources. This decrease, however, will only be partial as other autocratic governments might step in to buy resources or be intermediaries. This might cut down the amount of repression that a population experiences as the autocrat will have less money to support an army, but it is not at all clear that this decrease would be sufficient to ensure that the government would try to accommodate civic and political rights. If our desire to alleviate resource curse is from current guilt - that we as consumers care only about our current continued contribution to the curse - then indeed cutting revenue from resources would help. However, as Besley and Persson's (2013) model demonstrates, this would not help those countries alleviate the damage that has already been done and would be insufficient if our aim is to help populations to be free from resource curse and repression.

Finally, a philosophical challenge can be presented as well. Wenar (2008: 13) states that "might makes right" cannot be a good international principle for property rights, especially when it comes to natural resources, as it violates the commonly accepted principle that natural resources belong to the people stated in the Article 1 of the International Covenant on Civil and Political Rights (United Nations General Assembly 1966). Thus, he frames the problem as a "violation of property rights" (Wenar 2016: 3) since the people have not consented to the use of their resources. But it is not clear why this should not be presented as an issue of state legitimacy instead. Suppose Robert Mugabe, in his popular years, created a law approved by the public that made the country's resources private, and acquired most of the shares in the company owning these resources. Suppose he went on to become a dictator after that. In such circumstances, he would have acquired resources legally and hence it would not count as trading stolen goods. Nevertheless, it is still the case that by buying resources from him, Western consumers would perpetuate the resource

curse that Zimbabwe has (Doro and Kufakurinani 2018). While property violation does not apply in this case, one could say that some form of Wenar's argument of the harm inflicted by consumers of the developed world should still be applied to Zimbabwe.

One may appeal to the status quo legal principle of state sovereignty. This norm protects morally important interests such as the right for self-determination and formal equality of states in the international arena. One consequence of this norm is that property regimes should be determined domestically (Pavel 2015). But this would hardly be an acceptable response within Wenar's framework. The status quo is not a valid justification as long as democratic governments and government by the people is upheld by many people across societies, and has been enshrined in international agreements such as United Nations Resolution 64/155 (United Nations General Assembly 2009), the Universal Declaration of Human Rights Article 29 (United Nations 1948) and the African Union's Constitutive Act (African Union 2000) amongst others. This challenge is particularly relevant in what John Rawls (2003: 106) describes as the case of *burdened societies*: states that are not expansive or aggressive but "lack the political and cultural traditions, the human capital and know-how". In those states, the people simply cannot establish a domestic property regime. Arguably, countries like Equatorial Guinea can be described as one of those countries. These are countries where government institutions are unable to provide basic services such as protection of a person's life, as in many countries in Sub-Saharan Africa. Many of those countries have governments that are not merely corrupt but that also lack democratic legitimacy. Here lies the problem: what should be done if there is no legitimate entity to deal with?

In conclusion, Wenar's proposal is not sufficient for dealing with the problem which he presented. The Clean Hands Act in being similar to sanctions, suffers from the same deficiencies. The Clean Hands Trust does not alter incentives sufficiently and will be circumvented by other autocratic states. Moreover, resource revenue is only part of the reason why autocrats remain in power and cutting revenue partially will not incentivise them to extend political and civic rights, as is the aim of Wenar's proposal. Finally, I have also challenged the general framework Wenar uses and argued that the core issue is not a property rights violation but a lack of legitimacy of governments.

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