



# Tariffs and Trusts Won't End Illegitimate Sales of Natural Resources by Repressive Regimes

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## Abstract

In response to Wenar's (2008) proposal which addresses the customary rule of 'might is right', I argue that his approach fails to provide structural solutions to the illegitimate sale of natural resources by repressive governments. I first explain how his minimal conditions are not able to legitimise sales as they are not based on an exhaustive and authoritative criterion that would prevent false positives. I then contend that Wenar's trust-and-tariff mechanism, the Clean Hands Trust, depends upon unrealistic expectations of the resource-cursed government's reactions and its citizens' position.

**Keywords:** Resource Curse; Repressive Regime; Economic Sanctions; Oil; Wenar

## 1. Introduction

In response to the customary rule of 'might is right' which reigns in global resource markets, Wenar (2008) proposes that countries stop trading with governments that are not legitimately authorised by their national population to sell natural resources. In doing so, countries would stop funding corrupt authoritarian elites in resource-cursed states. The term 'resource curse' refers to the adverse effects on a country's social, political and economic infrastructures resulting from its large endowment of natural resources, particularly where these resources fall in the hands of repressive regimes (Ross 2015: 240). Wenar first establishes the minimal conditions necessary to legitimise sales and an authoritative standard that determines when the minimal conditions do not obtain (Wenar 2008: 19-25). He then develops national and international mechanisms to block any remaining illegitimate resource sales (Wenar 2008: 25-31).

In this paper, I argue that Wenar's proposal fails to provide structural solutions to the sale of illegitimate resources by repressive states as its minimal conditions are difficult to verify. Furthermore, its main enforcement mechanism is not realistically and efficiently conceived. I first discuss how Wenar's minimal conditions fail to provide infallible criteria against which the legitimacy of sales can be assessed. I then explain how Wenar's international tariff mechanism to enforce property rights is based on unrealistic expectations of the situation in

the resource-cursed country. It is important to note that my analysis will focus on assessing Wenar's minimal conditions and one of his enforcement mechanisms. As such, my conclusion is bound to be limited.

## 2. The Fallibility of Wenar's Minimal Conditions

In order to move away from illegitimate sales by resource-cursed countries, Wenar proposes the minimal set of conditions necessary for citizens to legitimise the sale of national resources. I argue that these conditions weaken Wenar's proposal because they do not include authoritative frameworks. In other words, the challenges posed by verifying the satisfaction of these conditions make it difficult and risky to use the conditions as the bases for the legitimacy of sales. Wenar's minimal conditions are as follows (Wenar 2008: 20-21):

1. Citizens should have access to "reliable general information" concerning the resources and their trade.
2. The state must offer mechanisms that allow and acknowledge citizens' dissent to the sales.
3. Authorisation given by citizens must be minimally independent of the government's will.

Wenar also proposes the lowest Freedom House rating of 7 as a minimum threshold to establish that a country definitely fails to meet his conditions (Wenar 2008: 24-5). In order to test the strength of these conditions, the following analysis focuses on their potential satisfaction in countries that exceed this minimum standard, i.e. those with a Freedom House score above 7. This includes countries like Libya, Nigeria and the Democratic Republic of Congo (Freedom House 2018: 1226), which have all previously been mentioned by Wenar (2016) as states, which illegitimately sell natural resources.

The first and third conditions do not provide sufficient benchmarks to clearly differentiate between countries that satisfy the conditions and countries that do not. The first condition requires that the citizens receive "reliable general information" regarding the resource sales conducted by the government (Wenar 2008: 21). Although a requirement of access to information does seem necessary, Wenar does not include a criterion against which the quality of the information provided could be assessed. We could then imagine a resource-rich country establishing mechanisms to publicly verify the information it provides while still withholding crucial details from the people. In this case, the state would still be providing 'reliable' and 'general' information. However, one could plausibly object that this country is not properly disclosing of all relevant information. In order to ensure they are voluntarily authorizing the sales, Wenar's third condition requires that citizens be independent from the government's will to "some minimal extent" (Wenar 2008: 21). He enumerates the types of dependence that could be exhibited, such as brainwashing (Wenar 2008: 21), but he does not illustrate the point at which dependence turns into minimal independence. A definition of the latter is crucial in order to clarify what is expected of the resource-cursed country. Without proper frameworks for assessing the information provided by the state and the citizens' level of independence from the state, Wenar's conditions cannot systematically and infallibly ensure an environment in which the people can knowingly and willingly authorize the states' sales.

The second condition necessitates that the citizens be able to "peacefully express dissent" (Wenar 2008: 21) to the sale of their national resources "without justified fear of major harms" (Wenar 2016: 228). The government must allow and acknowledge their dissent but, in order to satisfy the condition, it seems as though any kind of dissent is acceptable. In

other words, Wenar does not include whether the dissent must be independent from any coercion, influence or limit from the state. The ability to peacefully dissent is enough for the satisfaction of this condition. A lack of requirements on dissent can be dangerous since Wenar's proposal addresses corrupt and authoritarian governments (Wenar 2013). These repressive state structures are inherently averse to dissent. As such, a vague second condition could incentivise such states to set up ad-hoc formal and informal platforms allowing citizens to peacefully dissent but only to a limited extent under monitored conditions. They would then be able to satisfy the second condition without substantially empowering the voices of their citizens. In response, Wenar could argue that the conjunction of this condition with the third one would prevent such scenarios of dependent dissent. This is true. However, as seen earlier, it is difficult to rightly verify the satisfaction of Wenar's third minimal condition. Thus such scenarios are not completely avoided. Wenar's second condition would benefit from clearer guidelines as to what kind of dissent is required from the state.

Since the satisfaction of the conditions could plausibly lead to illegitimate sales, it seems as though they are not currently jointly sufficient. Nonetheless, where the minimal conditions fail to meet Wenar's desired aim, the enforcement mechanisms he develops could potentially strengthen his proposal.

### **3. An Unrealistic and Inefficient International Mechanism: the Clean Hands Trust**

Wenar (2008: 25-31) establishes national and international mechanisms aimed to enforce property rights against illegitimate sales. I focus on the trust-and-tariff mechanism which he coins *The Clean Hands Trust* (Wenar 2008: 28-31). This Trust is meant to keep the proceeds of antitheft tariffs imposed on non-complying countries that are still purchasing from the thieving states. By strengthening their property rights, he argues that the Trust benefits the citizens of resource-cursed countries in two ways. First, the Trust would weaken their corrupt and repressive states by affecting their trades (Wenar 2008: 30). Secondly, in order to gain access to the funds, the Trust would incentivise citizens to unite and overthrow their government (Wenar 2008: 29). In this section, I argue that Wenar's mechanism is unrealistic and inefficient in addressing the issues faced by the citizens of resource-cursed states. In addition to the Trust, Wenar (2011) develops the Clean Trade Act to legally penalise agents accepting such illegitimate sales. In my analysis, I only assess the strength of Wenar's Clean Hands Trust.

In his conception of the Trust, I contend that Wenar misjudges how the threatened state will react to the ban on trades. As mentioned earlier the countries targeted by Wenar's proposal are most often authoritarian. By taking away a proportion of their income, resource-cursed regimes are expected to push for more repression and control over their populations in order to secure their positions (Carey 2010). Drury and Peksen (2010) argue that the economic strain caused by sanctions is often strategically used by the state's leadership to strengthen repressive rule to the detriment of the opposition and the citizens. In his study of countries between 1981 and 2000, Peksen (2009) found that economic sanctions strongly contributed to an erosion of human rights in the targeted country. These findings suggest that Wenar's proposal would work to harm the population rather than empower it, as it incentivises the state to increase its grip on power. To present a recent example, in January 2019 the United States imposed sanctions on resource-cursed Venezuela by banning American firms from trading with the state-owned *Petróleos de Venezuela*. Instead of weakening president Maduro, who has been able to forcefully latch on to power despite months of protests (Keating 2019; Specia 2019), these sanctions have further exacerbated the Maduro-led

humanitarian crisis with shortages of food and medicine on the rise (Sullivan 2019; Sachs and Weisbrot 2019: 18).

Wenar's proposal indeed overlooks the economic repercussions endured by the population of resource-cursed states as a result of decreased resource trades. Although the government does receive most of the profits from its illegitimate sales, large parts of the population in these countries still depend on the resource industries. For example, four million people directly benefit from small-scale resource mining in the Republic of Sudan (Milicevic and Gayi 2015: 3). Blocking the trade of these national resources would also mean cutting off a significant source of the population's income. This would place a strain on their short-term livelihood, which is disregarded by Wenar in favour of the long-term benefits of respected property rights (Wenar 2008: 31). Where the governing elite may feasibly have contingency plans to partly mitigate the cut in resource income, the population does not have such luxuries, especially not in the short-term. How does Wenar expect weakened populations to revolt against their targeted, yet relatively empowered, governments? Wenar might argue that foreign funds will support the population. Nonetheless, he insists that the Trust will only be made available once a new "minimally decent" government is in place (Wenar 2008: 29). How are the people expected to survive in the meantime? This question is especially prevalent in cases where the incumbent's power is much stronger and more persistent than expected, as seen in the case of Venezuela. It is therefore fair to conclude that the acts of rebellion expected of the national citizenry will face practical difficulties.

Finally, the creation of a Trust does not endow the people of resource-cursed countries with long-term solutions and protection. Let us assume that the resource-cursed country receives the funds once the opposition forms a new government. The concern would then be in ensuring the funds are actually used in the people's interest. As the new government would still be operating within a cursed infrastructure, where a lack of transparency and accountability reign, there is no certainty that the funds would be used for their intended purpose. Wenar (2008) does require that the new government be "minimally decent" before receiving the funds. However, as discussed in the previous section, the satisfaction of the minimal conditions is difficult to verify. Thus it seems plausible that a government which is only 'minimally decent' on the surface would be able to satisfy the required conditions. It could then gain access to the Trust without the intention of using it entirely in the people's interest. Once again the state, rather than the people, would be empowered. Even if the funds were used exclusively in the interest of the people, Wenar's proposal does not prevent the new government from changing course and illegitimately selling resources in the future, despite a potential ban. This point highlights the fact that these aspects of Wenar's proposal do not structurally tackle the root of the problem because they do not efficiently address the political, social and economic weaknesses of the resource-cursed state. Consequently, the proposal does not equip the people with long-term tools to protect themselves from the Resource Curse. They still face the risk of exploitation by the new government, which brings us back to the initial problem.

#### **4. Conclusion**

In assessing parts of Wenar's proposal for banning trade with resource-cursed countries, I have argued that they fail to provide robust solutions to illegitimate sales of resources by repressive governments. Firstly, I explained why the minimal conditions he proposes are not currently able to legitimise sales, as they do not include exhaustive criteria that can prevent false positives. Providing infallible frameworks for these conditions would ensure that they become jointly sufficient. Secondly I addressed the Clean Hands Trust, an international mechanism Wenar develops to enforce property rights. I argued that this Trust is based on

unrealistic expectations of the resource-cursed government's reaction and its citizens' position. I added that, even if the Trust were to function as expected, the proposal does not efficiently address the structural weaknesses within the cursed country.

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