



Why It Is Unjustifiable to Ban the Purchase of Natural Resources from “Resource-Cursed” Countries

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Abstract

This paper considers Leif Wenar’s (2008) proposal for banning the purchase of ‘stolen goods’ from resource-cursed countries, as he argues governments do not have the consent required to authorise these transactions. The benefits of the proposal are that it disincentivises the sale of stolen goods, incentivises citizens in these countries to overthrow their corrupt governments, and the proposal’s penalties track the stolen goods. However, his proposal could cause significant harm to citizens of resource-cursed countries, and the conditions he deems necessary for citizens to authorise the sale of their resources are not sufficient. In concludes that Wenar’s proposal is unjustifiable.

Keywords: Resource curse; Property rights; Economic sanctions

The ‘resource-curse’ occurs when sale of natural resources strengthens the hand of repressive regimes and thereby enables poor governance and causes lack of broad-based economic growth. In this paper, I shall analyse Wenar’s (2008) proposal, grounded in property rights, for banning the purchase of natural resources from extremely repressive regimes and for levying a tax on the exports of countries who continue to purchase such resources, with the proceeds being held in trust for the citizens of the repressive regime until they acquire minimally decent government. He outlines certain conditions necessary for citizens to consent to their government selling natural resources, which, if not fulfilled, means these goods are effectively stolen. This proposal has some apparent merits: it disincentivises the sale of stolen goods, incentivises people in resource cursed countries to overthrow their corrupt governments, and the proposal’s penalties track the stolen goods. However, I will criticise it with respect to two considerations. Firstly, his proposal could worsen the situation of the people in the resource-cursed countries, as I posit with reference to empirical evidence. Secondly, the conditions under which Wenar deems it acceptable for citizens to authorise the sale of their collectively owned resources are not stringent enough. Thus, I shall conclude that whilst Wenar’s proposal has certain merits, overall, its drawbacks mean it is unjustifiable.

Wenar’s argument is based on the premise that natural resources are collectively owned by the people of a state. He supports this with reference to international human rights law, as well as national laws entrenched in the constitutions of certain countries (Wenar 2008: 9-10). Thus, the property rights of citizens within a country are violated whenever natural resources are sold without their consent. Wenar (2008: 20) asserts the following minimal conditions necessary for consent to be given to these governments to sell the natural resources:

1. Citizens must be able to find out about the sales.
2. They must be able to prevent the sales “without incurring severe costs” (Wenar 2008: 20) i.e. they must be able to voice their dissent without fear of reprimand.
3. They must be able to make decisions of their own volition, without manipulation by the seller.

If these conditions are not fulfilled, the silence or acquiescence of the people does not indicate consent. In his proposal, Wenar (2008) uses the Freedom House ratings, which evaluate the political rights and civil liberties afforded to citizens, to identify countries in which the above conditions do not hold but governments are nevertheless selling natural resources. These ratings were devised by an independent NGO, are based on the Universal Declaration of Human Rights, and are used by the US government, giving them credibility and legitimacy as a standard. Countries with the worst Freedom House rating of 7 in terms of civil liberties have “virtually no freedom” and “[a]n overwhelming and justified fear of repression” (Wenar 2008: 24). Those with the worst rating for political rights find their rights “absent or virtually non-existent” due to the oppressive regime in power (Wenar 2008: 24). Wenar therefore concludes that any country with the worst rating of 7 on either civil liberties or political rights cannot have the above conditions fulfilled. Thus the governments in these countries are selling resources owned by the people without their consent, which violates the people’s property rights and makes the goods ‘stolen’.

Wenar proposes a two part solution to this problem. First he proposes enacting a ‘Clean Trade Act’ which requires countries to stop trading with such extremely oppressive regimes. Second, countries that trade with these authoritarian governments and purchase ‘stolen goods’ from them should face tariffs on their exports to other countries (Wenar 2008). He uses the example of China, Sudan and the US: if China buys Sudanese oil then, if the US follows his framework, it should place import tariffs on all Chinese goods. The tariff revenues will be stored in a ‘Clean Hands Trust’ that will be allowed to fill up to the point that the Trust money is equivalent to what China has paid for Sudanese oil. This trust money is retained by the US until Sudan experiences a regime change such that the above conditions are met, at which point the Trust money shall be given to the Sudanese people. Wenar (2008) defends his proposal on the grounds that it protects the property rights of Sudanese citizens, and will return to them the exact monetary value of the property that was stolen from them by tracking these resources and placing indirect taxes on their purchase. Furthermore, it will encourage the Sudanese people to overthrow their government. They will be highly incentivised to do so as they will receive the trust money as well as being relieved of a corrupt regime. Lastly, the tariff-and-trust mechanism will disincentivise countries like China from trading with Sudan because their exports to the US will face larger tariffs, taking power out of the hands of the Sudanese elite.

However, Wenar’s proposal could worsen the situation of the people in these resource-rich countries. The little income they do receive could be dependent on resource revenue, thus, taking it away by disincentivising the demand for resources could seriously increase dire poverty. For example, in Sudan where (on the most recent estimate available, which is for 2009) almost 50% of people live below the national poverty line (World Bank 2019), falling incomes could lead to (increased) malnutrition and more deaths. Pogge (2005) argues that

we have a negative duty to prevent harm to people, and that citizens of resource-cursed countries should not face the suffering they do at the hands of other countries. According to Pogge “someone is harmed when she is rendered worse off than she was at some earlier time, or than she would have been had some earlier arrangements continued undisturbed” (Pogge 2005: 4). Thus, if the sanctions make the populations of resource-cursed countries worse off than they would have been without the sanctions, then the proposal is unjust through its perpetuation of harm. Wenar (2008: 31) briefly considers this criticism, but dismisses the problem of harm as merely temporary. However, this assumes that the Sudanese people will quickly be able to overthrow their government, which is unlikely given their lack of resources and power. (While, at the time of writing, public pressure led to the fall of the Sudanese dictator Omar al-Bashir, the military junta which has taken over does not appear more democratic.) It becomes even less likely that they are able to do so without receiving whatever little benefit they may have gotten from resource revenue. Collier and Chauvet in fact estimate that failed states like those Wenar describes as scoring 7 on the Freedom House ratings, take, on average, 59 years to turn around and be capable of sustaining themselves (Collier 2007: 71).

Oechslin (2014) provides evidence for this argument, examining the case studies of economic sanctions on Haiti and Iraq. He finds that imposing sanctions on authoritarian regimes in these countries, such as the bans and tariffs proposed by Wenar, causes elites to withhold public goods from citizens, thereby worsening instead of ameliorating the effects of the sanction (Oechslin 2014: 25). He theorises that this is because the elites aim to weaken the citizens’ ability to revolt. Reducing the supply of public goods makes it more costly for citizens to challenge the regime by lowering their incomes, meaning citizens face a bigger loss in utility if they decide to revolt. In Haiti, for example, there is evidence that the government weakened the healthcare system (Oechslin 2014: 27) and destroyed some of the agricultural infrastructure to prevent production and investment (Werleigh 1995: 166-7). Oechslin (2014) also argues that governments use the sanctions as an excuse for worsening conditions, often to mask their own involvement. This point is supported by interviews with Sudanese citizens after the lifting of sanctions by the US, one of whom said “The government used to say that US sanctions were responsible for all that was wrong in our country... [t]hey can’t hide behind that excuse anymore” (Vergee 2018: 2).

Evidence that conditions worsen under the imposition of sanctions has been found to persist in various other examples. Hufbauer et al (2007) reviewed 57 cases of sanctions that ended prematurely between 1914 and 2000. In 65% of cases sanctions were lifted despite a lack of regime change, which had been at least one of the aims of the boycotts (Hufbauer et al 2007: 80). Oechslin argues this is because the sanctioning bodies came to realise that the sanctions are in fact worsening the situation for the citizens of the country, rather than causing regime change, and thus lifted the sanctions to prevent further damage (Oechslin 2014: 27-8). Therefore, it is not possible to dismiss harms to citizens of resource-cursed countries as merely temporary, since empirical examples demonstrate that sanctions often cause significant harm without even leading to the long term benefit of regime change.

A further criticism is that the conditions Wenar sets out as necessary for resource sales to be permissible are not stringent enough. For here are cases that meet his conditions that involve a failure of consent. These cases should, by his logic, incur embargoes. Condition 2 dictates that citizens must have the power to stop the sales, but Wenar qualifies this by saying a regime must have “some effective mechanisms in place through which it acknowledges that people can dissent to the sales” (Wenar 2008: 21). This is, however, far too minimal. Citizens could dissent to resource sales whilst having no influence whatsoever because, crucially, the cases being examined here are of states with authoritarian governments who do not need the support of their people to stay in power. Rather, they

retain power through control of these resources, allowing them to buy security and buy out opposition, not through a democratic mandate. Governments of resource-cursed countries can and do ignore dissent, and other states often recognise them as legitimate despite awareness of this corruption (Wenar 2015). Thus even if all the conditions are fulfilled, i.e. the Sudanese population could have access to information about the sales without manipulation from the state and voice their dissent, this does not mean they have given their consent. The condition could be strengthened by reference to a stronger example of the prevention of sales, e.g. through a voting system. This criticism is supported by Nili (2011) who argues that Wenar ignores the larger moral complexities that arise from cases that are not “the worst of the worst” (Nili 2011: 8). In the worst cases, it is clear that the conditions are not met and it becomes much easier by Wenar’s framework to condemn the governments. However, more concerning are the countries in which Wenar’s conditions are met but the people of the country are still being exploited. Nili (2011: 9) explores a connection of the “harm to citizens” argument, positing that it could be the case that citizens are aware of the trade and are able to dissent, but do not do so for fear of the consequences and harm of trade being curtailed. Thus, Wenar’s framework still allows for cases in which the government is stealing resources from people, which means it is not sufficient in its aim of preventing governments from selling resources that are stolen due to a lack of consent.

Wenar’s proposal aims to tackle the violation of property rights of the citizens of resource-cursed countries through a combination of bans on the purchase of these resources and a system of taxation on those who violate the ban with proceeds being held in trust for these citizens. His plan is beneficial in that it incentivises the toppling of authoritarian governments, tracks stolen goods and ensures their (monetary equivalent) reimbursement to the people they were stolen from. However, I have argued that protecting citizens’ rights in this way could lead to worse situations for them, both in terms of fewer trickle down benefits from resource sales, as well as potentially increasing hardships imposed by their governments through public spending cuts. Furthermore, his conditions are not strong enough to ensure consent to the sales. Therefore, Wenar’s proposal, although perhaps encouraging from an idealistic perspective due to its grounding in property rights, cannot be justified when implemented in the real world.

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