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**A PRINCIPLED REFORM OF INTERNATIONAL TRADE IN  
NATURAL RESOURCES**

***Assessing Professor Wenar’s Clean Trade Policy***

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*To my Beloved Mother  
and Role-model  
Elena*

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## ACKNOWLEDGMENTS

Since my first days in school, I have adopted a multidisciplinary approach to my studies, because this is how my mind naturally tends to work. I have never been good at focusing on a single subject for too long, therefore when the time came for me to enter the university, I managed to choose a major that would allow me to deal with subjects belonging to different domains: history, economics, law, philosophy, foreign languages.

Now this journey has come to an end, and I am extremely grateful to my supervisor, Professor Marcello Di Paola, for giving me the opportunity to write a final dissertation that follows that spirit. Most importantly, I would like to thank him for the patience, the support, and the encouragement he has shown along the hard times I have been facing during the production of this work.

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## INTRODUCTION

When I proposed to my supervisor that the topic of the dissertation would be the *resource curse*, he wisely suggested me to read the latest work by one of today's leading political philosophers Leif Wenar: "*Blood Oil: Tyrants, Violence, and the Rules that Run the World*"<sup>1</sup>. It turned out to be a monumental book that combines ethics, economics, history and international law in an unprecedented way to provide a *Clean Trade* strategy that links the reform of the current rules governing the international trade in natural resources to the broader goal of realizing a more peaceful and more just world. Buying natural resources from whoever can control them by force, means sending money to unaccountable actors and incentivizing authoritarianism, corruption, civil wars and economic instability. Western governments should instead support public accountability in resource-exporting countries, implementing *Clean Trade* policies that enhance citizen control over their natural resources. I have to admit that building a critical analysis has been a challenging task that took me several readings. This book is so well written, carefully underpinned by a solid amount of qualitative and quantitative data, it addresses the topic from every angle the reader can think of, and even engages in auto-criticism! Most importantly, *Blood Oil* shows a strong and passionate commitment to the cause through every word: turning the last page, the reader cannot help but looking at the world under a new light, realizing how deeply complicit we are in the perpetuation of injustice abroad, and feeling the urgency to do something to support *Clean Trade*. Nonetheless, I have thought it through and collected my remarks about Professor Wenar's project. They are meant as a humble contribution to the discussion about a topic that can no longer stay out of the international political agenda.

We all have beliefs, values and principles that we try to live by in our daily lives: some of them have been passed onto us by our family when we were kids, others we have autonomously discovered and embraced once become adult and independent individuals that are part of a bigger society. This moral compass is the link between who we are, here and now, and who we ought to be; it is what connects our factual world to the ideal world we strive for. Nonetheless, as it happens to all of us, perhaps more times than we are willing to admit, the mere sensing a moral obligation does not always lead us to act accordingly. *Should*

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<sup>1</sup> Wenar 2016.

does not always translate into *do*, mostly because of the natural tendency of individuals to act in favor of their own interests. When this situation occurs, though, determining the nature of the *obligation* that we have breached is crucial in order to assess the consequences we might face.

A *just* behavior can be required by moral principles but also by law. Hence, it is the source of justice that determines whether we can be coerced to fix our wrongful action or not, and most importantly, whether those who have been hurt by our misbehavior are lawfully entitled to claim a redress. It is not always easy to define the realm we are in, though: legal norms often derive from the attempt of shaping abstract moral principles into concrete requirements that apply to real situations.

We have been living in the era of the so-called *globalization* for a while now, and we have grown accustomed to be interconnected and interdependent with people all over the world. Social relations of any kind (political, financial, commercial, and so on) are stretched across the globe, thus amplifying and speeding up the impact of every activity worldwide. The consequences of our actions reach individuals and groups well beyond our national borders. Given this scenario, what do we owe to those who are far away from us, as a matter of justice? Is a person from Nigeria in the same relationship with an American as two Americans are between them? Can the French government be held accountable to the people of Equatorial Guinea as it can be to the people of France? Face to a behavior that has damaged an individual, a group, or even an entire People beyond our national border, we have the *intuitive belief* that we should redress that wrong; but at what point, if at all, our moral compassion turns into something we *owe* as a lawful claim of justice by those who have been hurt? Whether we see ourselves as *primarily* members of a state or of the global society determines the nature and the extent of our obligation towards other persons, be them fellow citizens or foreigners. To answer those questions, we should define what justice *is* (whether it is a moral or a political concept), hence what justice *demand*s (moral or legal obligation). Only recently has the debate over global justice gained academic attention in political philosophy<sup>2</sup>. Mostly solicited by the speeding pace of globalization that has enhanced interconnection and interdependence not only among states but among individuals *per se*, political philosophy has tried to respond to this challenge by adapting on a global scale concepts and theories of justice usually conceived to apply within nation-states that are

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<sup>2</sup> Nagel 2005

endowed with institutions that enforce justice (with a political connotation, evidently). The main prescriptive views on global justice I will deal with throughout this work are, in general terms, statism and cosmopolitanism.

Implementing a *Clean Trade* system would constrain our own habits that up until today have been harming others, and it would be up to the implementing countries to bear the costs of change. Why should this new framework for trading natural resources be preferable to the status quo? What is its ultimate moral justification? Last but not least, is this proposal of reform feasible?

This work is divided in three parts. In the first part I will describe the phenomenon of the so-called *resource curse*: the paradox by which countries that are endowed with vast deposits of natural resources are often poorer and politically more unstable than comparable states that do not have that kind of endowment.<sup>3</sup> The causes and the effects of this paradox will be outlined with the support of case studies. This passage will help us in the task of comparing the current way of trading natural resources, based on the principle of *effectiveness*, with the proposal of reform advanced by Professor Leif Wenar: the *Clean Trade* framework, based on the principle of *popular sovereignty over natural resources*.

The second part will revolve around the moral questions I have presented above. Once having exposed how we are involved in the current harmful way of trading natural resources, and how we can bring about a real, positive change, it is due to explain why we ought to do that. Theories and paradigms formulated by eminent scholars of political philosophy will be compared and applied to those issues, and will result in very different answers as to what we are demanded to do (if at all) to deal with the *resource curse*. I argue that, by failing to engage in such an analysis, *Blood Oil* remains an inspiring masterpiece of moral suasion, a passionate plea for change that appeals to ethically indisputable assumptions, but whose realization ultimately depends on a voluntary, selfless and non-rational decision, both by consumers and governments. This *impasse* may be overcome if we shift the focus of our analysis from what are our duties towards distant others, to what are our duties towards ourselves.

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<sup>3</sup> The analysis will mainly focus on oil, but similar conclusions apply to other kinds of natural resources, such as: minerals, logging, gas, metals, gems and diamonds.

The third part of this thesis aims at assessing the feasibility of the *Clean Trade* framework against the current tangle of international trade regimes, international law, and international relations. Professor Wenar is not interested in doing “political philosophy without politics”<sup>4</sup>, nor in describing an ideally perfect world. His aim is to deal with the real, *perfectible* world we live in, as he makes clear in stating that “what is crucial is that we attend to the world as it is now”<sup>5</sup>. The reforms that he outlines in his work are morally admirable and thoroughly conceived, but they are demanding, first and foremost from us, the importing countries. A lot is at stake since, to paraphrase the subtitle of Wenar’s book, oil literally “runs the world”. What Wenar outlines is not only the next great moral revolution in the history of humanity after the end of slavery, of the colonial empires, or of the apartheid regime.<sup>6</sup> Banning the imports of oil and other natural resources from countries that lack a publicly accountable government, and taxing the imports of goods coming from intermediate countries that keep doing business with authoritarian leaders, is a policy likely to have a huge, disrupting effect on the stability of the international system: it touches upon global economy, political alliances, and international energy routes. It is exactly because “we do not live at a high level of abstraction”<sup>7</sup> that we have to assess whether *Clean Trade* is a practicable reform today.

Finally, I will briefly sum up the content of the analysis to conclude that Professor Wenar has provided us with a stimulating proposal that absolutely has to be taken into account as a starting point to bring about the world’s next great moral revolution. There is still room for improvement: changes in our political, economic and social habits are indispensable. But first and foremost, to make *Clean Trade* work, changes are needed in the perspective of our morality.

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<sup>4</sup> Wenar 2016, 353.

<sup>5</sup> *Ibidem*, 346.

<sup>6</sup> *Ibidem*, 260.

<sup>7</sup> *Ibidem*, 362.

# **PART I**

## **Reforming International Trade in Natural Resources**

## CHAPTER ONE

### ENDING THE RESOURCE CURSE

#### Introduction

Most of the goods we own and consume are the combination of single components coming from all over the world. The global economy, or as Wenar defines it, “the worldwide web of supply chains that turns the raw into the wanted”<sup>8</sup> is one of the distinctive features of our time, and it has been literally running on oil for decades now. Oil has been used, together with other fossil fuels such as coal and gas, not only as an energy source for transportation, but also to produce chemicals that end up in material goods that we use on a daily basis: plastic, to begin with, and then almost everything that is synthetic, including soaps, make-up, fabrics, and toys. The International Energy Agency estimates that every day the worldwide demand for oil reaches nearly 96 million barrels, which means more than 35 billion barrels per year. What is more, the latest Oil Market Report, issued in 2016, foresees demand crossing the 100 million barrels per day threshold by the end of its five-year outlook period.<sup>9</sup> What is interesting in this matter is that more than half of the world oil consumption is ascribable to countries that are not oil producers.<sup>10</sup> But then again, what is even more interesting is that most of those countries that do produce and export oil, are also the cradle of civil conflicts, authoritarianism, poverty, corruption, economic instability, and other worrisome conditions. This paradoxical situation whereby some states, despite being abundantly endowed with highly valuable natural resources, are afflicted by those negative features, has been called by social scientists the “resource curse”. Some scholars have focused their attention on the political aspects of this phenomenon, while others have privileged its economic side.<sup>11</sup> What all of those studies have in common is that they focus on the conditions of the resource-endowed countries. What makes *Blood Oil* stand out

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<sup>8</sup> Wenar 2016, xi.

<sup>9</sup> International Energy Agency statistics, available at <https://www.iea.org/about/faqs/oil/>

<sup>10</sup> The top ten oil importers are United States, China, India, Japan, South Korea, Nepal, Germany, Spain, Italy and France. Source: CIA World Factbook, country comparison – crude oil imports, available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2243rank.html>. Although it should be noted that the recent boost in domestic shale and gas production in the United States is likely to sensibly affect the volume of US imports.

<sup>11</sup> For an overview of the political aspects of the resource curse, see Ross 2014. For the economic aspects, Frankel 2012.

among all other perspectives on this matter is that it focuses on “our” share of the curse, and not just from an empirical point of view.

### **The Political Economy of the Curse of Natural Resources**

Sachs and Warner describe “the curse of natural resources” as the observation that countries rich in natural resources tend to perform badly, compared to resource-poor countries.<sup>12</sup> Studying the economies of Latin American countries in the post-World War II period and then of the Oil States of the Gulf from 1970s, they have found that none of those countries had experienced a rapid economic growth. Quite the opposite, researches have shown that many economies based on oil, minerals and logging have experienced a substantial deceleration in growth during that period, while displaying high levels of economic and social inequalities and weak institutional capacity. This finding has not been easily welcomed at first, because the general impression for longtime has been that most of the currently rich countries had a successful development exactly by virtue of their natural resource endowment.<sup>13</sup> The best-known example of such success is the industrial revolution occurred in the United Kingdom in the eighteenth century powered by coal and steel, followed by the United States with its abundance in oil, minerals, and other valuable natural resources. As a matter of fact, countries that rely on extracting economies are not always “cursed”. One can name Canada, or Norway as successful examples of extractive economies associated with high levels of political stability and economic development. What makes the difference, then, in making natural resources a blessing rather than a curse?<sup>14</sup> Auty argues that the level of natural resource abundance is not relevant for the economic growth of a country, but instead suggests that there are four conditions that are necessary for natural resources to allow sustained, rapid and equitable development: relatively equitable access to land and primary education; effective markets and public accountability; an open trade policy; and competitive economic diversification to give resilience to shocks.<sup>15</sup> The criteria of economic diversification seems to be especially important: for example, while the United States rely on oil and gas only in the amount of 2% of its total GDP,<sup>16</sup> in a country like

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<sup>12</sup> Sachs and Warner 2001.

<sup>13</sup> Habakkuk 1962.

<sup>14</sup> Stiglitz 2012.

<sup>15</sup> Auty 2001.

<sup>16</sup> Data from the US Bureau of Economic Analysis, 2017. [https://www.bea.gov/industry/gdpbyind\\_data.htm](https://www.bea.gov/industry/gdpbyind_data.htm)

Saudi Arabia the petroleum sector accounts for 87% of budget revenues, 42% of GDP and 90% of export earnings.<sup>17</sup> The structure of the economy of countries that rely so heavily on resource-revenues changes accordingly: other sectors such as agriculture and manufacturing experience sensitive reduction because of the large inflow of revenues that the country receives from selling its natural resources. This makes the country's exchange rate to appreciate, while a strong currency harms the exports of more traditional sectors, since foreign food and manufactured goods become cheaper. This phenomenon has been called Dutch Disease, from the steep decrease experienced by the Netherlands in its manufacturing and agricultural exports since the late 1950s, following the discovery of large natural gas fields.<sup>18</sup> But having a resource-dependent economy does not necessarily imply for that country to be poor. Qatar's GDP per capita is the second highest in the world, while that of the Democratic Republic of the Congo is the third to last in the world ranking and corresponds to less than half a percent of Qatar's.<sup>19</sup> What constitutes the common denominator then is that none of features highlighted by Auty are present (in relevant levels) in resource-cursed countries. Other scholars have stressed that what might cause the resource curse is the physical characteristics of those resources: oil, minerals and plantation crops are called point-source natural resources because they are extracted from a narrow geographic base that is easily controllable.<sup>20</sup> Since those resources can be extracted from few easily controlled points, they incentivize rentier behaviors from those who succeed in seizing them.<sup>21</sup> Being rent an unearned income, by definition, a rentier state with a predominantly extractive economy is one that receives a relevant amount of funds from selling those resources to foreigners and then use those resource to maintain its grip on political power. Ross highlighted that governments that can rely on resource revenues have less need to tax their citizens, and without taxation state institutions can avoid creating mechanisms of accountability through which the population can check and sanction their work.<sup>22</sup>

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<sup>17</sup> CIA World Factbook, Country Profile: Saudi Arabia, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sa.html>

<sup>18</sup> Sachs and Warner 2001. In economics the phenomenon of Dutch Disease is more commonly described as crowding-out, whereby a positive wealth shock in a certain sector (in this case, the extractive sector) makes prices – including wages of that sector's workers – increase and accordingly squeezes the profits of other sectors, that become less and less relevant in the country's economic outlook.

<sup>19</sup> Cia World Factbook, Country Comparison: GDP Per Capita. Available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>

<sup>20</sup> Isham et al. 2005. Auty 2001 follows a similar argument when speaking of "predatory political state".

<sup>21</sup> Kolstad and Wiig 2009.

<sup>22</sup> Ross 2001.

Furthermore, with those revenues the state can also proceed with the outright repression of any internal dissent. That is why today we find that one of the most valuable commodity, oil, is easily associated with countries that are ruled by dictators and authoritarians, and are often the stage of bloody civil wars.<sup>23</sup> It is clearer today that whether natural resource abundance constitutes a blessing or a curse depends upon the quality of the institutions of a country: namely, whether democratic institutions are established and strong *before* the discovery of high-revenue natural resources.<sup>24</sup> Wenar provides the example of Norway: a resource-dependent country, leading oil producer and world's third largest gas exporter, and a nation with the highest social capital in the world.<sup>25</sup> Moreover, the Norwegian government uses its oil-wealth funds to provide its citizens with health, education, security, and other welfare-state goods. This in line with Stiglitz's warning that if resource-rich nations "do not reinvest their resource wealth into productive investments above ground, they are actually becoming poorer".<sup>26</sup> The most important thing is that Norwegian people enjoy the highest scores in civil liberties and political rights, as attested by the Freedom in the World Report.<sup>27</sup> They enjoy free press, an independent judiciary, and state institutions are tightly constrained by the rule of law. Simply put, the government of Norway is fully accountable to the Norwegian people. This is not the case in most of the countries hit by the resource curse.

### **The External Supply of Money... for Many Sides**

In one of his most famous works, Joseph Schumpeter has pointed out the link between political power and finances within representative political orders.<sup>28</sup> Citizens pay taxes to the executive power, who in turn is checked by the legislative power constituted by the representatives of the citizens. When the government of a democratic country has to decide the level of its annual budget and the composition of that budget, that decision has to be approved by law. It is the logic underlying Parliaments' power of the purse over the decisions

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<sup>23</sup> Ibidem.

<sup>24</sup> Robinson et al. 2006.

<sup>25</sup> Wenar 2016, pp.11-14.

<sup>26</sup> Stiglitz 2012.

<sup>27</sup> Freedom in the World Report 2018, available at <https://freedomhouse.org/report/freedom-world/freedom-world-2018>. Freedom in the World is the annual report on the state of democracy in the world, produced by Freedom House, an independent organization advocating for the expansion of freedoms and democracy at the global level.

<sup>28</sup> Schumpeter 1991.

of the executive.<sup>29</sup> This democratic constraint disappears when the political power finds supplies of money that are external to its citizenry's taxation. Wenar points out that resource rents go into dictators' private pockets via the global transactions that occur in the international market where natural resources are sold:

“Today, global resource markets supply foreign-source funds that enable autocrats to maintain themselves in power instead of accepting limitations on their rules.” And since “they depend less on taxation”, they can “roll back representation”.<sup>30</sup>

Resource rents are preferable to democratic taxation because political accountability is too slow and potentially destabilizing a process to accomplish the main goal of all authoritarians: stay in power. As Ross has shown, states that enjoy large inflows of oil revenues have rarely succeeded in transitioning to democracy: indeed, most of the world's autocratic regimes today are oil-exporting states.<sup>31</sup> This nexus is so evident today that a scholar has even translated it into “The First Law of Petropolitics”, stating that the price of oil and the pace of freedom always move in opposite directions.<sup>32</sup>

Accordingly, Wenar highlights that most autocrats enjoying large resource revenues' inflows, will imply mixed strategies to stay in power while avoiding accountability. The first strategy is coercion; indeed rent-addicted regimes are those who score the lowest on Freedom House ratings on civil and political liberties, including freedom of speech, freedom of press and freedom to assemble.<sup>33</sup> They usually suppress domestic dissent with violence, or in alternative try to prevent dissent by building clientelistic links by making citizens subservient to the regime's institutions.<sup>34</sup> Since to keep resource-revenues private the regime relies on foreign extractive companies, local population might experiences high levels of unemployment which in turn could spark destabilizing protests and even social revolts against the regime. But by hiring those unemployed within states' institutions and public offices, chiefly in the military, citizens become part of a “pyramid of relations of subordination, where patronage flows downward and political loyalty flows upward”.<sup>35</sup> This

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<sup>29</sup> Prichard et al. 2014.

<sup>30</sup> Wenar 2016, 19.

<sup>31</sup> Ross 2012.

<sup>32</sup> Friedman 2006.

<sup>33</sup> Cfr. Supra 27.

<sup>34</sup> Robinson and Verdier 2013.

<sup>35</sup> Wenar 2016, 34.

hierarchical structure of public relations also incentivize corruption: this can be inferred by the fact that the most corrupted countries in the world are also those who most rely on resource revenues to cover their national budgets.<sup>36</sup> This picture however does not have to suggest the idea that all resource-dependent states are poor or that the citizens living in all resource-cursed countries enjoy daily violence. Wenar indeed distinguishes high-rent regimes, such as Qatar, which spend large sums of their resource rent in public goods for patronizing over the citizens; and low-rent regimes, such as the Democratic Republic of Congo, where citizens basically live in poverty and receive almost no public goods from the regime. We have already seen the figures associated to the respective GDP per capita of these two countries, and those different numbers ought to reveal the fact that “while resource-disordered countries have rich regimes and weak peoples, they do not all have rich regimes and poor peoples”.<sup>37</sup> Indeed, in the low-rent countries, a good way for citizens to make their own money is to violently seize natural resources and sell them on the black market. This can in turn spark civil conflict, as different militias fight one-another to control the spots where more natural resources are. For example, a study by Le Billon has reported that natural resources make conflicts likely to last longer and be more violent.<sup>38</sup> This is especially true when natural resources are located far from the head-quarter of the political power and therefore more out of reach to the regime. In the case of Angolan civil conflict, lasted from mid-1970s to early 2000s, while the central government controlled the oil fields that were based on the coast of the country, the insurgents controlled the countryside diamond fields: as a result, both sides had their own resources from which deriving revenues to keep fighting.<sup>39</sup> This is true also for the more recent conflict that broke out in 2014 among Iraqi, Kurdish and militias of the terrorist group ISIS, all of them financed by the smuggling of oil from the areas under the respective control.<sup>40</sup>

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<sup>36</sup> See Transparency International’s Corruption Perception Index, available at [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016). The report has found that clean countries are far outnumbered by the number of countries where corruption is almost a governance method. Among the most corrupt countries are Equatorial Guinea, Libya, Russia and Saudi Arabia. Alarming enough, the report highlights that even in countries where anti-corruption laws are in place, they are actually disregarded with impunity.

<sup>37</sup> Wenar 2016, 43.

<sup>38</sup> Le Billon 2012.

<sup>39</sup> Le Billon 2007.

<sup>40</sup> See for example the article by Robert Kennedy about the oil-fueled war in Syria, available at <https://www.ecowatch.com/syria-another-pipeline-war-1882180532.html>; and the report by Financial

What connects the behavior of authoritarian regimes and of insurgent militias in resource-cursed countries, is that both get the revenues that keep them in power from selling the country's natural resources. To whom? The basic law of economics is that to an offer corresponds a demand, and that demand comes to a great extent from "the free world", or as Wenar says, "we in the West".<sup>41</sup>

### **The Anti-market Rule of "Might Makes Right"**

From a market perspective, the resource curse derives from "a flaw in the enforcement of property rights".<sup>42</sup> What Wenar means, with this sentence, is that the current international trade in natural resources is based on the recognition and legitimization of physical possession rather than on legal property, through an outdated rule called "might makes right". Might is a synonymous for power, force. Right is a synonymous for legal entitlement. This rule says that "whoever can maintain physical control over a country's territory by any means gains the legal right to sell off the territory's resources".<sup>43</sup> Wenar derives this rule directly from a law existing in the pre-modern international community, a law that was valid not only for resources but for all international affairs: the leader who managed to gain military control over a territory, was recognized by other leaders as having the legal right to rule that territory as he pleased, including abusing or neglecting the inhabitants of the territory or sell them to another leader as part of territorial transactions. After World War II, all of this has changed. The modern international law, starting with the 1948 Universal Declaration of Human Rights, is based on the protection of individual and collective human rights, especially against the forceful violations committed by the political leaders, who can no longer dismiss the outsiders' intervention as an illegitimate interference in their country's internal affairs.<sup>44</sup> Yet, if the idea of the state's unlimited coercive authority over its people has been outlawed, as far as the state's natural resources are concerned the international trade system still is set on the principle of might makes right; that is, the principle that whoever physically controls the resources of a territory, is recognized as legally entitled to sell them and receive the money deriving from that transaction. That is why Wenar uses as

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Times about ISIS making revenues from the international smuggling of oil, available at <https://ig.ft.com/sites/2015/isis-oil/>

<sup>41</sup> Wenar 2016, xxviii.

<sup>42</sup> Ibidem, 72.

<sup>43</sup> Ibidem.

<sup>44</sup> Beitz 2009.

synonymous of might makes right the word “effectiveness”:<sup>45</sup> because the current system of international trade rewards those who are strong enough to exercise “effective” control, hence physical possession, on the resources. It is through this non-written and archaic rule that authoritarians, militias and warlords are incentivized to seize power, because they know that once in power they will get the money prize that comes by selling natural resources in the international market. What we begin to understand here is that all the negative features that we have previously seen as components of the resource curse, are not part of its origins, but instead the consequences. Dictatorship, corruption, civil wars, are fueled by the desire to capture the foreign cash that flows in the hands of whoever sells natural resources. The worst part of this scenario is that these negative incentives are created by the silent decision of resource-importing countries to engage in commercial transactions with whoever effectively controls the resources, by whatever means.

As a matter of fact, it is up to each country’s authority to regulate property rights within its own legal order, and this does not only involve property transactions made by citizens of the regulating country within that country’s national borders, but also the rights and duties of foreigners buying, using and selling property within the regulating country’s national borders, and the rights and duties of citizens of the regulating country that make property transactions outside the country’s national borders. These are what Wenar names the “Us-Here”, “Them-Here” and “Us-There” decisions, and together they let the regulating national authority decide what legal rights a national citizen “will have with respect to buying anything, anywhere in the world.”<sup>46</sup> But this also implies that property rights are primarily regulated at the national level, by national laws, even as far as international transactions are concerned. What is crucial to the topic of the resource curse, then, is that it is the political authority of each resource-importing country that states whom its citizens, firms and companies can engage in international transactions with.

For example, Liberia’s former President Charles Taylor, currently serving a fifty-year sentence for international war crimes and other gross violations committed in support of the Revolutionary United Front (RUF) during the civil conflict in Sierra Leone<sup>47</sup>, during his

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<sup>45</sup> Wenar 2016, 76.

<sup>46</sup> Ibidem, 106.

<sup>47</sup> Farah 2004 exposes how Charles Taylor obtained the infamous “blood diamonds” – used by RUF to fund their military activities and buy weapons during Sierra Leone’s civil war – from RUF and then passed some of those diamonds to the terrorist organization Al-Qaeda.

long-lasting presidency passed the “Strategic Commodity Act” that codified and made law his personal control over all of Liberia’s national resources.<sup>48</sup> Accordingly, the only person legally entitled to sell Liberia’s natural resources, domestically and internationally, was Charles Taylor. But this Liberian law that conferred to Taylor the right to sell, constituted only half of a potential commercial transaction. The other half, we have seen it, ought to be constituted by a foreign decision, taken by the potential resource-importing country, to authorize citizens and firms of the resource-importing country to buy those resources from Taylor, thus recognizing him as a legitimate vendor. Countries that made such choice were, among others, France, Italy and Turkey.<sup>49</sup> The fact that Taylor chose to enact a law to assign himself the absolute right to sell Liberia’s natural resources, ought not to lead to think that foreign importers give domestic legal effect only to authoritarian decisions that are adopted by law. For example, when Muammar Gaddafi’s authority over Libya was challenged by the rebels united under the name of Transitional National Council of Libya (TNC), during the 2011 Arab Spring, the United States decided to freeze all property of Libya’s Governments, thus preventing US corporations to buy Libyan oil from Gaddafi<sup>50</sup> while almost simultaneously authorizing transactions with the TNC with regards to oil, gas and petroleum products exported from Libya.<sup>51</sup> Nonetheless, when that authorization was issued, the United States had not yet recognized TNC as the new official and legitimate government of Libya, nor had the Libyan rebels issued any law that entitled them with the right to sell Libyan oil.<sup>52</sup> While accepting to trade on the rule of effectiveness seems to be the habit when it comes to buying and selling natural resources across international borders, it is the kind of commercial engagements rejecting that rule that seem to require special measures. The chief example is the Kimberley Process Certification Scheme for Rough Diamonds: it prohibits all parties of this Scheme from importing diamonds smuggled by actors involved in civil wars, since only diamonds certified by the country’s exporting governments are valid to be exported legally.<sup>53</sup>

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<sup>48</sup> On this, see Global Witness Report available at <https://www.globalwitness.org/sites/default/files/pdfs/taylormade2.pdf>

<sup>49</sup> On this, see Global Witness Report available at <https://www.globalpolicy.org/component/content/article/194/39175.html>

<sup>50</sup> United States Executive Order No. 13566 on Libyan Sanctions, available at <https://obamawhitehouse.archives.gov/the-press-office/2011/02/25/executive-order-13566-libya>

<sup>51</sup> United States Treasury Department General License No. 5, available at [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/libya2\\_gl5.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/libya2_gl5.pdf)

<sup>52</sup> <http://edition.cnn.com/2011/US/06/08/libya.rebels.oil/index.html>

<sup>53</sup> The Kimberley Process was promoted and inspired by the action of Southern-African diamond-producing states, who met in Kimberley, South Africa, in mid-2000 to discuss ways to stop trade in “conflict diamonds”:

The Kimberley Process is open to all countries that are willing to join the initiative, and currently gathers fifty-four participants representing eighty-one countries, with the European Union counting as a single participant under representation of the European Commission. Today, members of the Kimberley Process account for almost 99% of the global production of rough diamonds.<sup>54</sup>

The real question to ask, then, is why the preeminence of effectiveness is the default state of affairs for international trade in natural resources, while its rejection seems to be exceptional. As to Wenar, the simplest answer to this dilemma is that “national leaders choose effectiveness in response to their citizens’ relentless demands for natural resources and the products made from them”.<sup>55</sup> Since natural resources, as material components of final goods or as inputs for other productive processes are fundamental to sustain the global economy and the consumption habits of the world’s most developed economies, securing those imports at whatever costs seem to be the rational and obliged thing to do for national leaders of resource-consuming countries. As we will see further on this work, national politicians seem to have no choice but to dirt their hands to satisfy the energy and material needs of the communities they govern. After all, a government that would fail in satisfying those demands would simply be replaced by another at the successive elections. Therefore, to remain in power, democratic leaders in particular have to accept this system based on effectiveness.<sup>56</sup> Thomas Pogge has argued that effectiveness is indeed a neocolonial policy allowing the most developed countries to keep profiting from the natural endowments of the world’s most resource-rich spots but without bearing the costs of governing them directly.<sup>57</sup> But this also means that it is the economic and political choices made by national leaders of importing countries that drive the resource-curse abroad and allow it to taint their own domestic systems. This state of affairs, that seems to constitute the natural way commercial relations are meant to be, reveal to be instead the fruit of voluntary choices when governments decide,

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diamond purchases that were proven to be funding violence by rebel movements and their allies against national legitimate governments. By 2002, the negotiations between governments, diamond producing companies and civil society resulted in the Kimberley Process Certification Scheme document setting out the requirements for diamonds to be produced and traded legally. It entered into force in 2003, with its implementation by participating members.

<sup>54</sup> See <https://www.kimberleyprocess.com/>

<sup>55</sup> Wenar 2016, 115.

<sup>56</sup> This point is relevant and will be dealt with more in detail further on this work, when we will try to analyze the nature of resource-importing country’s duty to stop trading with unaccountable resource-exporters.

<sup>57</sup> Pogge 2008.

as they did in the Kimberley Process case, to act differently: to impose sanctions instead of engaging with a dictators, to close their domestic market to foreign petrocrats instead of allowing them to invest their fortunes within the importing-countries, and so on.

### **Popular Sovereignty over Natural Resources**

If “might makes right” is a rule expressing outdated principles of international law grounded in the unrestrained use power, the modern system international law from the end of World War II has been built around counter-powerful principles, protecting the rights of the ruled against the force of their rulers. As Pettit argues, these anti-powerful norms have followed a process of entrenchment within the international system, through several stages: they formed, then spread, then have been enforced, and most importantly they have been internalized by the relevant actors involved.<sup>58</sup> The stage of internalization is the most important for the entrenchment of a counter-powerful norm, since it deals with the identity of the actor himself: he does not feel to violate that norm since that norms now defines his identity. Examples of successful entrenchments of counter-powerful norms are the rules ending colonialism, the humanitarian laws regulating the conduct of war, and the laws ending the apartheid regime based on racial discrimination. What all of these rules have in common is the idea that an authority has to be rightful. There are limits that the powers of the political authority cannot overcome, and those limits are set by the rights of the ruled, especially in their highest form: human rights protected by modern international law, born with the adoption of the United Nations Charter in 1945 and followed by the 1948 Universal Declaration of Human Rights. Human rights are meant to limit the powers of the political authority by setting boundaries to how that authority can be exercised.

In particular, Article 21, paragraph 3, of the Universal Declaration of Human Rights affirms the principle of Popular Sovereignty:

“The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”<sup>59</sup>

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<sup>58</sup> Pettit 1996.

<sup>59</sup> Universal Declaration of Human Rights, Article 21.3, full text available at <http://www.un.org/en/universal-declaration-human-rights/>

The principle of popular sovereignty, in a nutshell, gives the people of a country the right to rule their own country. This norm, in turn, derives from the principle of self-determination affirmed by the United Nations Charter in a moment where most of human beings on earth were subject to the rule of colonial empires.<sup>60</sup> Which means that the right to self-determination expressed by the United Nations Charter, and then clarified by the 1960 United Nations Declaration on Granting Independence to Colonial Countries and Peoples, was intended as an external self-determination: the rights of colonial peoples to resist foreign domination.<sup>61</sup> But strictly related to the movement to affirm the right to self-determination, is the still ongoing struggle to affirm the right to internal self-determination: the idea that people should not only independent from external power, but also exercise the ultimate authority over the decisions that regulate the internal organization of their country. As paradoxical as it may sound, this idea of internal self-determination is even more ancient than the external one. It has first been affirmed with the Declaration of the Rights of Man and of the Citizens during the French Revolution against the absolute power of the monarch:

“The principle of all sovereignty resides essentially in the nation. No body, no individual may exercise any authority that does not emanate expressly from the nation.”<sup>62</sup>

As Wenar points out, this idea has since been accepted and engraved in national constitutions: the wording “We the People”, indicating that the citizens of a country are the repository of the ultimate authority over their country, is the opening of several national constitutions and laws such as the United States, India, Japan, South Africa, South Sudan, Ireland, China, Algeria, Equatorial Guinea, Vietnam, Iraq, and many others.<sup>63</sup> Even group of countries gathered in international organization, first and foremost the United Nations and then ASEAN, have adopted the same wording.<sup>64</sup>

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<sup>60</sup> Charter of the United Nations, Preamble and Article 1, full text available at <http://www.un.org/en/sections/un-charter/un-charter-full-text/>

<sup>61</sup> United Nations Declaration on Granting Independence to Colonial Countries and Peoples, full text available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/1514\(XV\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1514(XV))

<sup>62</sup> Declaration of the Rights of Man and of the Citizen, Article 3, full text available at [http://avalon.law.yale.edu/18th\\_century/rightsof.asp](http://avalon.law.yale.edu/18th_century/rightsof.asp)

<sup>63</sup> Wenar 2016, Chapter 10, pp.167-189.

<sup>64</sup> Ibidem.

As part of the wider affirmation of the principle of popular sovereignty intended as internal-self-determination, and for what concerns us most, we find the principle of popular sovereignty over territorial natural resources. It is engraved in two fundamental international human rights treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations in 1966. Both of these covenants' Article 1 declares:

- “1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources.”<sup>65</sup>

These Covenants have been ratified by almost every nation, and therefore have the force of law within domestic legal orders.<sup>66</sup> Most importantly, these covenants make peoples' authority over the management of territorial natural resources a human right. This means that a country's government that carries out the daily management of the country's natural resources, does so by virtue of the authority that the country's citizens have conferred upon the government to accomplish that task. As argued by Cassese, it is not possible to separate the concept of external self-determination from that of internal self-determination, since the latter “requires that the people choose their legislators and political leaders free from any manipulation or undue influence from domestic authorities themselves... in short, there is no self-determination without democratic decision-making”.<sup>67</sup>

But even if popular sovereignty over natural resources is widely affirmed on paper, it is not in fact respected in all countries of the world. Indeed Cassese directly refers to the words of Article 1 of both 1966 Covenants to affirm that it has

“An impact in extreme situations where it is relatively easy to demonstrate that a government is exploiting the natural resources in the exclusive interest of a small

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<sup>65</sup> Article 1 of both the International Covenant on Civil and Political Rights, and of the International Covenant on Economic, Social, and Cultural Rights. Full texts available at <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> and [https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch\\_IV\\_03.pdf](https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf)

<sup>66</sup> Status of Signatures, Accession, and Ratifications: [https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en); [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&lang=en)

<sup>67</sup> Cassese 1995, 53-54.

segment of the population and is thereby disregarding the needs of the vast majority of its nationals. Similarly, it may be invoked ... where it is apparent that a government has surrendered control over its natural resources to another State or to foreign private corporations without ensuring that the people will be the primary beneficiaries of such arrangements. Either of these situations would constitute a clear violation of Article 1 of the Covenants.”<sup>68</sup>

The main issue here is that outsiders have no easy way to assess the status of internal self-determination of a sovereign state without risking to violate its external self-determination. At the global level, a state’s regime represents the country and engage in international relations on its behalf, while at the domestic level it enacts laws over which outsiders cannot have a say. So if a President like Charles Taylor assigns himself the right to sell all of Liberia’s natural resources, what can outsiders do if not comply with that sovereign law? How can outsiders tell that a government “is exploiting natural resources” in the interests of the few or has “surrendered the control” to foreigners?

### **Authorization and Consent**

What outsiders ought to look at, is the relation that links a country’s citizens to its regime: a relation that is based on ownership and authorization.<sup>69</sup> Citizens are vested with original property rights in their country’s resources, and by virtue of the originality of those rights they can “freely dispose of their natural wealth and resources”, which means also authorizing laws that delegate to their country’s regime to manage the natural resources on their behalf. But as Rousseau explains in its theory of the Social Contract, a people that permanently cedes law-making powers to the government would eventually deny its original sovereignty. This means that even if the citizens delegate the government with the daily management of the resources, they maintain the final authority capable to change the extent and the content of that delegation. The people is said to be the principal, while the government is the agent. As Wenar argues,

“The duty of a president (fiduciary) entrusted with a country’s natural resources is to manage the people’s resources for the benefit of the people (principal) – not for

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<sup>68</sup> Ibidem, 56.

<sup>69</sup> Wenar 2016, 222.

the benefit of the president. A president may not profit from being the manager of the people's resources without the people's approval, but instead must direct all revenues from resource transactions to the people ... unless the people approve otherwise."<sup>70</sup>

What is clear, then, is that for people to enjoy their sovereignty over natural resources they have to find themselves in conditions to authorize, in a valid way, the regime to manage those resources. Those conditions are summed up by Wenar as:

1. Information – citizens that do not have any information about how their government manages the resources, cannot possibly be authorizing that management.
2. Independence – citizens' authorization must not derive from psychological or physical violence.
3. Deliberation – citizens' authorization must stem from a public and private debate among them about the regime's resource policies, without fearing of incurring in major harms.
4. Dissent – citizens' must be able to express their dissent, alone or together, inside or outside of formal mechanisms, without the fear of risking severe costs; and that dissent must be effective, that is, capable of influencing the regime's resource policy.<sup>71</sup>

Note that among those conditions, nothing is said about the benefits or the quality of the outcomes that the regime's management of natural resources might give to the citizens. As we have seen before, even if we can distinguish between high-rent and low-rent regimes, and therefore between authoritarian countries where citizens enjoy better or worse standards of living and material well-being, the principle of popular sovereignty equally applies to both types of regimes. Even though people in high-rent regimes might receive benefits from the government's spending of oil revenues, if not authorized through the exercise of popular sovereignty those benefits are only a paternalistic imposition of the regime upon its population. This point will be analyzed more in detail later. For now, what is crucial to stress is that benefit and control are not synonymous from the perspective of the right to popular

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<sup>70</sup> Ibidem, 223.

<sup>71</sup> Ibidem, 227-228.

sovereignty over natural resources. The tools that citizens need to exercise their popular sovereignty over natural resources, and the tools outsiders ought to look at to assess whether a regime's decision about the country's natural resources is legitimate, are basic civil liberties and political rights: exactly those enlisted in all the major international treaties of human rights and that make a state's government accountable to its citizens. Today, half of the world's proven oil reserves are in countries that do not allow minimal civil liberties and political rights to their citizens: Algeria, Angola, Iran, Iraq, Kazakhstan, Qatar, Russia, Saudi Arabia, Venezuela, and the United Arab Emirates.<sup>72</sup> Absent those minimal conditions, a regime that exports natural resources is doing so illegitimately, by virtue of effectiveness. Therefore, those outsiders who accept to buy those resources are literally buying stolen resources and are complicit in violating the sovereignty of the people of the resource-exporting country. They are responsible of turning "might" into "right".

### **Wenar's Clean Trade Policy**

Countries that accept, enforce and believe in property rights and popular sovereignty (basically, in human rights and rule of law) ought not to trade natural resources with countries where those principles are not respected. Instead, they ought to disengage commercially from resource-exporting countries where state's authorities or effective rulers are not publicly accountable, while supporting public accountability in resource-exporting countries where that accountability is present but weak. That is Wenar's core message. To that end, he outlines a trade policy called *Clean Trade*, divided in two parts to deal with different levels of accountability in resource exporting countries.<sup>73</sup>

At this point it might be useful to make a brief premise. Wenar classifies resource-exporting countries following the rating proposed annually by Freedom House, a U.S.-based non-governmental organization that analyses, monitors and actively advocates for human rights and democratic freedoms in the world. The most important rating is the one called *Freedom in the World*, which measures the levels of political rights and civil liberties for each country.

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<sup>72</sup> OPEC Annual Statistical Bulletin 2017, available at [http://www.opec.org/opec\\_web/en/data\\_graphs/330.htm](http://www.opec.org/opec_web/en/data_graphs/330.htm); Freedom House Report *Freedom in the World* 2018 available at <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

<sup>73</sup> Wenar 2016, Chapters 16-17.

Countries can score, for each category, from 1 (meaning that the country is the most free) to 7 (meaning that the country is the least free.)<sup>74</sup>

## **1. Disengaging from Not-Free Countries**

Resource-importing countries ought to replace their current trade policies based on the rule of effectiveness with policies that respect the sovereignty of the people of the exporting-countries over their natural resources. To this aim, Wenar designs two policy tools: a Clean Trade Act, and a Clean Hands Trust.

### **1.1 Clean Trade Act**

In countries where civil liberties and political rights are utterly inexistent, as we have seen, citizens cannot possibly be authorizing or consenting to their regime's sales of the country's natural resources. Therefore, a *Clean Trade* country would have to pass a *Clean Trade Act* that makes illegal purchasing natural resources from disqualified countries and established sanctions to punish those who keep buying those resources or facilitate their import. A *Clean Trade Act* would also close all commercial and financial facilities within its domestic jurisdiction to a disqualified regime's members, militants, businesses and inward investments, and to any other resource vendor pertinent to the disqualified country's jurisdiction. Finally, all resource-controlling actors of the disqualified countries would be denied all judicial venues within the home jurisdiction of the *Clean Trade* enacting country. This means that any exporting-country's law or contract related to natural resources will be unenforceable by national tribunals of the *Clean Trade* country.

At the time of writing, resource-dependent countries rated as Not-Free are: Afghanistan, Algeria, Angola, Azerbaijan, Bahrain, Brunei, Cambodia, Cameroon, Chad, Democratic Republic of Congo, Equatorial Guinea, Iran, Iraq, Kazakhstan, Libya, Oman, Qatar, Russia, Saudi Arabia, South Sudan, Sudan, Syria, Turkmenistan, United Arab Emirates, Uzbekistan, Venezuela, Vietnam, Yemen and Zimbabwe.

In order to avoid potential political and economic shocks that a halt of oil imports from all of these countries overnight might produce, Wenar suggests a *Clean Trade* country could set a timetable for gradually diminish its share of imports from all of these countries, or even

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<sup>74</sup> In particular, Free Countries score from 1.0 to 2.5; Partly Free Countries score from 3.0 to 5.0; Not Free Countries score from 5.5 to 7.0. See Freedom House website, Methodology, available at <https://freedomhouse.org/report/methodology-freedom-world-2018>

starting by disengaging only from one “worst of the worst” regime while delaying other disqualifications up to later decisions.<sup>75</sup>

## 1.2 Clean Hands Trust

The rationale of a *Clean Trade Act* is to stop the direct complicity of the enacting country to the perpetuation of the resource curse. By disengaging commercially and financially from unaccountable resource vendors, a *Clean Trade* country will no longer send large amount of money directly in the pockets of distant petrocrats. But since Wenar envisages a framework to be enacted by each country individually, the risk is that some countries will decide to abandon effectiveness in favor of the respect of the principle of popular resource sovereignty, while others will keep doing business as usual. Therefore, by engaging in commercial transactions with non-*Clean Trade* countries, virtuous resource-importers would still be contributing indirectly to the resource-curse by buying “tainted” goods. As we will see in the third part of this work, this impasse constitute a collective action problem: in the absence of a supranational coordination, cooperative behaviors among states are difficult to grow spontaneously. As Wenar argues, *Clean Trade* countries “need to go beyond their own commercial disengagement to encourage their trade partners also to stop buying stolen resources.”<sup>76</sup> To this aim, another policy tool is designed to deprive third-parties of the economic gains that they derive from their ongoing obedience to effectiveness: it is the *Clean Hands Trust*.

The example describes an economic triangle between Equatorial Guinea (not-free, oil-exporting country), the United States (supposedly a *Clean Trade Act* enacting country), and China (non-*Clean Trade* country and commercial partner of both the U.S. and Equatorial Guinea). Due to the U.S. *Clean Trade Act*, Americans would no longer import oil sold by the Equatoguinean President Obiang, since he is not the legitimate vendor of his country’s resources. China instead would easily keep buying the oil sold by Obiang, and perhaps even in a greater amount than before since now Obiang has lost his former American client. China would then use that stolen oil as a factor of production within its economic system. The United States, buying Chinese goods, would then import indirectly on the American soil some of the Equatoguinean oil: as part of clothes, toys, electronics, and other Chinese-made

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<sup>75</sup> Wenar 2016, 286.

<sup>76</sup> Ibidem, 289. In the second part of the work we will discuss the nature of this “need” to go beyond one’s own disengagement.

exports. What the United States ought to do, then, to avoid even this indirect contribution to the resource curse, is to impose duties on Chinese imports to the United States. These duties should fill a bank account established by the U.S. government in favor of the people of Equatorial Guinea, up to the point where the amount of American duties on Chinese imports equate the monetary value of the Equatoguinean oil that China has bought from Obiang. By filling the *Trust* at each purchase of Chinese goods, American consumers would *clean* their *hands* to the amount of the duty in place that subtracts from the imports the value of Obiang's stolen oil. At the same time, China would incur in economic losses because the duties on its exports would damage the competitiveness of its products. Peking would thus feel disincentivized to keep doing business with Obiang, knowing that buying more Equatoguinean oil would just reward China with more American duties. The citizens of Equatoria Guinea, for their part, would be incentivized to replace the petrocrat Obiang, knowing that there is a bank account full of money that legitimately will be turned over to them whenever a more accountable government will be in charge. To accelerate this process and create more economic incentives for China to stop doing business with Equatorial Guinea, Wenar also suggests consumers boycotting major Chinese-made products, such as toys and clothing (albeit acknowledging that this would be a difficult task to carry out).<sup>77</sup>

## **2. Supporting Accountability in Partly-Free Countries**

Albeit bordering Equatorial Guinea, oil-exporting Nigeria does not display the same levels of democratic deficit. Nigeria is indeed classified as Partly Free by Freedom House this year, meaning that its citizens might have at least some kind of control over their natural resources. Even in this scenario, a *Clean Trade* country would change its own trade policies in order to encourage positive developments towards greater accountability in resource-exporting countries. The first tool of this second group of policies revolves around setting rules of engagement for *Clean Trade* countries' national companies working in Partly-Free countries. The second tool implies the design of responses to the evolving levels of public accountability in the resource-exporting countries. Wenar calls this second tool the "Public Power Spectrum".

### **2.1 Rules of Engagement**

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<sup>77</sup> Ibidem, 291.

A *Clean Trade* country Rules of Engagement are meant to hold all domestically listed oil and mining companies accountable to the same standards, be they national or foreign companies. Moreover, national companies operating abroad will be subject to the same standard of accountability as if they were to operate within the *Clean Trade* country's borders. Although each country is free to adopt whatever measure it deems more fitting to its own circumstances, Wenar signals broad areas where several initiatives are already in place and have a relevant membership. We have already seen resource validation initiatives such as the Kimberley Process. Other important initiatives are in the anti-corruption field. For example, the *Publish What You Pay* initiative supported by Oxfam and Transparency International encourages extractive firms to make their payments to foreign states public, so as to enable citizens to find out what deals in the natural resource trading sector their governments are making.<sup>78</sup> By the same token, the *Extractive Industries Transparency Initiative* is a voluntary scheme to which resource-rich states can adhere by accepting to make their resource revenues public.<sup>79</sup> Both of these initiatives help reducing the contribution of their members to the resource curse by enhancing transparency and accountability while punishing bribery and corruption. Other initiatives might target money-laundering and other fraudulent behaviors by oil companies and businessmen, for example by setting standards upon credit agencies that fund domestic extractive firms operating abroad. Finally, since 2006 the esteemed political theorist John Ruggie has been working to develop the UN Guiding Principles for Business and Human Rights, aimed at ensuring that corporations take responsibility for their direct and indirect impacts on human rights of the communities where they operate, also by providing remedies and redress for those who are harmed by their activities.<sup>80</sup> Those Guiding Principles on Business and Human Rights have been accepted and published by the UN Human Rights Council in 2011, and although they are not mandatory they nonetheless signal a special attention by an authoritative forum such as the United Nations to the issue.<sup>81</sup>

## 2.2 Public Power Spectrum

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<sup>78</sup> See *Publish What You Pay* website to learn more about their activities and successful campaigns: <http://www.publishwhatyoupay.org/>

<sup>79</sup> See *Extractive Industries Transparency Initiative* website: <https://eiti.org/>

<sup>80</sup> Ruggie 2006.

<sup>81</sup> Full text available at

[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

Whereas Rules of Engagement are meant to monitor and sanction the behavior of the enacting country's companies, both at home and abroad, what Wenar calls the Public Power Spectrum is a second policy tool that *Clean Trade* countries can adopt to support public accountability in resource-exporting countries that are rated as Partly-Free. Basically it constitutes a system of conditionalities that link the volume of commercial transaction between the two countries to the level of public accountability of the resource-exporting country's institutions. To engage in trade relations with a *Clean Trade* country, a resource-exporting state will have to comply with standards of accountability designed by the enacting country: for example, in terms of anti-corruption regulations, transparency initiatives, resource-certification schemes, and so on. The latter, in turn, will respond to the improvement or worsening of the levels of public accountability of the institutions and firms of the resource-exporting country by increasing or decreasing its foreign direct investments, the volume of foreign aid destined to that country, the establishment of cultural and educational exchanges, the freezing or unfreezing of public assets, and so on. Wenar also suggests two possibilities for structuring conditionalities: either setting different policies for different resource-extracting countries (depending on their initial level of public accountability) or establish a "club" gathering exporting countries and the *Clean Trade* country (or countries) and within which members peer-review each other and accountability can be exchanged with know-how, aid, or whatever it is collectively decided to be furthering the quest for public accountability the best.

## **Conclusion**

This chapter has exposed the causes and the effects related to the so-called resource curse: the paradoxical situation whereby the countries that are the most endowed with valuable natural resources happen to be at the same time the poorest, the most corrupt and instable states in the world. This condition presents both political and economic features, and *Blood Oil* has focused on exposing not only the endogenous factors but first and foremost the exogenous causes of the curse: that is to say, "our" contribution to its existence and perpetration. "Us" as opposed to "Them" refers to the wealthy, democratic, western world that still accepts to import natural resources based on the outdated Westphalian rule of effectiveness. This is an anti-market rule that literally makes us fund unaccountable power abroad, since the revenues of the resource trade are kept as private wealth by the authoritarian

leaders of the exporting countries. This is also a rule that violates one of the core principles of modern international law, namely: popular sovereignty. This is a counter-power norm that has been established, accepted, protected and enforced in almost any domain after World War II, both at the national and at the international level. Sadly, this principle is still not observed when it comes to trade in natural resources, since resource-cursed citizens are prevented from exercising their sovereignty over the natural resources of their territory. Professor Wenar has thus advanced his proposal for a *Clean Trade* approach to natural resources, ranging from the political to the economic and social realm to make us, in the West, stop being complicit in a practice that betrays our own laws and principles and creates negative externalities for everyone. Nonetheless, ending effectiveness through *Clean Trade* entails some costs on the enacting countries that can prompt resistance to its implementation. We will go through a practical feasibility assessment of this policy proposal in the third part of this work. But first, we will try to answer more simple, yet deep and necessary, questions: why should we bear those costs? What are they supposed to be paid for? And most importantly: whom do we have to bear those costs for? In the second part of this discussion, we will try to provide an answer.

**PART II**

**Global Justice**

## CHAPTER TWO

### THEIR CURSE

#### Introduction

The *Clean Trade* framework aims at ending the resource curse by substituting the current standard for international trade in natural resources – effectiveness – with the standard of popular sovereignty over natural resources. The implementation of this proposal entails costs that, from the standpoint of global justice, need to be justified. In justifying the costs, we will have to assess the responsibility of the agents who are supposed to bear those costs, and most importantly, assess how the costs are to be borne among the responsible agents. This is because the chances of realizing justice are often hindered by the agents' perception of being asked to do more than their "fair share."<sup>82</sup> In this chapter, after an account of the differences between domestic and global justice, I will present the two main approaches to global justice, namely cosmopolitanism and statism. I will show that neither of them is alone sufficient to comprehend and justify the balance of rights and duties linked to the resource curse, nor either one of them will be alone sufficient to justify without qualms the adoption of the *Clean Trade* proposal to tackle the resource curse. Nonetheless, the phenomenon of the resource curse is a complex problem of global justice that needs to be addressed. *Blood Oil* takes the debate at a higher level, not only by reaffirming the thesis that the resource curse is a matter of justice, but also by showing the fundamental role played by the importing countries in perpetrating and incentivizing the curse. The most important consequence is that, in doing so, it substantially shifts on them the burden of redressing the situation. Therefore, the *Clean Trade* perspective has distributive features, so it is important to assess on what basis, if at all, we can justify its adoption.

#### Domestic Distributive Justice and Global Distributive Justice

Political philosophers have traditionally studied the subject of justice within the domain of domestic political theory. Concerns over what obligations we have to one another, or what institutions have to be like in order to be considered just, have usually been analyzed within the horizon of the nation-state, seen as "the primary locus of political legitimacy and the

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<sup>82</sup> Singer 2009, 55.

pursuit of justice”.<sup>83</sup> However, contemporary trends like globalization, international political integration, worldwide economic interdependence and - unfortunately – rising levels of global poverty, have fostered a debate about the new concept of global justice. For the sake of analyzing this new phenomenon, contemporary thinkers have found it natural to firstly respond to this challenge by adapting on a global scale concepts and theories related to domestic justice.

The starting point of our discussion has to be the definition of justice formulated in 1971 by John Rawls in his book *A Theory of Justice*. This we have to do because this work has easily become the benchmark for any subsequent theory of justice, whether at the national or at the international level. Rawls defines justice as follows:

“The concept of justice I take to be defined, then, by the role of its principles in assigning rights and duties and in defining the appropriate division of social advantages”<sup>84</sup>

Consequently, global justice can be defined as the way in which fundamental rights and duties are distributed globally and how the distribution of the advantages fostered by global cooperation is determined. On that perspective, it is appropriate to speak in terms of global *distributive* justice.

For domestic distributive justice, the two critical central contentions are whether principles of distributive justice are justifiable and, if they are justifiable, to what extent are they justifiable. For global distributive justice, the first and second critical central contentions are same as those of domestic distributive justice, but it goes on to contend whether those principles of distributive justice are justifiable globally. In extending principles of distributive justice to the global arena, global distributive justice implies that there are some entitlements of justice which have global scope, which in turn implies that there are some corresponding duties of justice which have global scope.<sup>85</sup> It is this third critical central contention that mainly separates statist from cosmopolitans.

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<sup>83</sup> Nagel 2005, 113

<sup>84</sup> Rawls 1999a, 6.

<sup>85</sup> Armstrong 2012.

Which principles of distributive justice, if any, are valid globally? Who can legitimately claim an entitlement of justice at the global level? Who is entitled to the corresponding duty? Most importantly, is it a duty of justice or a duty of charity?

Duties of justice are considered to be more demanding than duties of charity or humanitarian duties. Duties of justice are “more fundamental in their objective”<sup>86</sup> and they usually refer to other concepts of justice such as the causal role and the responsibility associated with the person that has to honor that duty. Conversely, duties of charity are thought to be looser because they are merely required in the name of the common humanity shared by the claimant of justice and the person that fulfils the duty. In this light, Tan argues that humanitarian duties deal with distributive justice problems regardless of “how” and “why” those problems originated.<sup>87</sup> Whereas Armstrong argues that the two kinds of duty differ in terms of “stringency” and “enforceability”. Stringency defines the level of difficulty in avoiding such duties.<sup>88</sup> Enforceability describes the possibility of coerce an agent to perform a duty in the event the agent is unwilling to do it.<sup>89</sup> Accordingly, he defines duties of charity as less stringent and not enforceable, while duties of justice are stringent and enforceable. Another fundamental distinction concerns the nature of those duties, that is, whether they are positive or negative in nature. According to Rawls, positive duties require that the agent “do something good”, while negative duties *simply* require that the agent refrains from doing “something that is bad”<sup>90</sup> and thus are more easily justified. To some extent, in the global justice discourse, positive duties are often pictured as a consequence of a previous failure to respect some negative duties. Since an agent failed not to do harm to others, now he has the duty to rectify his wrongdoing.<sup>91</sup> As we shall see further on this account, this is not an uncontroversial statement.

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<sup>86</sup> Ibidem, 18.

<sup>87</sup> Tan 2014, 21.

<sup>88</sup> Armstrong 2012, 21.

<sup>89</sup> Ibidem, 22.

<sup>90</sup> Rawls, 1999, 122. On this note, it is arguable that the rationale of the *Clean Trade* framework is compatible with the negative duty of resource-importing countries to respect the sovereignty of the people of the resource-exporting countries over their natural resources. However, as we shall see, the final aim of implementing *Clean Trade* policies seems to go beyond the mere respect of a negative duty, but instead imply a duty of outcome.

<sup>91</sup> The very existence of the *Clean Trade* framework can be justified as the manifestation of the determination of the enacting countries to rectify their past contribution to the perpetration of the resource curse at the expense of the exporting population. Yet, I will question the effectiveness of some measures in redressing the past injustices.

Nonetheless, let us assume that we are content in accepting that there are both positive and negative duties, that these are not just humanitarian concerns but duties of justice and that they apply at a global level. On what grounds can we justify global distributive justice?

The distinction based on ‘the grounds of justice’ is that between the relational and the non-relational perspectives on global justice. The relational approach lays emphasis on the common relationships that bind subjects and agents of justice together. Sebastiano Maffettone calls this the associative approach.<sup>92</sup> Any subject and agent of justice that is not part of the aforementioned relationship, has neither duties nor rights *per se* within that relationship. Conversely, any subject or agent of justice that is a member of that relationship, has duties and rights within that relationship. Combining these conditions, we find that, within a given relationship, the subjects and agents who are *related* have duties toward one another and right-claims against one another; at the same time, they have neither duty toward nor right-claims against the *non-related*. On the other hand, outside the relationship, the *non-related* have neither duties toward nor right-claims against the *related*.

Conversely, for non-relational approaches the conception of justice does not depend on any special relationship between the agents and the subjects of justice. This approach usually grounds its conception of justice in the equal worth of reason and humanity in every person.<sup>93</sup>

According to Maffettone, the non-relational approach is always identified by cosmopolitanism, while the relational approach can be adopted by both cosmopolitans and statist.

Non-relational cosmopolitans argue for the existence of global moral obligations of subjects and agents of justice. Relational cosmopolitans instead focus on the relationships that link individual persons who inhabit the world and therefore argue that questions of justice ought to be dealt with at the individual level.<sup>94</sup> For relational statist, this line of reasoning is incorrect, because it reads international relations at the individual level rather than at the state level, and this is not possible since states are the predominant institutions of our world and the primary locus for the pursuit of justice.<sup>95</sup>

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<sup>92</sup> Maffettone 2013, 127.

<sup>93</sup> Held 2005.

<sup>94</sup> Maffettone 2012, 131.

<sup>95</sup> Nagel 2005.

Cosmopolitanism and Statism use all the elements of the foregoing account to build their perspectives on global justice. Nonetheless, as we shall now see, they reach opposite conclusions.

### **Statist and Cosmopolitan Views of Global Justice**

Even though many strands exist within cosmopolitanism (such as, for example, the distinction between legal and moral cosmopolitanism), the central tenet that links all the cosmopolitan variants is that all individuals have equal moral worth and as a consequence deserve equal moral consideration regardless of other contingent affiliations such as nationality, ethnicity, religion or social class.

Conversely, statism – as a general strand – links the concept of justice to the existence of institutions that can enforce justice, and focus on the special relation between those institutions and the recipient of justice. Therefore, for statist, justice is first and foremost a political value that is best realized at the state level. The moral requirements that ‘should’ be demanded within the state are different from any moral requirements, if at all there is any, that ‘may’ be demanded on the global level.

#### **1. Statism**

There are several statist approaches to global justice. The Hobbesian one says that justice is totally inapplicable to the international realm. For Hobbes, justice does not exist before the Leviathan is instituted. Justice is a political value because individuals need an external assurance – identified in the institution of the Leviathan – that their rights and duties will be reciprocated by the other members participating in the social contract. The Rawlsian one sees justice at the international level as only existing between well-ordered Peoples but not directly between individuals belonging to different Peoples.<sup>96</sup> Instead Nagel navigates between those two positions and says that we can only plausibly talk about and practically have charity rather than proper justice at the international level.<sup>97</sup>

#### **1.1 Rawls: The Basic Structure as the Primary Subject of Justice**

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<sup>96</sup> Rawls 1999b.

<sup>97</sup> Nagel 2005.

We have already anticipated that the debate on global justice has benefited from the conception of justice formulated by John Rawls in *A Theory of Justice*. This occurred despite Rawls being explicit that his principles of justice should be taken as only applying within the political society pertinent to a territorial state.<sup>98</sup> In the Rawlsian view of justice, the space of a moral community corresponds to the physical space defined by the borders of a state. This is because Rawls identifies as the primary subject of justice what he calls the basic structure of a society. He argues that:

“The basic structure of society is the primary subject of justice. By the basic structure is meant *the way in which* the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation. Thus the political constitution, the legally recognized forms of property, and the organization of the economy, all belong to the basic structure.”<sup>99</sup> (*Emphasis added*).

The key passage to understand why Rawls hesitate to extend his principles of justice at the global level is “*the way in which*”. The basic structure is not given by the mere existence of institutions. Rather, it is meant as a stable model of interaction that prescribes *the way in which* all the different institutions together shape a political system. At the state level, this stable model of interaction is usually embodied by the Constitution, which regulates the interactions among the different domestic institutional organs, the interactions among the citizens, and the interaction between the institutions and the citizens.

The basic structure is the primary subject of justice because it results from principles that would be agreed upon by individuals sitting in the original position to negotiate the rules that will govern their interactions within a future political society. The original position is a virtual pre-societal condition that echoes the state of nature featured in traditional theories of social contract.<sup>100</sup> Negotiations among individuals in the original position are guided by the principle of justice as fairness thanks to a trick that Rawls call “the veil of ignorance”.<sup>101</sup> Under the veil of ignorance:

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<sup>98</sup> International Distributive Justice, Stanford Encyclopedia of Philosophy.

<sup>99</sup> Rawls 1977, 159.

<sup>100</sup> Rawls 1999, 11.

<sup>101</sup> Ibidem.

“No one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities”.<sup>102</sup>

Not knowing where each of them might end up being situated within the future society, individuals will not be able to craft principles that advance the interests of one particular condition over another, thus they will rationally choose principles that will go to the advantage of the least advantaged position.

The first principle is the liberty principle, which prescribes equal basic liberties for all. The second principle is the equality principle and it is further divided into two sub-principles namely the difference principle and the fair equality of opportunity principle. Together, these sub-principles state that:

“Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”<sup>103</sup>

To sum up, the basic structure is just because the principles that informs it are just, and in turns they are just because the initial situation in which they have been designed was just, and in turn it was just because it was fair, meaning that the relations of everyone to each other were symmetric. This is what Rawls calls “justice as fairness”.<sup>104</sup>

Therefore, we can say that Rawls’ statism bases his conclusions on the concepts of special relationship and basic structure. It focuses on the vertical relationship that exists between the state and the citizens, and also on the horizontal relationship among the citizens. This relationship is the special and primary cooperation occurring within a state that divides a state and its members from any other special and primary cooperation occurring within other states; it further divides any special and primary cooperation occurring within any state from the general and secondary cooperation that might exist, on one level, among states and, on another level, among different members of different states.

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<sup>102</sup> Ibidem.

<sup>103</sup> Ibidem, 53.

<sup>104</sup> Ibidem.

The special relationship that distinguishes the state from, and raise it above, all other forms of human associations is described by citizenship: the exclusive membership of an individual to a state. The basic structure of a state legitimates, enables, and most importantly can enforce the rights and duties of the citizens of that state. For statist like John Rawls, Michael Blake, Thomas Nagel, Samuel Freeman and Mathias Risse, that political-legal coercion is present within the state but absent on the global level makes principles of distributive justice more demanding requirements within the state.<sup>105</sup>

In a nutshell, statism is uncomfortable with the idea of global justice as a global mirroring of domestic justice because we don't have a global basic structure that determines the just and fair distribution of the rights and obligations and the advantages and disadvantages within the aforementioned cooperation. There has not been a global political participation aimed at designing the principles of justice that would inform a global constitution that articulates, say, how the United Nations are to interact with, say, the World Trade Organization, or how an individual from France is to interact with an individual from Venezuela.

## **1.2 Rawls: The Law of Peoples**

Rawls' perspective on global distributive justice is more *international* than *global*. He seeks principles apt to regulate the interactions among territorially defined political agents, called Peoples – and thus only indirectly to regulate interactions among individuals.<sup>106</sup>

*The Law of Peoples* is both a realistic and a utopian work. It is realistic because:

“It could and may exist. I say it is also utopian and highly desirable because it joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests”.<sup>107</sup>

Rawls distinguished among liberal Peoples, decent Peoples, outlaw states, burdened societies and benevolent absolutism. The first two Peoples are described as well-ordered, while the latter three are not well-ordered.

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<sup>105</sup> Blake 2001.

<sup>106</sup> Rawls 1999b.

<sup>107</sup> Ibidem, 7.

Liberal Peoples are by definition liberal democracies, characterized by a reasonably just constitutional democratic government, citizens united by common sympathies, and a moral nature.<sup>108</sup> Decent Peoples are not liberal, but qualify as well-ordered because externally they are neither aggressive nor expansionist, and internally they respect a certain amount of human rights and administer justice according to a broadly shared conception of the good.<sup>109</sup> Outlaw states are expansionist and aggressive, internally they meet no requirements of well-ordered peoples and externally they threaten the peace of others. Burdened societies, unlike outlaw states, are neither expansionist nor aggressive. Nevertheless, they lack the means to be well-ordered due to unfavourable historical, social, cultural, political and economic factors. It is Rawls' contention that well-ordered Peoples have a duty of assistance to those burdened societies: they have to be helped to reach the necessary conditions to be part of the well-ordered Peoples.<sup>110</sup> While benevolent absolutisms respect most human rights but do not allow their members any significant participation in the process of political decision making. Hence they are not well-ordered.<sup>111</sup>

The long-term goal of the *Law of Peoples* is to eliminate all forms of oppressions that in Rawls' opinion are products of political injustice. Therefore, for political injustice to be eliminated, just institutions must be established.<sup>112</sup> But Rawls recognizes changing the socio-political culture of burdened societies is not an easy task for the well-ordered societies. Given that the economic status or condition of a society is dependent on its political culture, foreign aid in form of fund dispensation will not help change the economic condition of a society because a mere dispensation of fund cannot change a society's political culture. But emphasizing on human rights could change the behaviour of the rulers which will in turn make them considerate of their people's well-being.<sup>113</sup>

We will come back more thoroughly on the *Law of Peoples* when dealing with the justifications for adopting *Clean Trade* measures, since I believe that Wenar's reasoning

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<sup>108</sup> Maffettone 2010, 293-294.

<sup>109</sup> Ibidem, 301.

<sup>110</sup> Ibidem, 308.

<sup>111</sup> Ibidem. 306.

<sup>112</sup> Rawls 1999b, 7.

<sup>113</sup> Ibidem, 106. This clearly has to ring a bell about the structure of *Clean Trade* Policy as conceived by Wenar. Its aim is to support actions that will bring about the conditions for peoples of resource-exporting countries to express their voice and thus choose for themselves how to rule their lives – starting from the management of their resources.

echoes Rawlsian vision of the relationship between well-ordered societies and burdened societies being based on the duty of assistance – while the points raised in *A Theory of Justice* will come at hand when discussing the distribution of the costs of implementing *Clean Trade*.

### 1.3 Nagel: No Justice Outside the State

In his article named “The Problem of Global Justice” Thomas Nagel concedes that the world we live in is unjust.<sup>114</sup> Nonetheless, he straightforwardly admits that we don’t have a clue neither on what global justice might mean, nor what its requirements might be.

Nagel envisages two conceptions of global justice.<sup>115</sup> The first conception is cosmopolitanism while the second conception is the political conception – by which he means statism. Justice as conceived by cosmopolitans, for Nagel, is an absolute concept, meaning that it derives from morality and is pre-institutional.<sup>116</sup> While justice in the political view is a relative concept, an “associative obligation” grounded in the law that citizens of a nation state have posit to regulate their interactions.<sup>117</sup> In the end, which one of the two prevail:

“Will depend crucially on one’s moral conception of the relation between the value of justice and the existence of the institutions that sovereign authority makes possible”.<sup>118</sup>

Nagel’s heavy reliance on the relation between justice and state sovereignty leads him to significantly reduce the scope of the demands of justice at the global level. He is particularly concerned with giving a justification to positive and negative rights at the global level. He argues that negative rights call for justice independently from associative obligations, because all they require is for individuals to refrain to violate them.<sup>119</sup> On the contrary, positive rights – or, to employ Nagel’s definition, “socioeconomic justice” – need to be enforced, and this requires for a political society to unite under strong centralized control.<sup>120</sup>

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<sup>114</sup> Nagel 2005, 113.

<sup>115</sup> Ibidem 119.

<sup>116</sup> Ibidem .

<sup>117</sup> Ibidem 121.

<sup>118</sup> Ibidem 119.

<sup>119</sup> Ibidem 127.

<sup>120</sup> Ibidem.

In this sense, Nagel leans plainly on a Hobbesian reading of the dichotomy sovereignty-justice. For Hobbes, while it is possible for us “to discover true principles of justice by moral reasoning alone, we can only get real justice in a sovereign state”<sup>121</sup> No matter how strong the common interest of the individuals might be, without the assurance that everyone else will adhere to the rules and without the fear of the sanction of the sovereign, people are bound not to obey the rules, and persevere in a state of nature. That is, without a government that ensures the stability of social institutions, people can only aspire for justice but not have it in practice, regardless of the strength of their moral concerns.

However, if institutions are in place, both vertical and horizontal relationships regulated by those institutions enter the realm of justice. The state:

“Exercises sovereign power over its citizens, in their name; those citizens have a duty of justice toward one another through the legal, social, and economic institutions that sovereign power makes possible This duty is *sui generis*, and is not owed to everyone in the world, nor is it an indirect consequence of any other duty that may be owed to everyone in the world, such as a duty of humanity.”<sup>122</sup>

Combining both Hobbes’ and Rawls’ arguments on justice, Nagel affirms that we can only properly talk about justice within the nation state, because that is where the political legitimacy is found. Whereas at the global level, there is no structure that embodies a similar political legitimacy. In fact, the existence of international rules and institutions does not necessarily imply the provision of socioeconomic justice, or the fulfillment of positive rights – conversely to what cosmopolitans would claim, and this is because those international rules and institutions:

“Are not collectively enacted and coercively imposed in the name of all the individuals whose lives they affect; and they do not ask for the kind of authorization by individuals that carries with it a responsibility to treat all those individuals in some sense equally. Instead, they are set up by bargaining among mutually self-interested sovereign states. International institutions act not in the name of individuals, but in the name of the states ... that have created them. Hence, the responsibility of those

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<sup>121</sup> Ibidem, 114.

<sup>122</sup> Ibidem, 121.

institutions towards individuals is filtered through the states that represent and bear primary responsibility for those individuals”.<sup>123</sup>

However, given that the world *is* unjust – in that the disparity in well-being at the global level is undeniable – for Nagel it is plausible to think that those who are well-off should be genuinely concerned for those who are worse-off. But this is not a relationship based on right-claims and duty-claims, it is only a matter of charity – of humanitarian assistance.<sup>124</sup>

Thus, we can properly talk about justice among individuals within a state, and between states (*à la* Rawls) but we cannot talk about justice among individuals across states (*à la* Hobbes). Nagel concludes that:

“Internationally there may be standards, but they do not merit the full name of justice”.<sup>125</sup>

It has been underlined that for Nagel “only negative rights to non-interference can be universally honored in virtually all circumstances”.<sup>126</sup> Basically, until the creation of a world government, the only treatment owed by affluent countries towards the poor ones is an humanitarian duty of assistance. Therefore, at a closer look, we can see that Nagel is a much stronger statist than Rawls. At least Rawls argues for duties of assistance towards the burdened societies, to remedy cases of severe poverty and gross violations of human rights.<sup>127</sup> For Rawls these qualify as duties of justice, while for Nagel these are merely duties of charity.

## 2. Cosmopolitanism

On their account of global justice, cosmopolitans oppose the centrality of the state. They argue that statist derive their conceptions of justice from a mere description of what the reality is rather than a moral prescription of what ought to be, and that our relationships as members of the more general and comprehensive category of humanity should have precedence over more specific relationships based on citizenship. In the cosmopolitan view, the world is not composed of Peoples, as Rawls would have it – at least, not primarily; it is

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<sup>123</sup> Ibidem 138.

<sup>124</sup> Ibidem 118.

<sup>125</sup> Ibidem 122.

<sup>126</sup> Ashford 2009, 101.

<sup>127</sup> Rawls 1999b, 105-106.

rather composed of persons. As a consequence, principles of justice at the global level should apply to persons and be justified considering the interests of persons.<sup>128</sup> For in cosmopolitan view it is only individuals who are moral agents in their own right. The state is only a vehicle for social cooperation.

On his account, Simon Caney argues that global distributive justice and domestic distributive justice can be justified on the same fundamental grounds. For Caney, domestic distributive justice rejects discrimination against fellow citizens not merely because they are fellow citizens but fundamentally because they are fellow humans and it is wrong to discriminate against fellow humans. Since both citizens and non-citizens are all humans, and fellow humans, the standard justifications of domestic distributive justice principles can equally serve as the standard justifications of global distributive justice principles.<sup>129</sup>

Nonetheless, the cosmopolitan account of justice is peculiar in that it starts from the same arguments advanced by statism but then implies totally opposite conclusions. Insofar as statist argue for domestic distributive justice and argue against global distributive justice on the ground of coercion, if it can be shown that there is coercion at the global realm therefore there should be global distributive justice.

For instance, Cavallero argues that at the international level coercion comes in forms other than state, such as when powerful states interfere in the internal affairs of less powerful states through military, political, economic covert or overt operations.<sup>130</sup> Cohen and Sable, on their account, focus on the structure of international trade institutions. They argue that states cooperated to form the World Trade Organization (WTO) and that, although the WTO acts in the name of states, the WTO as an institution coerces its members if they fail to comply with its directives. Since leaving is not a practical option for its members, and since remaining in it means its members are under coercion, consequently there is a direct relationship of coercion between the WTO and citizens of member states. This also applies to the relationships between other similar international organizations and citizens of member states.<sup>131</sup>

However, unlike the statist who tend to stress the coercion argument more than the cooperation argument, the majority of cosmopolitans tend to stress the cooperative features

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<sup>128</sup> Beitz 2000, 677-678.

<sup>129</sup> Caney 2006, 107.

<sup>130</sup> Cavallero 2010.

<sup>131</sup> Cohen, Sabel 2009.

that can be found at the international level and that would therefore demonstrate the existence of a global basic structure.<sup>132</sup> They cite globalization, especially the intensity and extensity of cross-border economic activities to argue that the sort of cooperation (horizontal relationship) among citizens within the state also exists on the global level.

A statist obviously would counterargues that trade relationships cannot be equated, on the moral ground, to the relationships established between individuals sharing the same citizenship. International trade, Barry argues:

“Is merely economically beneficial to the trading partners rather than creating a single cooperative unit which necessitates the sort of cooperating relationship within the state.”<sup>133</sup>

On his account of cosmopolitan justice, Sangiovanni argues that it is reciprocity that gives rise to legitimate demand for the principles of distributive justice, and consequently distributive justice duties. As long as individuals are involved in the collective provision of goods and services, they are owed the duty of reciprocity in order for them to benefit from the goods and services which they are involved in providing. So, to the extent and in the aspects that global economic activities are a collective provision of goods and services, it is to that extent and in those aspects that principles of global distributive justice are applicable. Consequently, individuals are globally owed the duty of reciprocity to the extent and in the aspects they contribute to global economic activities that are collective provision of goods and services.<sup>134</sup>

Charles Beitz, on his part, criticizes directly the Rawlsian position, starting from the assumption that “Rawls regards society as a cooperative venture for mutual advantage”.<sup>135</sup> In order to realize a fair distribution of the advantages fostered by social cooperation though, some principles of justice are required. In the light of such cooperation every member of the society is entitled to require certain standards of justice from the institutions of that society. To assume the absence of social cooperation among different nations, is tantamount to deny any chance of demands for distributive justice at the global level, since there would be no institution onto which apply a distributive principle. Beitz maintains that such a Rawlsian

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<sup>132</sup> International Distributive Justice, Stanford Encyclopedia of Philosophy.

<sup>133</sup> Barry 1982, 233.

<sup>134</sup> Sangiovanni 2007.

<sup>135</sup> Beitz 1979, 130.

view of international justice “makes sense only on the empirical assumption that nations-states are self-sufficient”.<sup>136</sup> His conclusion, therefore, is that “confining principles of social justice to domestic societies has the effect of taxing poor nations so that others may benefit from living in just regimes”.<sup>137</sup>

Peter Singer, being a utilitarian philosopher, bases his cosmopolitan argument on global justice on the principle of utility. His concern is how to maximize well-being and minimize destitution. For Singer, it does not matter whether persons are members of the same state or not, whether they fall under the same basic structure or not, whether they share the same cooperative or coercive apparatus. On his account, those who are well-off have a duty of global distributive justice to those who are worse-off, regardless of where they are. In the light of the fact that we enjoy higher standards of living, it should require minimal to no costs to us to change the situation. What we would have to give up to help the global poor is very little compared to our lifestyle, and this should make us feel morally obliged to aid through charity. Because if we can prevent any morally bad things from happening without sacrificing anything that is of equal moral importance to what we are preventing, then we have the moral duty to prevent such bad thing from happening.<sup>138</sup>

Amartya Sen affirms that distributive justice should not be limited to the state. In order to avoid bias and be fair to others, we have to consider the interests of other people as relevant as our own interests. Moreover, in order to avoid a narrow mindset that is focused on a local area, and in order to widen the scope of what we consider to be relevant principles of distributive justice, we need to consider other people’s perspectives as relevant.<sup>139</sup>

## **2.1 Pogge’s Resource and Borrowing Privileges**

Among cosmopolitan philosophers, one who has dealt thoroughly and directly with the issue of the resource curse is Thomas Pogge – and this is why it is more appropriate to analyse his ideas separately.<sup>140</sup> His argument is really close to Wenar’s, and the solutions they advance are similar but – and this is very important – not identical. We will see that Wenar has reservations about Pogge’s take on the resource curse.

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<sup>136</sup> Ibidem, 128.

<sup>137</sup> Ibidem, 149-150.

<sup>138</sup> Singer 2009.

<sup>139</sup> Sen 2009.

<sup>140</sup> E.g. Pogge 2001; 2005; 2008.

We have seen that for Rawls, Nagel and statisticians in general, the boundaries of a moral community coincide with those of the nation state, and that any kind of obligations extending beyond those borders are much weaker, surely not a matter of political justice. We can speak of humanitarian concerns or charity at best.

Pogge shuts down these arguments, taking a more realistic and pragmatic approach: in our globalized world, characterized by inter- and hyper-connection, keeping this narrow-minded view is rather outdated.<sup>141</sup> If the shoes we are wearing or the smartphone we are using are the product of men, women and children whose human rights have been violated, then we cannot possibly claim that we don't have anything to do with that. We cannot pretend that the only causes of the resource curse are domestic and not also international. According to Pogge, what Rawls and his Westphalian terms mistakenly do is to portray peoples as utterly independent of other peoples.<sup>142</sup> The affluent countries play a central role in shaping the global economic order, in establishing the rules governing international trade and in deciding how international institutions work. In this regard, Pogge elaborates the concepts of international borrowing privilege and international resource privilege.<sup>143</sup> They are employed to point out that the international community remains silent on the level of corruption, dictatorship and violence that might be present in a certain country. In fact, as long as the regime is in control of that country, the other states accept it as the authority that has the legitimate power to sell the natural resources of its country and also ask for international loans on behalf of its country.<sup>144</sup>

Thus Pogge's two privileges are actually compatible with Wenar's rules of effectiveness and might makes right. Wenar calls out those who accept buying oil from whoever; Pogge calls out those who claim the right to sell it just because they control it by force. Pogge argues that if a group of thieves loots a stockhouse and then sells the haul, those who buy those items are actually buying stolen goods and are criminals under national law. Whereas if a group of thieves seize a whole country, those who buy the stolen resources are called ExxonMobil, BP, Chevron – and their rights are protected by a system of international trade laws that benefit the affluent countries. Pogge further insists that the citizens of the resource-

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<sup>141</sup> Pogge 2010c.

<sup>142</sup> Or, in Beitz's words: "self-sufficient". Cfr. Supra, 136)

<sup>143</sup> Pogge 2001.

<sup>144</sup> Shafter describes the borrowing privilege as "odious debt", which is sovereign "debt incurred [by a government] without popular consent and utilized for illegitimate purposes". Shafter 2007, 669, note 1.

cursed countries would have been better off if those powerful oil companies had invaded their nation and stolen their oil outright, instead of paying a dictator for doing it. Either way, citizens would not receive the royalties, but by giving money to authoritarians and dictators those companies help them strengthen their hold on power and make sure that the huge amount of oil revenues will never benefit the needs of the population. The resource privilege and the borrowing privilege provide warlords, militias and other greedy actors with tempting incentives to seize power by whatever means because of the benefits that the international community grants to whoever is in that position. This means that affluent countries should have more than mere humanitarian concerns towards resource-disordered countries. In fact, they owe them, because by embracing the might-makes-right way of trading, they are breaking the negative duty not to harm resource-exporting countries' rights, in ways that are foreseeable and can be changed. Here we find a difference between Singer's and Pogge's positions: according to the former, affluent states should send aid through charity to the worse-off nations and should feel obliged to do so by virtue of the minimal costs doing so would entail; while the latter maintains that the rich countries owe to the poor ones because of their active and direct contribution in shaping the global order that is harming them.

What solutions does Pogge propose, then, to address the borrowing privilege and the resource privilege? He suggests making constitutional amendments in exporting countries' constitutions, while establishing a "Democracy Panel" at the international level. Constitutional amendments ought to set out that only constitutionally democratic governments can "effect legally valid transfers of ownership rights in public property".<sup>145</sup> This move is necessary to cut those above-mentioned negative incentives at the source. Cancelling the "reward" previously attached to ruling the country without legitimization, greedy individuals will be less tempted to seize power through the use of force. Besides, an international Democracy Panel should be set up in order to assess and monitor the democratic conditions of those countries and eventually sanction any unconstitutional action undertaken by their regimes by adopting a ruling that bans international trade with them.<sup>146</sup> Pogge acknowledges that these solutions are puzzling in theory and even more laborious in practice, but the least affluent countries could do is taking the first step on the right direction

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<sup>145</sup> Pogge 2008, 153.

<sup>146</sup> *Ibidem*, 156.

by admitting that each of them has its own share of responsibility for the injustices that are harming the global poor.

It is possible to notice here another crucial difference with Wenar's approach to addressing the resource curse. Pogge's argument stresses the state of poverty into which the current international trade in natural resource forces the exporting countries. His goal is especially to redress this situation, and rebalance the global wealth among countries. Whereas Wenar acknowledges that poverty is a regrettable correlate of the resource curse, but it is not the focus of his proposal to directly solve this issue. Rather, we will see that Clean Trade will choose the protection and enforcement of property rights as its main goal, in consideration of the fact that all the other negative externalities linked to the resource curse stem from the lack of enforcement of principle of the popular resource sovereignty.

### **3. To Sum Up**

Let us briefly recapitulate and organize the main similarities and differences between the cosmopolitan and the statist accounts on global justice.

Both the accounts agree that institutions give rise to legitimate demands for distributive justice and the consequent duties. It is the participation of individuals in distributive institutions that generates principles of distributive justice. Whether or not a basic structure exists determines the presence or the absence of distributive justice. In parallel, the nature of the basic structure determines what principles of distributive justice will be relevant and to what extent it will be just to proceed with the distribution of rights and duties. However, statist and cosmopolitans do not agree on the nature of the principles that trigger distributive justice nor to what extent those principles operate.

### **Determining Responsibility in Problems of Global Justice**

According to Thomas Pogge, social affairs can be analyzed in two ways: either we look at interactions or we look at institutions. In particular, interactional analysis focuses on actions and effects of actions performed by individuals or groups of individuals. Whereas institutional analysis focuses on the way in which institutions, laws and other social practices affects our world.<sup>147</sup>

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<sup>147</sup> Pogge 2010b, pp.14-15.

With regard to global justice, the focus of the analysis is usually a harmful action or omission that requires rectification. Both interactional and institutional analysis will try to determine whether any of the causally relevant agents is fully or partially (then, to what extent) responsible for the harmful action or omission.<sup>148</sup> The only difference between the two types of analysis is that in individual analysis the causally relevant agents will be individuals and groups of individuals, whereas in the institutional analysis the causally relevant agents will be institutions, laws, and social rules.

In the particular problem of the resource curse, several agents, of different nature, contribute to the resource curse. Individuals, groups of individuals, multinational corporations, governments and even the global institutional order (which is based on the principle of might makes right) intervene in exacerbating this problem. In light of the two orders of analysis above, any agent that contributes to the resource curse will be responsible on the level and to the extent it contributes. The resource curse is a complex phenomenon. There are different factors and agents intervening at once, at different levels, causing different effects. The combination of the contribution of each agent on each level results in the phenomenon of the resource curse as a whole. Using the two kinds of analysis suggested by Pogge, it is possible to determine what role, at what level, and with what effects, each agent plays in the resource curse.

### **1. Interactional Analysis and Responsibility of Individuals/Groups of Individuals**

When looking for assessing responsibility at the individual level, we can single out different kinds of agents and actions.

The most immediate connection is linked to us the consumers, who pay our money at the gas station thus actually sending funds to petrocrats and dictators through the sale chains intertwined in the global market. Basically, western purchasers contribute to the resource curse literally injecting cash in this flawed system of international trade and providing the material incentives for keeping the resource curse to continue.<sup>149</sup> Later on we shall discuss whether this material action can by itself generate responsibility on the consumer, and we shall make this assessment on the notion of consent that Wenar holds so dear.

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<sup>148</sup> Ibidem.

<sup>149</sup> Wenar 2016, li.

Another contributing issue is corruption, both individual and collective. Seeking and offering bribes to get business done is a selfish behavior that is displayed on both sides of the supply chain, the importing and the exporting side. After all, it takes two to bribe: nobody can be corrupted if there is nobody who corrupts, and vice-versa. Ken Silverstein has exposed the fundamental role of the “invisible hands” or “the fixers” that connect governments, multinational corporations, stakeholders and all kinds of relevant interested agents, and make sure that those transactions succeed smoothly.<sup>150</sup> Corruption runs through agents of financial institution as well, for example when employees of the banking system take part in operations of money laundering or other illegal financial operations. Perhaps more frustrating is corruption perpetrated within the judicial system, when for example lawyers help companies or petrocrats to avoid accountability or conviction for their negative actions. This is not necessarily done by illegal means, a simple legal loophole to delay the proceeding of the investigation or of the trial is often enough to prevent justice from being enforced. Still, justice delayed is justice denied.<sup>151</sup>

Law-makers that pass a legislation allowing MNCs to circumvent their corporate social responsibility, or lawmakers that abrogate laws meant to check the integrity of the business conducted by oil companies are helping the perpetration of the resource curse. It is the case of the worrisome repeal of the sect.1504 of the Dodd-Frank act in the United States, occurred at the beginning of 2017, and commented by many as a result of the heavily oil-friendly Trump administration (just to provide an example, at the time of writing the U.S. Secretary of State is Rex Tillerson, former CEO of the extractive company ExxonMobil)<sup>152</sup>. The rule implemented the Cardin-Lugar anti-corruption provision that required US-listed extractive companies to publish their payments to US and foreign governments, such as taxes and royalties. By bringing transparency onto oil, mining and gas payments, this provision aimed at help breaking the vicious link between corruption and poverty in resource-rich

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<sup>150</sup> Silverstein, 2009. *Invisible Hands – the secret world of the oil fixer*, report available at <https://harpers.org/archive/2009/03/invisible-hands/>

<sup>151</sup> For example, companies such as Big Oil, Chevron, Exxon and BP have been extracting in Louisiana, Ecuador and in the Amazon area for years, leaving behind thousands of sites polluted with oil and cancer-causing chemicals. Many citizens have tried to sue those companies and their governments, but the indicted have loyal high-priced lawyers on their side that manage to drag the trial for decades. Silverstein, 2014.

<sup>152</sup> Global Witness had expressed concerns upon Tillerson’s designation. See GW website <https://www.globalwitness.org/en/blog/secretcy-conflicts-interest-rex-tillerson-fails-his-six-month-performance-review/>

countries.<sup>153</sup> It is clear that a contributory role of the same kind can be attributed to policy makers and lobbyists that benefit the persistence of incentives to the resource curse.

From a cosmopolitan point of view, all these agents violate the core cosmopolitan principles through their actions or omissions – those principles being individualism, universality and generality.<sup>154</sup> Against the principle of individualism that holds the human being as the ultimate unit of concern, agents that indulge in corrupted practices such as those described above do not care about violating the interests of the resource-cursed peoples. By seeking the realization of their selfish interests at the detriment of the rights of the citizens in resource-exporting countries, the perpetrators of the resource curse are not observing the equal status that by the principle of universality ought to be attached to every human-being. Lastly, the principle of generality prescribes that everyone should be the ultimate unit of concern for everyone, whereas the self-interested actors that we have sketched only work for their personal gains. Simply put, in relation with the phenomenon of the resource curse, these agents do not observe their negative duty not to harm others, and they fail to perform the consequent positive duty to redress the harm they have provoked.

As for the collective responsibility, we can consider it as the result of joint actions and omissions of two or more agents that collaborate for a common purpose: for example, a lobby, a political party, or the shareholders of an oil company.

## **2. Institutional Analysis and Responsibility of the State/Global Order**

In the realm of international relations, the state is the virtual agent that embodies the unity of its many components (be they individual citizens, groups, interests, etc.). Its organs are those entitled to express unitary voice of the countries within the international community, and to engage the international responsibility of the state as a whole in its international relations. But most importantly, for what concerns us here, the state substantiates the Rawlsian basic structure, through the coordination of its functions. That is why the focus here is on the branches through which the state exercise its powers: the legislative branch, the executive branch, and the judicial branch. Any action or omission that facilitates, or fails to prevent, or do not prosecute agents or situations that contribute to the resource curse, triggers the responsibility of the state as an institution: the flawed behavior could be found at the

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<sup>153</sup> More details on Publish What You Pay website, <http://www.pwypusa.org/pwyp-news/gutless-congress-votes-yes-to-corruption-february-3-2017/>

<sup>154</sup> Pogge 2010a.

law-making stage, as well as with regards to policy implementation or law enforcement. In the most concerning cases, all of the three branches make their negative contribution. Notwithstanding this analysis, the conclusion related to the perpetration of the resource curse is basically the same as in the case of individual and collective responsibility. Out of a negative duty not to harm, the state shall refrain from making, implementing and enforcing laws, policies and rulings that allow the resource curse to persist thus violating the rights of the citizens of the resource-exporting countries. If the state fails in this sense, it has a positive duty to redress the harm that it has contributed to foster.

Moving to the level of the global level, we have already seen that both Wenar and Pogge acknowledge that the rules – and the institutions playing by those rules – sustaining the current international order are unjust. The rule of effectiveness or the might makes right principle according to Wenar, and the international resource and borrowing privileges for Pogge, are the illegitimate framework within which all other actors feel free to make their moves. These rules constitute the structure of constraints under which all other agents' behaviors are subject, be they individuals, groups, corporations or governments. Unfortunately, the current structure of international trade in resources epitomizes the lack of constraints, or alternatively we can say that its features are such that there will be always some agents that will disregard their negative duty not to harm in order to pursue their negative self-interest. Although the isolated agent or behavior may not be, in itself, a necessary nor sufficient condition for the resource curse to occur, nonetheless all the agents and behaviors taken together concur in causing the resource curse. Each plays the game by the rules set by the overarching structure, each within its own level. Or, in Pogge's words, they "have a collective causal responsibility".<sup>155</sup> Therefore, the more the rules governing the global order will tend to allow or fail to prevent behaviors that foster the resource curse, the more the agents subject to those rules will be likely to act in the same direction. Conversely, if the rules governing the global order pivot towards resource curse constraining norms, also the behavior of the agents subject to those rules will be directed towards the realization of a more just world.

Because of the resource curse reaches such a systemic pervasiveness, Pogge realizes that solutions cannot be implemented effectively at the interactional level – that is, directly between individuals. What individuals and groups ought to do is to put pressure on their

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<sup>155</sup> Pogge, 1989. P.276

governments and, when possible, directly on global institutions to make them redress this global injustice.<sup>156</sup> This idea is again compatible with Wenar's proposal for consumers to boycott tainted goods or promoting popular campaigns to raise awareness on the issue. But the core of Pogge's argument is that a global institutional reform is necessary, and if this entails some costs, they are to be borne by those who keep violating their negative duty not to harm others: the affluent countries that violate the popular resource sovereignty of resource-rich countries.

It is worth notice that this perspective directly influences the conception of the *Clean Trade* framework. It is exactly because causality and responsibility can be traced at any level, in any kind of action or omission, by anyone, that *Clean Trade* provisions adopt an all-encompassing approach to address the resource curse with various tools. This might sound a little at odds with Wenar's vision of a world in which international relations are carried out among states and not directly among individuals, but as we will see further in the discussion, *Clean Trade* is not conceived as an ideal moral theory. Rather, it leans more towards the policy-making domain, with a fundamental role played by normative principles already existing in national and international law.

### **Double Standards**

The very reason we are debating the nature and the extent of principles of justice in relation to the phenomenon of the resource curse is because Wenar highlights the presence of a double standard in the enforcement of the principle of popular resource sovereignty: we protect this principle in our domestic orders with constitutional rules and hold our leaders accountable if they violate it, but we turn a blind eye when this occurs daily and massively in foreign countries. In fact, we are actively contributing to keep this situation in force.

Thomas Pogge has dealt more broadly with the problem of double standards in his work *World Poverty and Human Rights*. He argues:

“Most citizens of the developed countries reconcile themselves to massive and avoidable poverty abroad by not holding such poverty against the global economic order as they would hold similar poverty within a national society against its economic order. The common and obvious way of rationalizing such a divergence is through a

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<sup>156</sup> Ibidem, 277-278.

double standard: by subjecting the global and economic order to weaker moral demands than any national economic order. [...] The affluent countries and their citizens continue to impose a global economic order under which millions avoidably die each year from poverty-related causes. We would regard it as a grave injustice if such an economic order were imposed within a national society. We must regard our imposition of the present global order as a grave injustice unless we have a plausible rationale for a suitable double standard. We do not have such a plausible rationale.”<sup>157</sup>

This means that citizens of current resource-importing states would see it as a gross violation of their constitutional rights and of fundamental principles of international law if suddenly someone seized control of their nation by force, claimed to be its legitimate chief and pretended to manage its natural resources as his private wealth. Nonetheless, this is what the picture looks like in resource-exporting countries where the resource curse is unfolding. And not only we in the West take this state of affairs as given, but also we keep engaging in trade relations with those countries. The truth is that we ought to observe the same standard on both situations, lest commit an injustice.

The *Clean Trade Proposal* aims exactly at leveling those two standards: here and there. We have anticipated that this might come at some costs, which will be dealt with more attention in the last part of this work (just to recall a few dilemmas here: our foreign policy and strategic interests, our energy supplies, and the higher costs of our overall lifestyle). Why ought resource-importing states to impose their citizens those costs in the name of the protection of some faraway people’s rights? What are the possible justifications for resource-importing countries not to adopt *Clean Trade*? Borrowing Pogge’s words, I now turn to consider two “plausible rationales”.

### **1. Priority to the Compatriot**

In *Political Theory and International Relations*, Charles Beitz explores the concept of the “claim of compatriots”.<sup>158</sup> He points out that even individuals who embrace cosmopolitan principles, when facing a clash between the interests of their compatriots and others, could yield to the pursuit of the interests of the compatriots. This behavior might result in prioritizing the “less urgent needs of compatriots” over “the more urgent needs of others”,

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<sup>157</sup> Pogge 2008, 109-109.

<sup>158</sup> Beitz 1999, 208.

which is inconsistent with the cosmopolitan principle of equality.<sup>159</sup> In fact, as remarked by Shue, there are “insufficient reasons to believe that one’s duties to people in the next county, who are in fact strangers, are any greater than one’s positive duties to people on the next continent.”<sup>160</sup>

Why, then, does this national ideal still impose itself in our way of addressing international dilemmas? Beitz starts by defining the claim of compatriots as distinguished from the concept of national egoism, meant as the pursuit by a state of its citizens’ interests without regard to the interests of other states. Rather, the claim of compatriots derive from interpreting the national ideal as allowing to consider foreigners’ interests in a different way from that in which it takes into account those of the compatriots.<sup>161</sup> This reasoning therefore embraces a prioritarian view of justice that results in an unequal treatment between two groups of people (here vs. there, us vs. them). What is concerning, though, is that the departure from the principle of equal treatment is basically grounded in citizenship, a feature that every individual possess by circumstance and not by choice (most of the time), since it derives automatically from the place one is born. Citizenship is a totally arbitrary discriminatory starting point for such a prioritarian view of justice. Still, Beitz offers a two-layer interpretation of this issue. The first layer is interpreted through the contractarian paradigm and maintains the principle of equal treatment. The second and deeper level embodies a sheer prioritarian view of the compatriots’ interests, even when it cannot be justified under any claim to equal treatment.

As to the contractarian interpretation, we have already explained the criticisms moved by Beitz to Rawls’ assumption of self-sufficient societies.<sup>162</sup> In Rawls’ original position the principles of distributive justice are chosen by compatriots, while foreigners are dealt with only insofar as principles for diplomacy and war are to be chosen. This means that any distributive principle of justice, chief among them the difference principle, is relevant only within national societies, while our duties towards the other states are limited to the principle of non-intervention and the duty to assist the burdened societies. This reading would indeed justify the claim to the priority of the compatriot, but the whole reasoning is flawed by a conceptual confusion. If the individuals gathered in the original position for choosing

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<sup>159</sup> Ibidem.

<sup>160</sup> Shue 1988, cited by Reus-Smith 2009, 31.

<sup>161</sup> Beitz 1983, 593.

<sup>162</sup> Cfr. supra, 65.

principles of justice are taken to be equal moral persons; and if Rawls himself argues that the only criteria for participating in the original position are for an individual to possess moral personality (i.e. the capacity for an effective sense of justice) and the capacity to form, revise, and pursue a conception of the good;<sup>163</sup> then any argument against the possibility of conceiving a global original position is untenable, since those two criteria are possessed by everyone and anyone “regardless of whether, at present, they belong to a common cooperative scheme”.<sup>164</sup> As the title of his work “Kantian Constructivism in Moral Theory” suggests, Rawls conceives the principles of justice chosen by the members of the original position as “principles thought to be already latent in common sense... certain conceptions and principles congenial to [their] most essential convictions and historical traditions”.<sup>165</sup> That is why these principles of justice cannot be automatically extended to all individuals on earth, since they are supposed to be peculiar to a certain culture or society, and this is also why the concept of justice applies only within the state and namely onto its basic structure. Assuming that specific national units are characterized by more homogeneous morals than it is possible to obtain on a global level,<sup>166</sup> this “parochialist” view is nonetheless misleading since the admission criteria to the original position refer to inner moral powers of the members and not the content of the principles of justice that they will choose. The second and deeper layer for prioritizing the compatriots derives from reasons that normally justify prioritarian considerations in the interests of the self, regardless of any possible appeal to equal treatment. In this case, Beitz challenges another statist: Thomas Nagel. He argues that:

“There is some public analogue to the individual’s right to lead his own life free of the constant demand to promote the best overall-results, but it appears in the relations of states to one another rather than in their relations to their citizens; states can remain neutral in external disputes, and can legitimately favor their own populations – though not at any cost whatever to the rest of the world”.<sup>167</sup>

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<sup>163</sup> Rawls 1980.

<sup>164</sup> Beitz 1983, 595.

<sup>165</sup> Rawls 1980, 518.

<sup>166</sup> But think about multi-ethnic or multi-religious states and which “historical tradition” or “most essential convictions” might inform their original position.

<sup>167</sup> Nagel 1979, 84.

Beitz disagrees in equating the private and the public morality, unless one specifies the meaning of “analogue”. It is generally maintained that private morality allows, in a limited way, to aim at outcomes that do not maximize the overall good of the society, by virtue of “the importance we attach to being sufficiently free of impersonal moral constraints to be able to pursue the projects and commitments that express our separate identities as autonomous persons”.<sup>168</sup> It is not straightforward, though, that the state enjoys the same permission. This would imply a notion of national agency analogous to the one of personal agency, and yet distinct from the mere sum of the personal identities and agencies that constitute the citizenry – something that is difficult to conceive.

Otherwise, one could argue that as “the independence of the personal point of view”<sup>169</sup> allows individuals to resist impersonal morality demands and avoid some sacrifices it may demand in order to pursue their own individual good, the state cannot be forced to bear costs connected to the realization of cosmopolitan goals. In this case, public morality is the ceiling that allows a nation to give priority to the interests of its compatriots. Beitz’s counterargument here is that even personal morality encounters some limits, namely the consideration that one ought not to refuse to pursue the overall greater good just to avoid trivial costs for oneself; hence, national morality must at least obey to the same rule.<sup>170</sup> Moreover, the individual and the state attitude towards “bearing” costs cannot be equated. Personal morality allows the individual to shun excessive costs when these would put him at disadvantage compared to others who have sacrificed less.<sup>171</sup> Being the state an aggregate entity, it is possible that the “excessive costs” argument does not withstand – provided that the basic structure of that state ensures a just distribution of those costs within the society. That is why the state, embodied by the governments, in order to attain cosmopolitan goals,

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<sup>168</sup> Beitz 1983, 598.

<sup>169</sup> Scheffler 1982, 61.

<sup>170</sup> I believe that this is the meaning intended by Wenar when saying that “the right of choice in one people cannot be used to justify the violation of that same right in another”, about the possibility that citizens of resource-importing countries authorize their governments to buy oil from regimes that violate the popular resource sovereignty. Such an authorization would be motivated by the trivial need to maintain our higher standard of living, standard that we have reached also by smashing and disregarding the right of foreign populations to be the ultimate authority over their own territorial natural resources. See Wenar 2016, 250.

<sup>171</sup> When we would be doing more than our “fair share”. Singer 2009, 55.

might require its people as a group to bear costs that are overall greater than those that the realization of the same goal might reasonably ask from a single citizen.

This clash between cosmopolitan ideals and national sentiments – to borrow Beitz’ words – highlights a deep dilemma, namely “how to combine different kinds of reasons for action when these reasons conflict and lack a common basis in virtue of which they can be reconciled”.<sup>172</sup> The argument of priority to the compatriots is a way to justify the choice of one claim of justice – the national one – over another – the foreign one.

## **2. The Problem of Dirty Hands**

Strictly related to the claim of priority to the compatriots, is the so-called problem of dirty hands: should political leaders violate the deepest constraints of morality in order to achieve great goods or avoid disasters for their citizens? Can the governments of the resource-importing countries keep contributing to the violation of the popular sovereignty over natural resources of foreign peoples that are subjected to dictators and authoritarians, in order to secure their citizens their energy supplies and other goods and commodities that they need to go through their daily lives?

Today it is common belief that dirty hands are allowed only and insofar as “anything less than the ongoingness of the community is at stake, or when the danger that we face is anything less than communal death”.<sup>173</sup> Therefore, only circumstances of supreme emergency could justify the practice of dirty hands: the examples relate to the Allied bombing of German cities or the detonation of the atomic bombs over Japan in the context of World War II. But when the topic of dirty hands was first addressed by Michael Walzer in a 1973 paper, the examples under evaluation were more ordinary, like political corruption in the forms of bribes and nepotism.<sup>174</sup> Nowadays, the idea of dirty hands goes beyond the mere bad behavior or corrupt activity in the political realm, although such situations are regrettable, disappointing and potentially harmful. The idea of dirty hands refers to a contradiction or a moral dilemma, in which an agent has moral reasons to follow each of two

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<sup>172</sup> Beitz 1983, 600.

<sup>173</sup> Walzer 2004, 46.

<sup>174</sup> Michael Walzer, with his influential 1973 article called “Political Action: the Problem of Dirty Hands”, coined the term “dirty hands” adapting it from Jean Paul Sartre’s play of the same name. See Stanford Encyclopedia of Philosophy’s entry: The Problem of Dirty Hands, available at <https://plato.stanford.edu/entries/dirty-hands/>

possible courses of action, but cannot pursue both.<sup>175</sup> Whatever the agent's choice, he is bound to a moral failure with regards to the option he dismisses. The difference between a moral dilemma and the problem of dirty hands is that the latter is always portrayed as a matter of necessity, almost a force *majeure*, as with the case of pursuing national defense at the expenses of civilian lives.

From a utilitarian point of view, the problem of dirty hands would be solved by choosing the course of action that increases the overall good, as painful as this choice may be. In our case, this would result in affluent governments keeping importing oil from resource-disordered countries in order to sustain the global economy and therefore increase the wellbeing of citizens, who could consume more goods and energy and commodities. But since we have agreed that problems of dirty hands are those that involve extreme choices, the utilitarian view cannot be taken as a justification to uphold the current international trade system based on effectiveness. Walzer argues that:

“No government can put the life of the community and all its members at risk, so long as there actions available to it, even immoral actions, that would avoid or reduce the risk. ... That is what political leaders are for; that is their first task”.<sup>176</sup>

Implementing *Clean Trade* is hardly going to jeopardize the life of the enacting countries' communities, and therefore to keep buying stolen oil from ruthless dictators is an immoral action that the problem of dirty hands cannot possibly justify.<sup>177</sup>

Another way to address the problem of dirty hands is by setting rules that forbid the hands to get dirty. By sanctioning the inviolability of some moral prescriptions, the agent will simply choose the option that complies with them, avoiding the problem of dirty hands. This position is compatible with Nili's "liberal integrity" argument that will be discussed more in detail later. What can be said, for now, is that at its core it starts by a deontological position, whereby the morality of choices is not determined by the outcome they bring about but by their capacity to comply with some preset moral norms.

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<sup>175</sup> See Stanford Encyclopedia of Philosophy's entry: "Moral Dilemmas", available at <https://plato.stanford.edu/entries/moral-dilemmas/>

<sup>176</sup> Walzer 2004, 42.

<sup>177</sup> Although it could be said that, under a certain threshold, the absence of trade relations could be decisive for the wellbeing of the countries. Remember Beitz' argument that states are not self-sufficient units. We will address this concern in the last part of the work.

## 2.1 Whose Hands are Dirty, Anyway?

We have seen that the dirty hands argument cannot count as a justification for the importing-countries' governments to keep effectiveness in place as a way of trading natural resources internationally. But then another concern arise. The democratic link between rulers and ruled has taken, since its first formulations, the form of a principal-agent relation. It is broadly agreed that sovereignty lies with the people, who are the principal, while the government is a mere agent. The agent cannot represent the principal without the consent of the latter, and the agent should not act against the interests and intentions of the principal. This is because the agent receives his agency from the principal, who instead enjoys the original agency and through that exercise authority over, and maintains the faculty to withdraw, the agency of the agent. Since, by virtue of the democratic legitimization, the government is said to act on behalf of the citizens as its representative, do citizens' hands become dirty too when their government yield to the rule of might makes right? For Hollis, "political actors, duly appointed within a legitimate state, have an authority deriving finally from the People. ... When their hands get dirty, so do ours".<sup>178</sup> It is not straightforward though that people want their leaders to violate moral principles (let alone international norms or national laws) to achieve or avoid some outcomes. The issue to assess is whether the relation between a democratic society and its representatives inherently implies the authorization for those representatives to dirty their hands.<sup>179</sup> We realize here that the onus of consent is the affluent countries' side, too. Specifically, examining the citizens' authorization is crucial in order to assess their level of contribution to the resource curse and thus to what extent can they be said to be responsible. The question of authorization must focus on whether the democratic citizens can plausibly be said to have authorized their governments to violate the right of popular sovereignty over natural resources. If so, the citizens would be tantamount responsible as the democratic government that represents them and engage on their behalf at the international level.

## 2.2 The Tug-of-War between causality and responsibility

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<sup>178</sup> Hollis 1996, 146-47.

<sup>179</sup> Acknowledging that democratic communities are characterized by their pluralism, and thus there will always be segments of the societies that did not vote in favor of this political leader or that policy, we will not put excessive emphasis on this physiologic absence of perfect unanimity underlying the democratic legitimization, and will proceed with the discussion in general terms.

We saw earlier in this work that individual and collective agents, at different levels, and in different ways contribute collectively to reproduce the resource curse. Nonetheless, it is possible to distinguish causality from responsibility, since the two are not necessarily mutually implied. For example, an agent can contribute with its actions to the resource curse, thus incurring in causal responsibility, and nonetheless be considered not morally responsible. This is because the kind of moral responsibility we are assessing here follows a deontological approach, whereby the moral rightness or wrongness of a behavior derives from its compliance or not with certain duties or obligations preset by moral norms. When the agent ignores that he has caused harm, even a serious harm like the breach of the right to popular sovereignty over natural resources of foreign peoples, cannot be said to have responsibility, but only a contributory causal role. Obviously enough, once the agent acknowledges his harmful action, has to put that behavior to a halt, otherwise the ignorance argument no longer holds.

The property rights of a people to its natural resources are violated, as any other owner's right would be, whenever someone gains control of this property by force, theft, or manipulation. Put simply, "possession morphs into property" through illegal means.<sup>180</sup> But possession is a factual condition, not a normative one. As Nili argues:

"If perpetrators deprive an owner of his property without his valid consent, the owner still enjoys the same moral powers with regard to the property in question, as he did before he was dispossessed: even if perpetrators take away the owner's *effective control* of the property, *normative authority* concerning the property remains with the owner. ... Therefore, in order to buy his property, prospective purchasers ought to seek the consent from the *same* owner who is now a victim, even *after* the victim has been impermissibly deprived of effective control of the property".<sup>181</sup>

By accepting to trade on effectiveness and legitimizing the might makes right principle, we are therefore importing natural resources from the possessors, or effective controllers, rather than from the real owners. The issue here is that those imports that enrich the private pockets of dictators and warlords, are paid with the money spent by the ordinary citizens, under the form of consumptions or taxes paid to their own democratic governments. Somehow,

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<sup>180</sup> Wenar 2016, 76.

<sup>181</sup> Nili 2017, 315. *Italic* in the original text.

citizens are the “material” contributors who fuel the resource curse in exporting countries. It is therefore necessary to distinguish between the good faith purchaser (excusable due to ignorance) and the bad faith purchaser (non-excusable because of his awareness).

### 2.3 Bad-faith and Good-faith Purchasers

It is crucial to understand that the difference between the two types of agents is based on the knowledge of the history of the good that is traded.<sup>182</sup> The idea here is that the bad faith purchasers are indeed the democratic governments and the national oil companies, and not the citizens-consumers. A bad-faith purchaser is the one who, although having a reasonable doubt that the possessor of the good is not legitimately entitled to sell it, proceeds to purchase the good regardless. The faith of the purchaser is assessed against ordinary requirements of prudence. If the purchaser cannot reasonably think that the owner of the good gave its consent to the sale, then the purchaser cannot legitimately buy the good from the possessor. This is the core principle of sale and ownership that is enforced by national laws but with regards to international trade in natural resources. Western democratic governments buy, and allow national corporations to buy, the most valuable commodities directly from ruthless foreign leaders that do not respect their own citizens’ right to control the natural resources present in their national territory. Wenar himself affirms that “it is in fact a consumer’s own government that links him in legal chains with foreign petrocrats and warlords and that brings their injustices into his own system.”<sup>183</sup> Democratic governments and corporations cannot plausibly argue to be good-faith purchasers, as they are the ones who do the deals in practice. Not to mention the fact that they are in such a position of power as to have easily access to extensive and thorough information on political and economic conditions of every country and every firm in the world. It is not plausible to think ordinary citizens as purchasers that contribute to the resource curse with the same amount of knowledge, intentionality and extent. In fact, Wenar plainly sums it up arguing that the global market is difficult to know because of its very nature made of how supply and sale chains shift and merge together

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<sup>182</sup> The “history” of the good directly refers to Nozick’s Entitlement Theory as discussed in his book “Anarchy, State, and Utopia”. A person who acquires *X* in accordance with the *Principle of Justice Acquisition* is entitled to *X*. A person who acquires *X* in accordance with the *Principle of Justice in Transfer* from someone who is entitled to *X* is entitled to *X*. No one is entitled to *X* except by repeated applications of the previous passages. In this sense, Nozick’s Entitlement Theory of Justice in Holdings is called “historical”, as to determine whether a certain distribution is just, one has to look at how that distribution came about. See Nozick 1974, Part II, Sect.1, pp.150 and following.

<sup>183</sup> Wenar 2016, xlv-xlvi.

relentlessly in a huge network. And this is even truer in the world of oil and other commodities where those supply and sale chains are kept secret because of the powerful interests they come attached with. In the end, ordinary consumers “simply cannot know” which products are tainted or stolen.<sup>184</sup> It is much more difficult for consumers to discover the origin of each good they buy on a daily basis, while their governments have all the tools to single out illegal sellers who violate their peoples’ property rights.<sup>185</sup> That is why, on grounds of efficiency and effectiveness, the distinction between legal and illegal trade in natural resources should be determined by democratic governments right at the origin of the sale chains, rather than expecting consumers to solve this puzzle at the end. The democratic governments that accept to trade by the rule of effectiveness have a double responsibility, not only towards resource-exporting peoples but also towards their own citizens, because they betray the national and international rules that the citizens have accepted to follow and that therefore bound their government as their representative.

## 2.4 Our Consent

As far as consumers’ responsibility is concerned, Wenar affirms:

“Even fairly wealthy people feel that they have little choice but to support national and global institutions by paying taxes and obeying other laws. So even if these wealthy people were to agree that they harm others by upholding the global order, they may feel that they are being forced to harm. And being forced to harm normally cancels any moral responsibility for the harms caused”.<sup>186</sup>

From a consumer perspective, the ignorance argument is hindered by the feasibility of putting it to a halt. This does not necessarily derive from a lack of awareness about the mere existence of the resource curse, or its features and extent. Perhaps the relevant aspect of their ignorance relates to what the agents can do to change this state of affairs, which in turn can

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<sup>184</sup> Ibidem, xix-xx.

<sup>185</sup> This argument resonates the distinction made by Beitz between the limits of what can be reasonably asked to a private morality and to a public morality, and the distinction that it is possible to operate between the two against the costs that they can reasonably bear or avoid by virtue of their self-interest. As argued by Nili, “governments will incur much smaller costs, comparable to their resources, in disengaging at least from severely oppressive regimes, than in the case with consumers who decide to boycott every good whose origins might somehow be tainted, and therefore practically have no choice but to consign themselves to almost survivalist modes of life”. See Nili 2011a, 122, note 27.

<sup>186</sup> Wenar 2009, 126.

lead to a sense of powerlessness and eventually to an acceptance of the status quo as a timeless and immutable reality. It is appropriate to remember here that another way an agent can contribute to the resource curse is by spreading misleading information or by keeping relevant information secret. That is why it is of the utmost importance to invest in raising awareness among democratic citizens, not only about the mere existence of the resource curse, but also about who the true responsible are, and pressure them for accountability. Given the standards of civil and political rights and freedoms that most of the citizens of the affluent democratic countries enjoy, the least they can do to honor these rights and freedoms is to take advantage of them to advance just and praiseworthy goals, such as putting an end to the resource curse and to the persistence of the might makes right rule. Since it is the consent of the citizens that gives validity to a government's actions, informed democratic citizens should state their opposition to this blameworthy state of affairs loud and clear, through the democratic tools at their disposal. More importantly, as we will argue more deeply in a moment, they should do this for their own integrity, before than for relieving the poor conditions of distant others.

### **The Resource Curse as a *Real* Problem of Global Justice**

After all that has been said, can we side with either statism or cosmopolitanism to frame the issue of the resource curse and consequently derive what we should do about it?

The resource curse is doubtless a matter of global distributive justice. It involves rights and duties, both at the national and at the global level. It involves global cooperation in the form of international trade that generates advantages distributed on a national and global basis. And the rules governing how this distribution works belong both to the national and the global level.

When facing such a complex phenomenon, it is of no use to look at it through a single approach, since its features are neither only national nor only international, and the intervening agents are neither only individuals or groups of individuals, nor only institutions. Rather, we have seen that each and anyone agent contribute with his own actions or omissions, in its own way within its own level, and while any single agent or any single action may not be neither necessary nor sufficient to bring about the whole phenomenon of the resource curse, when these variables are taken together they generate a kind of collective responsibility that is greater and distinct from the mere sum of the single responsibilities of

its single components. By looking only through the lenses of either cosmopolitanism or statism we will not be able to deal with the demands of justice generated by the resource curse. Especially because statism and cosmopolitanism are highly ideal theories while the resource curse has millions of real and practical facets.

What is crucial to underline at this point though, is that both statism and cosmopolitanism approaches adopt an “outward-looking” perspective.<sup>187</sup> They give their answers to whether we should, and if so, to what extent and on what grounds, pay the price linked to ending effectiveness. The concept of “costs” is relative to how those who are supposed to bear them feel about the cause they are spending money on. Until we maintain a disposition centered on what we ought to do for others, let alone the “distant” others, there will always be some that will find a reason to say that the task is too demanding, either individually or collectively; that even if we were keen to act, there would always be others that free-ride on somebody else’s effort; and, finally, that for all the good intentions our effort might end up being ineffective.

At this point it is possible to introduce a third approach, named by Professor Wenar himself “ideal-based consequentialism”, which he adopts to build his anti-resource-curse *Clean Trade* framework. This latter approach is *sui generis*, since it gathers elements from both the other two approaches and represents a middle-ground between a theory of global justice and a policy proposal.

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<sup>187</sup> Nili 2011a.

## CHAPTER THREE

### *OUR CURSE*

#### **Introduction**

As the major approaches of global justice, Statism and Cosmopolitanism have dealt with the resource curse as an issue of how rights and duties are distributed, and basically disagreeing only to their nature and extent. Moreover, their common interpretation of the resource curse, has heavily stressed the condition of poverty of the resource-disordered countries, therefore debating over whether affluent democracies have actively caused the current level of severe global poverty or merely failed to prevent it. Accordingly, Statism and Cosmopolitanism have evolved as paradigms of global justice that revolve around the concern of alleviate the poor conditions of others. They differ on whether these concerns translate into positive duties to help (thus entailing some costs on the duty-holder) as distinct from negative duties to refrain from violating rights. One way of defusing this clash is, as we have seen, to look at causal roles and matching them with responsibility accordingly. Nonetheless, when it comes to analyse why and for whom one should implement *Clean Trade*, remaining in the realm of pure ideal theories of justice is neither effective nor convincing. And this is due to the fact that Wenar has not created a purely ideal theory of global justice. In this section, we will proceed to explore more in detail the meaning that Wenar attributes to his *Clean Trade* proposal, to suggest that there could nonetheless be a moral framework able to support his arguments. This moral framework is the “liberal integrity” argument proposed by Shmuel Nili.<sup>188</sup> It differs from both Statism and Cosmopolitanism because it does not inquire what we ought to do for others, but for ourselves. Putting aside for a moment possible concerns that may arise with regards to the practical implementation of *Clean Trade*, the advantage of focusing on “inward-looking” reasons to act<sup>189</sup> is that it frees us from all the above-listed anxieties. As strange as it may sound, we should adopt the *Clean Trade* approach for us. Once we take this mental shift, we may as well realize that this choice is in fact the one that brings about the best results for everyone.

#### **Wenar’s Ideal-based Consequentialism**

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<sup>188</sup> Nili 2016.

<sup>189</sup> Nili 2011a.

Does the *Clean Trade* proposal fit anywhere within the Statism-Cosmopolitanism debate? Not really, at least as far as the reader of *Blood Oil* can state by relying on the book's words. *Clean Trade* is presented as a realistic dissertation on a major adversity of our times, and little does it care about positioning officially within the global-justice debate. It really is intended as a wake-up call for the each and every real person to raise awareness on a real issue and become an advocate for change. Whereby *Clean Trade* assumes the shape of a policy proposal more than a pure theory of global justice.

Wenar clearly affirms that he is not interested in doing “political philosophy without politics” or a “powerless” theory and criticize those academics that, by looking for an ideal form, try to provide the perfect description of what justice *is* and are less concerned with *what to do*.<sup>190</sup> Conversely, he stresses that “we don't live at a high level of abstraction ... what to do now depends on what is possible now”<sup>191</sup> and warns that “what is crucial is that we attend to the world as it is now”.<sup>192</sup> He maintains that both rules of interpersonal morality and more concrete policies are to be evaluated by their contribution in their time: basically, they must be useful, more than they have to be perfect. This is what he defines as “ideal-based consequentialism”<sup>193</sup> and what has guided him along the journey to conceive the *Clean Trade* proposal. Here the key-words are “ideal” and “consequentialism”, since they are both heavily employed in the philosophical debate.

## 1. Ideal

The word ideal immediately recalls the distinction between ideal and non-ideal theories first introduced by Rawls as two possible approaches to conceive a theory of justice.<sup>194</sup>

An ideal theory, “assumes strict compliance and works out the principles that characterize a well ordered society under favorable circumstances”. Then it prescribes “a conception of a just society that we are to achieve if we can”. Lastly, we ought to “judge our existing institutions in accordance with the prescribed conception”. Basically what Rawls suggests – reformulating Rousseau – is that to build an ideal theory, the philosopher should “take men as they are and laws as they might be”<sup>195</sup>. Conversely, non-ideal theory takes its objective to

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<sup>190</sup> Wenar 2016, 353. Italics are in the original text.

<sup>191</sup> Ibidem, 362.

<sup>192</sup> Ibidem, 346.

<sup>193</sup> Ibidem, 364.

<sup>194</sup> Rawls 1971, pp.245-246.

<sup>195</sup> Rawls 1999, 7.

be the realization of the just society conceived in the ideal theory. “It asks how this long-term goal might be achieved or worked toward, usually in gradual steps. It looks for courses of actions that are morally permissible and politically possible as well as likely to be effective”.<sup>196</sup>

What Wenar’s ideal-based consequentialism does is to merge these two approaches together and setting “principles for action”.<sup>197</sup> It is a journey from the ideal to the real and back. He sets an ideal, then the principles compatible with that ideal and then the means that will help realize in concrete that ideal. This is the “consequentialist” part of his discourse. Ends justify the means, but ends also justify the principles that constrain the means. *Clean Trade* guiding principles are popular sovereignty, property rights, human rights, rule of law and peace. Like a consequentialist, Wenar chooses *Clean Trade* tools based on how they contribute to reach the end.<sup>198</sup> Commercial disengagement, boycotts, trade conditionalities, transparency and anti-corruption legislation: these are all initiatives already existing, which have proven to be compatible with international law and they have been widely used both in space and time to deal with international politics. And most importantly, they are all initiatives that are crafted to hit every single causal agent, be it individual, institutional or structural, of the resource curse.

### 1.1 A Rawlsian Cosmopolitan

Even without proposing a pure ideal theory of global justice, we sense that *Clean Trade* is more keen to a statist approach than to a cosmopolitan one. Actually, Wenar himself explores whether there might be better principles to choose, instead of the popular sovereignty over natural resources, to bring about a more just world. In looking for an answer, he firmly dismiss more cosmopolitan principles like the common ownership of the Earth, but also cosmopolitan-inspired policies such as the one proposed by Pogge in *World Poverty and Human Rights*.

The idea of the “common ownership of the Earth” derives from John Locke’s statement that “God has given the Earth to mankind in common” – which was meant to describe the original state of nature whereby a society would then develop.<sup>199</sup> But as many certainly know, Locke

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<sup>196</sup> Rawls 1999, pp. 89-90.

<sup>197</sup> Wenar 2016, ch. 15, 263.

<sup>198</sup> *Ibidem*, 343-344

<sup>199</sup> Wenar 1998

is not the only philosopher who has dealt with the description of the initial conditions of the state of nature: think about Hobbes, Kant, Rousseau, and all the theories of social contract that have been elaborated along the centuries. Each theory had its own particular specification of the initial conditions of the state of nature, and therefore each theory reached its own conclusions about what “just” institutions would derive from there. An argument thus conceived is too controversial to be used to build a comprehensive and stable theory about what our world ought to be now. In particular, Wenar addresses and criticizes Risse’s and Pogge’s attempts to constrain current international institutions by the principle of the common ownership of the Earth: what international institutions ought to work for is to meet the basic needs of all persons. Risse believes that common ownership of the Earth is the grounding principle of the human right of every person to have opportunities to meet his or her own basic needs.<sup>200</sup> Following common ownership of the Earth, Pogge would require nations to fill a global fund whenever natural resources are extracted, then using the fund to meet the basic needs of the world’s poor.<sup>201</sup> Even accepting the factual realities that resources are controlled by nation-states, both Pogge and Risse conceive popular resource sovereignty has to be limited by the common ownership principle, so as to realize a more just distribution that benefit the poor elsewhere. But in countries where the resource curse is already in place and features alarming levels of dictatorship, corruption, and poverty, it is of no use to bring more money in (for example, through the redistribution of sovereign wealth funds globally). The point is exactly the opposite. It is necessary to take natural resource wealth away from the reach of dictators and kleptocrats that use it as their private source of money. The reasoning behind the common ownership of the Earth is also linked to the consideration that the worldwide distribution of natural resources is uneven and scattered, and that if some people are born in countries that are highly endowed while others are not, then this is just a matter of circumstance, and if this influences the wellbeing and the living standards of some, then a redistribution of resource wealth from the luckiest in resource-rich countries towards the less resource-rich countries is due. But this kind of reasoning is totally counter-productive with regards to the mission of fighting the resource curse. One could imagine if people of Equatorial Guinea were told that, because of their rich endowment in natural

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<sup>200</sup> Risse 2012.

<sup>201</sup> Pogge 2008.

resources, part of their revenues were to be transferred to, say, Italy, since that country have less natural resources.

Cosmopolitan ideals are admirable, but not feasible at the moment. Peoples living in the most resource-rich countries belong to nation-states that are just too recent, they were born from the process of decolonization after World War II, and therefore would look at such a principle as a new form of colonial exploitation. Therefore, popular resource sovereignty is currently a preferable grounding value for action: “we will always prefer partial unities, so long as no reasonable alternative is in sight”.<sup>202</sup>

Moreover, for Wenar, the perspective to adopt to deal with the resource curse does not necessarily have to focus on poverty. As we have seen, there citizens in resource-cursed countries that actually receive benefits from their rulers, like in Saudi Arabia or Bahrain. But this does not justify the fact that their property rights over natural resources are not respected. Popular resource sovereignty, as we have seen, is not about the benefits but about the control, the authority over the resources. Focusing on alleviating poverty, as praiseworthy a goal as it may be, is misleading in the current situation.

## **1.2 Dealing with Not-Free and Partly-Free countries**

There is another feature of Wenar’s argument that explains why he is more Rawlsian than cosmopolitan. And this refers to the internal order of the political units that currently form the international community: states. Cosmopolitanism cannot fully be realized unless all countries democratize first. This statement, which might be accused of cognitive colonialism, as we were trying to impose a kind of liberal western mindset worldwide. But at a closer look, we can see that what it points at, is democracy as a procedure, and not as a value. The basis of the principle of popular resource sovereignty, we saw it, are the ability for the citizens to find out and influence the way their natural resources are managed. In concrete terms, those abilities require minimal civil and political rights that consent information, independence, communication, deliberation, freedom and dissent.<sup>203</sup> Whatever the content of the decisions that will derive from the exercise of those rights, that is not “our” business, as western liberal democracies, to judge or influence.

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<sup>202</sup> Wenar 2016, 370.

<sup>203</sup> Ibidem, 227, 236.

This attitude emerges also if we take a look at the difference in the treatment that *Clean Trade* reserves to not free and partly free countries. We have seen that Wenar envisages the complete commercial and financial disengagement from countries that are rate as non-free by the Freedom House Index on Civil and Political Liberties, while partly-free countries face tailored responses and policies that match their progress (or regress) in enforcing their citizens' sovereignty over natural resources. Wenar states that the aim of the latter treatment is supporting accountability in those countries through a system of conditionalities.<sup>204</sup> I argue that the different treatment between these two classes of states echoes the Rawlsian conception of justice elaborated in *The Law of Peoples*. Wenar himself affirms that international relations do not occur at the interpersonal level since individuals are not the subject of international relations, but states are.<sup>205</sup> And international relations between states are regulated by *The Law of the Peoples*, which takes into account the diversity present in the international community and gives a moral justification as to how to deal with this diversity.

From Rawls' perspective, the subjects of international justice are not individual persons but independent Peoples. What liberal societies owe to decent and well-ordered societies that reject liberal principles of justice is respect and tolerance. But to interpret this statement as a simple consequence of the factual consideration that at the global level we find a greater diversity of principles that influence the conception of what is "Good" (such as religion, for example), is a non-moral account of justice. What Rawls wants to affirm, is the moral significance of collective self-governance as condition to accept and compound the varieties of Peoples at the global level. As Macedo points out, "collective self-governance yields a moral basis for a respecting global diversity and also moral standards or criteria for discerning which peoples merit our respect".<sup>206</sup> Decent and well-ordered peoples deserve outsiders' full respect provided that they are genuinely self-governing collectivities. This means that their domestic institutions must provide inclusion for all the segments of the society and voice to the opposition. Non-liberal but decent and well-ordered societies are moral communities. Conversely, governments that rule by tyranny and oppression do not deserve outsiders' respect nor tolerance. The issue here is:

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<sup>204</sup> Ibidem, 324.

<sup>205</sup> Wenar 2006, 103.

<sup>206</sup> Macedo 2004, 1723.

“Whether we can reconcile two convictions: First, that respect for the diversity of cultures and traditions means that we cannot simply universalize the liberal conception of justice worked out within Western societies. Second, that we must not bow to cultural diversity as a way of rationalizing the oppression of some by others.”<sup>207</sup>

The criterion to reconcile these two convictions, for Rawls, is to look at the respect of what he calls “human rights proper”.<sup>208</sup> They are identified with the most basic rights set out by the Universal Declaration of Human Rights, and “cannot be rejected as peculiarly liberal or special to the Western tradition.”<sup>209</sup> Liberal Peoples and non-liberal but decent Peoples are both considered to be well-ordered, in Rawls opinion, because they respect those principles and they involve the members of their society in the political decision-making process in a meaningful way. *The Law of Peoples* does not ask decent societies “to abandon or modify their religious institutions and adopt liberal ones”<sup>210</sup> Decent and well-ordered societies may not qualify as fully just from a liberal standpoint: they may be characterized by an official religion or doctrine that sets how the government or the social policies should be shaped. But they are inclusive and allow the expression of dissent, and if this internal structure make these states go wrong, then the mistake is “theirs to make”.<sup>211</sup> This is also what Wenar means when he says that “it is not for us to tell the Saudis or Nigerians how to run their countries. Those are matters for the Saudis, and for the Nigerians, to decide”.<sup>212</sup> At the opposite side of the spectrum, we find all the types of non-well-ordered societies that are therefore not subject to the *Law of Peoples*. Outlaw states that violate human rights, societies burdened by unfavorable conditions, and benevolent absolutisms that honor human rights and are non-aggressive but do not allow their members to play “a meaningful role in making political decisions”<sup>213</sup> - all of these Peoples do not deserve the respect and tolerance of the other well-ordered societies. Nonetheless, burdened societies that lack the political or economic resources to become decent societies are owed a “duty of assistance” that basically translate in sending foreign aid to bring these societies to a level at which they will be finally able to

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<sup>207</sup> Ibidem, 1733.

<sup>208</sup> Rawls 1999, 65.

<sup>209</sup> Ibidem.

<sup>210</sup> Ibidem, 63.

<sup>211</sup> Macedo 2004, 1733.

<sup>212</sup> Wenar 2016, xxviii.

<sup>213</sup> Rawls 1999, 4.

collectively self-govern themselves. In the distinction between outlaw states and burdened societies it is possible to read the difference in treatment that *Clean Trade* attributes to not-free and partly-free countries. The first have to be totally disengaged from, because not-free countries do not present any feature of collective self-governance. As a consequence, disengaging from them would neither be an interference in their internal affairs nor a breach of the right to equality that every people enjoys as independent and sovereign unit within the international community. Conversely, the partly-free countries have to be supported in their quest to full accountability through tailored responses and policies adopted by the *Clean Trade* countries. Of course, in the particular context of the resource curse, “sending foreign aid” as sums of money towards kleptocratic or corrupt regimes can do more harm than good, but we do not have to forget that Rawls’ intention is to construct an ideal theory of justice, not to address particular real situations of our present reality. For that, we can refer to the policies set out in *Clean Trade*. But the underlying rationale holds.

As Rawls argue, “the common good idea of justice ... takes into account what it sees as the fundamental interests of everyone in society”.<sup>214</sup> Therefore, what makes it possible to accommodate the diversity of Peoples that is found at the global level, and consequently the shape of the *Clean Trade* proposal, is the respect of the right to collective self-rule that every People enjoys. The only condition for deserving this respect, though, is that “the people – all of them – are collectively ruling over themselves”.<sup>215</sup> The respect that well-ordered societies collectively ruling over themselves owe one another translate into a negative duty to refrain from “exporting” principles, institutions and values that are specific to a particular culture or tradition. That’s also why Wenar criticizes Pogge’s idea of adopting constitutional amendments to the resource-exporting countries constitutions. Rather, Wenar insists that “Western countries only need to enforce their own principles, within their own borders, on their own soil”.<sup>216</sup>

### **1.3 A principled Policy Proposal**

*Clean Trade* is some middle-ground between an ideal theory of justice and a simple public policy. It is a project that wishes to contribute realizing a more just world by help solving a

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<sup>214</sup> Ibidem, 67.

<sup>215</sup> Macedo 2004, 1735.

<sup>216</sup> Wenar 2016, xxvii.

real and specific issue of our times: the resource curse. It aims at doing so through feasible tools that are conceived to concretely enforce more abstract moral principles. *Clean Trade* is more realistic than cosmopolitanism, since we cannot disregard completely the factual reality that the world is divided in national states, or territorial units. But neither is it expression of a pure statist approach. The focus on the direct link between consumers' behavior "here" and effects on resource-cursed citizens "there" recalls the type of interpersonal relations that cosmopolitans insist on. At the same time, the space allocated to the exercise of justice leans towards a statist paradigm: the international engagement happens through laws enacted by national governments, and these laws define the room of maneuver for, and influence the behavior of, individuals, groups and companies. Wenar accepts the *de facto* and *de jure* division of the world in territorial sovereign states that are the primary locus of pursuit of justice, and also the role played by the international institutions. But taking into account the evolution of international law and international trade that *in concrete* create injustice, he refuses to settle for the existence of mere moral justice at the global level, let alone a mere humanitarian concern. Even if Wenar does not explicitly refer to this point, his argument basically consist into applying Nozick's historical principles to the international trade in natural resources. And since international trade *is* based on *legal* transactions that compose the net of sale and supply chains of our global economy, then *legal* justice can be claimed by resource-cursed exporting peoples. An approach based on the criticism that trading on effectiveness is a serious infringement of international law might actually be a smart move to prevent all those that are skeptics about moral principles from turning a blind eye on the problem of resource-curse only because they hold different views on the nature and extent of global justice. Once we have identified who the rightful owners of the natural resources are, not asking for their permission to sell is to violate their property right over those resources. The natural resources traded on effectiveness, are stolen goods. Appealing to the violation of citizens property rights in the resource-exporting countries might be essential to ground the kind of reform that *Clean Trade* seek to bring about: western resource-importing democracies could not possibly complain about the "sacrifices" that giving up on stolen resources would impose on them, if the kind of lifestyle they are currently enjoying is made possible through their complicity in illegal activities. The same reasoning apply in case of domestic violations of property rights: those who enrich themselves by corruption, fraud, or robbery, cannot possibly complain

when a judge rules that, besides stopping those activities, the indicted has to pay reparations or go to jail. We cannot consider a sacrifice losing something that has been obtained by illegal means.

## 2. Consequentialism and the Problem of Valuable Outcomes

There is a problem in using the word consequentialism: because consequentialist moral theory judge morality from the capacity to bring about valuable outcomes. *Clean trade* is surely animated by the most noble and moral reasons: help enforcing the property rights of resource-exporting peoples currently violated by the most brutal dictators, which will in turn help raise their well-being and standard of living, hopefully. After all, Wenar himself opens his work by saying that “the promise of systemic improvements pools this book investigation.”<sup>217</sup> But since we have tried to stress the need to adopt of *Clean Trade* on the premise that maintaining the status quo constitutes a breach of a negative right of resource-exporting peoples, then the grounding arguments for changing the current state of affairs cannot concern outcomes, as praiseworthy as they may be. Yet, this is what Wenar seems to suggest throughout his book. Even if his argument, smartly enough, tries to dodge the classical objections generally addressed to the advocates of positive duties by saying that *Clean Trade* movement requires self-control more than sending aid,<sup>218</sup> eventually he only replaces our alleged duty to “send” aid with a more general duty of realizing a positive outcome:

“In the end, it’s not about you; it’s about progress ... to unify one’s own life around action with others and for others”.<sup>219</sup>

And also:

“clean trade framework is based on the democratic leadership of importing countries... free peoples committing to self-disciplined action on behalf of the freedom of peoples elsewhere”.<sup>220</sup>

Moreover, Wenar is also able in handling carefully the delicate link between the right to popular sovereignty over natural resources and democracy. He is right in understanding that western countries that want to tackle effectiveness cannot simply impose democratic

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<sup>217</sup> Wenar 2016, xliv.

<sup>218</sup> Ibidem, 333.

<sup>219</sup> Ibidem, 319.

<sup>220</sup> Ibidem, 282.

institutions on resource-cursed countries, especially not democracy interpreted as a liberal value. Nonetheless, even if only as a decision-making procedure, popular resource sovereignty *requires* democracy. On this issue as well Wenar eventually fails to remain in the realm of the negative duties of resource-importing countries. He states that:

“Nigeria’s problems are... fore Nigerians to solve, and the same is true for all exporting countries. Outsiders *can* help by reversing the forces now generated by their own terms of trade.”<sup>221</sup>

Unfortunately, saying that one *can* do something, does not automatically imply, nor require, that one *has to*. It is normally assumed that one’s rights outdo more utilitarian concerns about others’ wellbeing. Moreover, if the aim of law is to impose some duties on its subjects, usually it is required that those duties correspond to actual rights. On that point, most legislation and public policies are severely opposed when they do not limit themselves to deal with negative duties not to infringe upon negative rights. This means that any broader positive duty to aid, as distinct from negative duties to refrain from violating rights, might only be seen as supererogatory, and their enforcement through law illegitimate since such enforcement itself violates agents’ rights.<sup>222</sup> *Clean Trade*, as a public policy or legislation, cannot require citizens of implementing countries to improve non-compatriots’ conditions. To use Shmuel Nili’s expression, *Clean Trade* cannot be chained to an “outward-looking” perspective,<sup>223</sup> neither as legal duty nor as a moral one. Linking the adoption of *Clean Trade* to the outcomes it *wishes* to bring about, as praiseworthy as they may be, risks raising more skepticism and attract more objections than this reform needs if it is to be implemented.

Conversely, an inward-looking reason can help explain why affluent countries’ citizens should bear most of the costs entailed in Wenar’s proposal, thus shutting down any possible rejection towards our alleged positive duties to care about people living in distant countries. If the citizens, in the first place, do not recognize how the resource curse is linked to their own actions and hurts their own rights and duties, then they may not be ready to accept the costs of this reform. As a consequence, they will not pressure their own governments towards the right direction, that is, the disengagement from trading with resource-cursed countries.

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<sup>221</sup> Ibidem, 324. Italic is not present in the original text, I used it to stress the difference between an obligation and a voluntary action.

<sup>222</sup> Nili 2015.

<sup>223</sup> Nili 2011a.

By shifting the focus on inward-looking reasons to implement *Clean Trade* and dissociating the duty of outcome from the duty to disengage, *Clean Trade* can find a normative support that will make its adoption more likely.

### **Our Liberal Integrity and the Duty To Disengage**

“The desire to make a palpable difference to urgent problems of global deprivation has generated a growing preoccupation with practical problem-solving”.<sup>224</sup> These are the words used by a scholars to describe a current trend among philosophers who address injustices in their practical dimensions, but often disregard to do so following any particular ideal theory of global justice. We can argue that Wenar’s *Clean Trade* match such description, since its grounding arguments revolve around the violation of property rights, the infringement of international law, and the protection of human rights in terms of popular sovereignty over natural resources. While it is not possible to downgrade in any way the contribution that such kind of work can add to the process of concrete problem-solving, it is nonetheless the distinctive feature of the political philosopher to support any argument with a rigorous normative analysis. The fact that Peoples, and not rulers, have the ultimate legitimate authority over the natural resources within their territorial states, is an incontestable right set out both by international and national law. By accepting to import natural resources from dictators and other oppressive regimes that do not let their people exercise their popular sovereignty, western democracies are *de facto* partners in crime with illegitimate vendors of natural resources, and those imports are literally theft. While it is somehow intuitive that everybody ought to condemn such state of affairs, such intuition is not enough for grounding the dramatic reform that *Clean Trade* represents. The level of urgency of a real-world problem does not erase, from the point of view of political philosophy, the need to back action with a normative theory that specify what sacrifices individual and collective agents can reasonably be required to make. Otherwise, we would simply risk to break one of the fundamental rules of Kantian deontology: that is, prohibition to treat others as mere means to an end.<sup>225</sup> Wenar himself addresses <sup>226</sup> some of major concerns that in the affluent countries might end up blocking the adoption of his *Clean Trade* proposals, chief among

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<sup>224</sup> Flikschuh 2014, 6.

<sup>225</sup> Kant 1785.

<sup>226</sup> Wenar 2016, 292-303.

them the overall increase of the cost of living and the future of the energy supplies. If citizens of the importing countries are not to be treated as mere means to protect the rights of distant others, a normative support to Wenar's argument is necessary.

Shmuel Nili offers such support. He argues that the hope for better outcomes for the resource curse's victims cannot be the foundation of democratic disengagement from petrocrats.<sup>227</sup> Western democracies ought to stop trading with severely oppressive regimes for the sake of their own liberal integrity.<sup>228</sup> He describes an agent's integrity as "the pursuit of projects or commitments that the agent considers constitutive of its identity."<sup>229</sup> Accordingly, he conceives a western democracy as an agent characterized by a liberal identity, which is shaped by the fundamental laws that sovereign citizens have established to govern their relations and pour the pluralism that is present at the social level into the unitary figure of the state. As Dworking says, "the legal order they establish turns collectively sovereign citizens into a community personified".<sup>230</sup> The grounding principles of a liberal polity, broadly speaking, are based on the protection of individual rights and freedom, especially against the power of the state. When the state, as the guardian and the embodiment of the identity-grounding law of a liberal polity, acts in ways that conflict with fundamental rights and freedom it ought to represent, then the identity of that polity is threatened. By entangling themselves in manifestly illiberal practices abroad, western democracies become materially complicit in practices that betray the fundamental principles of their own liberal identity. And this is a necessary and sufficient reason to disengage from the old rule of effectiveness and all the negative externalities that it implies. As an answer to the problem of dirty hands, we can argue that by picturing the liberal integrity as an inviolable moral prescription, the issue is solved by forbidding that the hands become dirty in the first place.

How can we evaluate whether the integrity of a liberal democracy is threatened? Nili suggests taking the "global integrity test":

"Assessing a foreign political or economic practice, a polity with a liberal self-conception ought to ask itself whether it would still be able to retain its identity grounding commitment to equally respect the rights of all of its citizens, if the same foreign practice were institutionalized, through its legal system, within its borders.

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<sup>227</sup> Nili 2011a.

<sup>228</sup> Nili 2016.

<sup>229</sup> *Ibidem*, 148.

<sup>230</sup> Dworkin 1986, 167.

Where the answer is negative, perpetuating, legitimating or reaping the benefits from this manifestly illiberal practice through its own law threatens the polity's liberal integrity."<sup>231</sup>

This sort of clash is exactly the kind of double standard that we have analyzed earlier in this work. The president of a western democracy could never sell his country's natural resources and keep the revenues as his private wealth, since this would directly infringe upon the principle of popular resource sovereignty that western democracies observe within their own borders. Liberal democracies, as a general feature, embody the idea that the state does not belong to the rulers, but to the people. But when it comes to importing natural resources from countries ruled by dictators and warlords that do not let their citizens control the management of their natural resources' wealth, western democracies accept a ruler as legitimate vendor only because it is powerful enough to control those resources and thus act like the *de facto* owner of commodities that are citizens' property instead. This is an illiberal practice. This argument can surely support the rationale of *Clean Trade's Rules of Engagement*, which set uniform standards for all oil and mining companies that are domestically listed. "The gold standard of *Clean Trade* – Wenar says – is a country that holds its firms and agencies to the same legal standards whether they are doing business at home or abroad".<sup>232</sup> The global integrity test, is able to immediately signal liberal democracies whether they are actually entangling in illiberal practices and allow them to disengage from dictators and their illegitimate activities. Most importantly, this disengagement can occur for reasons that are exclusively inward-looking: that is, they are not based on an assessment of the advantages that the victims of the illiberal practice may get, but on the inherent wrong for a liberal democracy to engage in practices that go directly against its own identity-defining principles.

### **The Outward-looking and Inward-looking Perspectives**

There are several reasons why adopting an inward-looking perspective, based on the aim of safeguarding importing-countries liberal integrity, is preferable to an outward-looking perspective, based on the aim to improve others' conditions. All of these reasons will help making the adoption of *Clean Trade* smoother, wider and, hopefully, faster. We now

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<sup>231</sup> Nili 2016, 151.

<sup>232</sup> Wenar 2016, 324.

consider only those reasons that pertain to the realm of moral theory, but in the last part of this work we will see that adopting an inward-looking perspective based on liberal integrity will solve other concerns related to the feasibility of *Clean Trade*.

The first order of reasons are normative. Since the rule of might make right is inherently wrong and conflicts with liberal-democratic identity, the complicity of western importing countries “is a necessary and sufficient justification for boycotts, independently of their consequences for the curse’s victims”.<sup>233</sup> The inward-looking perspective has as first target not the resource curse phenomenon in itself but the role of each democracy in the perpetration of the resource curse. Instead of grounding our policies in the hope of bringing about better outcomes for others, we should focus on our own moral decency as fundamental value for action. If we follow Wenar’s consequentialist approach, the duty to stop entangling with brutal dictators would become totally dependent on the prospects of improving the conditions of resource-cursed people. But there is no assurance that disengaging from dictators will make the citizens of those countries better off. As Michael Blake affirms:

“We are under no obligation to maximize the world’s welfare – or the welfare of any part of it, for what matters – but we are under an obligation to avoid denying the conditions of autonomy to all human beings”.<sup>234</sup>

The fact that the resource curse is an appalling phenomenon and that it is in the power of both states and international institutions to address it is an uncontestable statement. With all good chances, *Clean Trade* and all of its tools are the right direction to pursue to bring about positive changes. But hoping for such changes to occur cannot be the grounding justification for disengage. “One has a duty to end one’s material involvement in the theft independently of outcomes ... simply for the sake of duty. We ought to stop doing what is manifestly wrong simply because stopping is right – full stop.”<sup>235</sup> We should commit first, and then hope.

The second order of reasons are empirical. It is very hard to establish any concrete prediction of the direct impact of democratic disengagement on the rest of the world, be the

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<sup>233</sup> Nili 2011a, 104.

<sup>234</sup> Blake 2001, 293.

<sup>235</sup> Nili 2011a, 114.

consequences positive or negative. When criticizing the alleged positive duty to aid distant others, Wenar writes:

“Moral theory ignores the extraordinarily complex causal nexus that lies between the rich and those distant from them who live in poverty. These causal connections between the rich and poor are relevant to the conclusions that moral theory can reach. Individuals must after all carry out their moral duties in this world ... If moral theorists demand action in this world, they should be able to give firm empirical support for their claims that the actions they require will have the effects that they predict. The empirical question that rich individuals must be able to answer in order to understand their moral duties to aid distant others is this: how will each dollar, given by me or my government, affect the long-term well-being of the poor”.<sup>236</sup>

The opposite criticism holds as well: How will each dollar withheld by individuals (through the shopping boycotts), governments and corporations (through commercial and financial disengagement) affect the long-term well-being of the resource-curse victims? Moreover, focusing on foreigners’ conditions will not help policy-makers to deal with possible differentiated outcomes of the disengagement. Some countries could improve, while others could fall into more vicious conditions, and there is no clear and definitive way to predict that. Such differentiated outcome might also lead to wonder whether, should consequences for resource exporting countries keep getting worse, *Clean Trade* countries ought to maintain their disengagement or not. The uncertainty about the answer might lead to frustration and eventually to the outright avoidance of the problem. This surely is an immoral and selfish behavior, given the dramatic urgency of addressing the resource curse. The liberal integrity argument should oblige western democracies to stop treating oppressors as legitimate vendors of their citizens’ resources because trading on effectiveness betrays the rights on which the liberal-democratic identity is founded. The hope for positive outcomes for others should become a supporting rather than grounding justification for adopting *Clean Trade* policy.

### **The “Worst of the Worst” and the “Benevolent Despot”**

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<sup>236</sup> Wenar 2003, 291.

*Blood Oil* is a book animated by the aim of contributing pragmatically to one of the gravest issues of our times. But exactly because the resource curse is not a mere abstract problem, but instead has heavy political and economic facets, for all the most committed intentions Wenar knows that implementing *Clean Trade* requires careful handling. A *Clean Trade* country would have to disengage from all countries rated Not Free from Freedom House, that is, countries where not even the minimal civil and political liberties of citizens are not guaranteed. This group of countries, at the time of writing, contain states as diverse as Equatorial Guinea and Saudi Arabia, Angola and Iran, Chad and Russia, and so on.<sup>237</sup> Since disengaging all at once would be too politically and economically disruptive, Wenar suggest disengaging gradually, starting by disqualifying only one minor “worst of the worst” regime.<sup>238</sup> While we can see the practical concerns that might explain, more than justify, such a tactic, from a normative point of view this is not justifiable at all. For example, treating differently Equatorial Guinea and Saudi Arabia, both of which scored 7 in Political Rights and Civil Liberties, would be a complete discretionary discrimination between equally appalling situations. The only difference among the two countries is their respective national income per capita, since Saudi citizens are getting a good enough deal from how their regime manage the country’s oil, both in public and private goods; the Equatoguinean are not. From this point of view, the only difference between Equatorial Guinea and Saudi Arabia is that “Obiang is a brutal despot while the Saudi king is benevolent. A good king confers benefits on his people; a bad king cruelly deprives them”.<sup>239</sup> If we are to be taking seriously popular sovereignty over natural resources as the grounding value of our reform, then it makes no sense distinguishing between the worst dictatorship and a benevolent despot. Even more so since Wenar himself spends so many pages explaining that most kleptocrats do not rule by the sole use of force, but instead adopt mixed strategies in order to remain in power.<sup>240</sup> They limit their use of force, distribute much of the revenue from state-owned natural resources to the population, and generally try to ensure decent standards of living for the population: some even hold elections. But, as we have explained, popular sovereignty over natural resources is not about benefits: it is about control. Wenar says it best affirming:

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<sup>237</sup> The latest Freedom in the World Report (2017) is available on Freedom House website, see <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

<sup>238</sup> Wenar 2016, 286. In his example, the regime to be disqualified is Equatorial Guinea.

<sup>239</sup> Ibidem, 241.

<sup>240</sup> Ibidem, see Part I, “Them vs. Them”, pp.1-64.

“If we believe in popular resource sovereignty, there can be no such thing as a ruler who is benevolent with resource revenues. No one can be generous by giving someone what they already own”.

From a normative point of view, then, his suggestion to disengage only from “the worst of the worst”, contradicts the whole rationale of his own argument.

Moreover, indulging on a benevolent despot only because he gives benefits to his citizens, means also accepting its paternalistic attitude towards its population. The behavior of a benevolent despot reflects the assumption that rational citizens are not capable enough to govern themselves and therefore are legitimately obliged to approve what they get. Absent the possibility to express their consent on the management of natural resource revenues, we cannot really assess whether those could possibly be the benefits that the average Saudi really wants. A government that does not allow its people to collectively rule over themselves, does not deserve any favorable treatments, even when its decisions reflect concern for the people’s material well-being. As Nili points out:

“Equal respect for agent’s property rights is part of the overarching idea of respecting agent’s freedom of choice. Agents ought to be respected as equally autonomous as a matter of inherent right that is independent of good outcomes or benefits. It matters, in other words, that agents are treated equally, independently of what they may or may not get”.<sup>241</sup>

The concept of popular sovereignty over natural resources requires minimal procedural democracy in the form of civil and political rights and rule of law. Absent those minimal requirements, no decision of the government legitimate trade transactions in natural resources. From a normative standpoint, Saudi Arabia violates the principle of popular resource sovereignty just as much as Equatorial Guinea, and democracies’ commitment to protect their own liberal integrity ought to make them treat both countries the same way.

A different argument can be advanced to justify the choice to start disengaging only from the worst dictatorship, both from a moral and a practical point of view: disengagement is more urgent where dictators not only deny their people the control, but also the benefits from resource revenues. This makes liberal democracies complicit to shameful practices that go

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<sup>241</sup> Nili 2011a, 106.

well beyond the mere theft: those people can suffer from severe poverty, human rights abuses, and other degrading conditions. Nonetheless, this does not mean to adopt an outward-looking perspective again. It is just a matter of urgency, which may qualify but not replace the grounding principle for western democracies of boycotting partners that entangle them in practices that conflict with their liberal identity.

### **Does the Trust Clean our Hands?**

We have seen that the task of the *Clean Hands Trust* is to exert horizontal pressure on trading partners of the *Clean Trade*-enacting countries with different aims. The first aim is making them stop buying stolen resources too, by cutting the economic gains that are generated by effectiveness. If the inward-looking perspective based on the notion of liberal integrity might be enough for Western democracies to stop obeying and contributing to the might makes right rule, other countries with different ideals (and levels of development) might not be on the same page. Therefore, the objectives of the Trust are morals and normative, while the practical tools to achieve them are economic. The second – more impalpable – aim is to widen the volume positive forces that globally row towards the full enforcement of property rights of the peoples whose natural resources are illegally stolen and sold. The third aim, with which we are more concerned here, is to prevent our complicity to this theft from continuing (notwithstanding the adoption of a *Clean Trade Act*) through the indirect consumption of stolen resources via tainted goods – that is, goods containing stolen resources and purchased by *Clean Trade* countries from third countries that have not adopted a *Clean Trade* legislation. That being said, it is necessary to explore some practical and ideal concerns about the *Clean Hands Trust*.

#### **1. Practical Concerns**

The first practical concern about the *Trust* is about its monetary quantification.

Wenar sketches a commercial triangle occurring among the US, China, and Equatorial Guinea.<sup>242</sup> The US have already passed a *Clean Trade Act* that disengage all American private and public companies to buy oil from Equatorial Guinea, while China has not. In order to avoid funding Equatorial Guinea indirectly via US commercial relations with China, the US will establish a *Trust* destined to the citizens of Equatorial Guinea, to be filled with

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<sup>242</sup> Wenar 2016a, 290.

duties applied on Chinese imports as they enter the United States. If, for example, China buys \$3 billion worth of oil from the Equatorial Guinea's dictator, American duties on Chinese imports will be imposed until they fill the *Trust* for \$3 billions. This will work as a system of economic disincentives for China to keep trading with the Equatorial dictator, as buying more oil will only mean to increase the volume and extent of American duties on Chinese exports to the US. At the same time, "American consumers can buy Chinese imports with clean hands because the duties subtract from those imports the value of the oil stolen by Obiang's regime"<sup>243</sup> At this point, it is necessary to bring up the previously made considerations about how the global market works, with the fog of supply and sale chains that merge, shift, split, and sometimes disappear.

To begin with, not all the Equatorial Guinean oil that China buys will be used to create exporting goods, nor all of its exports will be purchased by America alone. Moreover, being outsourcing and intra-industry trade a common practice in the productive sector, it is difficult to take into account the value that each of these intermediate transactions add to the final product. It is thus difficult to quantify in monetary terms the level of tariff that American consumers should legitimately pay to fill their fair share of the *Trust*. Continuing to pay such duties beyond that share, would amount to taxing American customers for amounts of Chinese imports of stolen oil that have not reached the US. It is a technical issue related to the argument that "we simply cannot know exactly which products are tainted by moral toxicity in their supply chain".<sup>244</sup>

Nonetheless, a more polished institutional design in this sense should not be too hard to figure out, especially if supported by strong anti-corruption and pro-transparency activities that contribute to make sure that every step of the supply chain can be tracked.

## **2. Ideal Concerns**

What is more challenging is to assess the role played by the *Clean Hands Trust* from a perspective of justice. We have argued that trading on effectiveness is a harmful behavior that violates the property rights of the people of the resource-exporting countries. This right is enshrined in international law and in national constitutions, of both exporting and importing countries, and for the right-holders to enjoy it only imposes negative duties on

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<sup>243</sup> Ibidem.

<sup>244</sup> Ibidem, xx.

others, who shall refrain from breaching that right. When such a breach occurs though, a positive duty of redress arises. Wenar acknowledges that “reparations are about repair, and repair is about restring to a previous condition”.<sup>245</sup> This is a backward-looking perspective, whereby in absence of injustice, reparations are not justified. But then the author adds that “reparations, when they are due, are reparations not for the sake of the past, but for the sake of the future”.<sup>246</sup> This means that the backward-looking perspective, which maintains that a past injustice is necessary for reparations, is necessary but not sufficient, and we have to award reparations also considering whether they are capable of bringing about a greater distributive justice (or at least when they do not make the world even less just from a distributive point of view), following a forward-looking perspective. This means that, for reparations to be just, backward-looking and forward-looking perspectives must be both satisfied. On a logic level, though, forward-looking reasons cannot but depend on, and be prompted by, a historical injustice to be repaired.

We can now try to apply these concepts to the role of the *Clean Hands Trust* from a point of view of justice as redress. Does paying the people of the Equatorial Guinea from the day of the *Trust*'s activation clean the hands of American citizens for all the past decades they have been breaching Equatorial Guinean popular sovereignty over natural resources? It is not clear that it does, because while reparations are morally just and rightfully due, they seem to suggest that the breach of one's negative right can be pursued *sine die*, as long as those who harm can afford to repay accordingly *after*. A *Trust* thus conceived seems to be a flawed solution, since it risks to provide a moral loophole to carry on the injustice as long as there is money available for compensation. As for the forward-looking perspective, since it is not sure when or even whether implementing the *Trust* will finally bring about a democratic shift within the resource-exporting countries, the “greater distributive justice” requirement might remain unrealized. There are indeed several factors that might hinder such realization, like political opposition, retaliations, or economic crises.

### 3. Final Considerations

As we have argued earlier, *Clean Trade* is a project grounded in an expected outcome, through the enforcement of already existing laws and principles, and it is only conceived to

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<sup>245</sup> Wenar 2006, 398.

<sup>246</sup> *Ibidem*, 396.

create incentives for all agents to respect them. For all the criticism, the *Clean Hands Trust* is an economic tool, conceived to be applied in the real world, to solve a problem that is not only moral but also practical. There is room for improvement, but the overall idea remains valuable. Some fear that implementing *Clean Trade* unilaterally is risky for a country, in terms of the relation between the costs and the wished outcomes that are, by definition, uncertain. From a commercial point of view, for example, it could be feared that the imposition of an American tariff on Chinese imports might just end up pushing China to reciprocate by imposing duties or quotas on American imports, thus starting a commercial war that only adds up to the already existing problems.<sup>247</sup> In such a scenario, the idea of liberal integrity should guide the western democracies not to be influenced by material interests or greedy reasoning like the fear of doing more than their fair share. Rather, they should hold onto their deepest moral principles. The chances are very little that following those principles will not to lead also to better outcomes.

## **Conclusion**

The phenomenon of the resource curse has longtime been looked at either from its political or its economic features. From the point of view of global justice, neither the two major philosophical approaches alone, namely statism and cosmopolitanism, can provide a full account of who or what is responsible for this phenomenon and therefore how this situations should be redressed, or for what reasons. Wenar's *Clean Trade* is not an ideal theory of global justice but neither is solely a policy proposal, since it tries to combine both a concrete plan of action with moral principles to act, with the stated aim to bring about systemic improvements to the current grave state of affairs. As praiseworthy as this attempt may be, from the point of view of political philosophy, it does not solve fundamental normative issues such as to what extent and to the advantage of whom one ought to bear the costs associated to his proposal. Shmuel Nili offers such normative support through the idea of liberal integrity, dissociating the positive duty of outcome from the negative duty to simply disengage from illiberal practices that are inherently wrong and conflict with the deepest principles that compose the identity of western democracies. Besides filling this normative deficit, adopting such an inward-looking perspective helps solving more practical aspects

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<sup>247</sup> See the article "Inviting an endless cycle of tit-for-tat tariffs" by John Ghazvinian, available at <https://www.cato-unbound.org/2008/05/27/john-ghazvinian/inviting-endless-cycle-tit-tat-tariffs>

liked to the implementation of *Clean Trade* in the highly non-ideal world that we currently inhabit. Accordingly, we now turn to assess the feasibility of Wenar's *Clean Trade* policy.

## **PART III**

# **Feasibility Assessment**

## CHAPTER FOUR

### CLEAN TRADE MEASURES AND WTO LEGISLATION

#### Introduction

As we examined in the first chapter, the main policy tools of *Clean Trade* aim at erasing the economic gains obtained by trading natural resources on the rule of effectiveness. Conversely, they are conceived as leverages to get both importing and exporting countries to enforce and respect the human right to permanent sovereignty over natural resources that is engraved in Article 1 of both the International Covenant on Civil and Political Rights (henceforth ICCPR) and the International Covenant of Economic Social and Cultural Rights (henceforth ICESCR).

In a nutshell, the *Clean Trade* Act and the Clean Hands Trust<sup>248</sup> translate, respectively, into a direct embargo on stolen resources and the imposition of duties<sup>249</sup> on tainted goods imported from third countries that keep trading with resource-disordered states. Therefore, it is necessary to assess the legality of these two mechanisms in the light of the norms that regulate international free trade: namely, the General Agreement on Tariffs and Trade (GATT) and, since 2005, the World Trade Organization (WTO) provisions.

Let us briefly recall here that there are two core principles at the base of the world trade system: market liberalism and non-discrimination. The first principle entails that the more we liberalize trade, the more wealth we create, for all. The second principle entails that all WTO members must have the same opportunities to trade.<sup>250</sup>

Given this premise, *Clean Trade* policy tools might violate WTO provisions. By the end of the analysis, it will be clear that the most feasible option to avoid any quibble whatsoever, is to consider a waiver from WTO obligations. In this regard, an important precedent can be found in the waiver granted by the WTO General Council in 2003 to allow the

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<sup>248</sup> As explained previously, the Clean Hands Trust envisages not only the imposition of tariffs on the imports of tainted goods by third countries, but also the diversion of the proceeds of these duties into a Trust to be held by the importing countries on behalf of the citizens of the resource-cursed countries. The management of the Trust by *Clean Trade* countries and the eventual restitution of the funds to the populations of the exporting states are aspects that do not deal with WTO legislation.

<sup>249</sup> In the early sketches of his *Clean Trade* project, Wenar expressly names them “anti-theft tariffs”. Wenar, 2009.

<sup>250</sup> Oatley 2014, 22-23.

implementation of the Kimberley Process Certification Scheme for Rough Diamonds, aimed at tackling the smuggling of the so-called “conflict diamonds”.

## **A Direct Embargo on Exploited Resources**

*Clean Trade* countries can block the imports of stolen resources in two ways. Either they prohibit the imports *tout-court*, or they enact an internal regulation that outlaws the sale of exploited resources in the domestic market. The latter would thus be enforced at *Clean Trade* countries’ national borders.

### **1. Prohibition on Imports of Stolen Resources**

Were *Clean Trade* countries to adopt an import prohibition *tout-court*, they would directly violate Article XI.1 of GATT, which forbids the imposition of quantitative restrictions on imports from WTO members.

### **2. Prohibition on Sales of Stolen Resources in the Domestic Market**

This second option is a little bit tricky. In concrete terms, it would be enforced as an import prohibition, since stolen resources would be stopped at the national border of the enacting *Clean Trade* country, before they can reach the domestic market (where they could not be legally sold due to the prohibition). However, in legal terms, the implications are different since this particular measure would count as internal, and would therefore have to be assessed against the obligation of “national treatment” set out in Article III.4 GATT.

The principle of “national treatment” requires that governments treat domestic and foreign versions of the same product (*like products*, in the wording of Article III.4) identically once they enter the domestic market. Based on the core tenet of non-discrimination, this rule ensures that domestic and imported goods face equal competitive conditions. In order to conclude whether the *Clean Trade* Act would accord the foreign (stolen) resources a less favourable treatment than it does “like” domestic products, we have to assess whether those stolen resources are “like” domestic resources.

#### **2.1 Products “Likeness”**

The WTO Appellate Body indicated a useful framework for determining the “likeness” of products under Article III.4 in the *EC – Asbestos* Report.<sup>251</sup>

It said that the factors to take into accounts are: physical characteristics, end use, consumer preference and tariff classification. The Body also stated that none of these factors are determinative. Since stolen resources and “free” resources are identical in terms of physical characteristic, end use and tariff classifications; since the only difference between them is that the first are stolen while the latter are not; the assessment of last resort has to be made against consumers’ preferences. That is, we should be able to assess whether, other things equals, *Clean Trade* consumers show such a marked preference for free resources that stolen resources end up being non-competitive in the domestic market. If this was the case, the two types of resources could not be considered “like” products. As a consequence, the prohibition on sale of stolen resources in the domestic market enforced as an import prohibition would not violate Article III.4 GATT.

Two concerns arise at this point. The first concern revolves around the identity of the consumer. It could be a physical person that fills her car with petrol, but it could also be a domestic oil company that buys oil to refine it. This leads to the second concern, that is, market researches must show that consumers in all the segments of the domestic market are indifferent between the two types of products, for stolen products to be considered not-competitive. In *Philippines – Distilled Spirits* the Appellate Body affirmed that Article III GATT “protects all instances of direct competition”<sup>252</sup>. In *US – Tuna II*, the US did not even contest the statement that tuna product were “like” regardless of the extent to which they were hunted in a manner that harmed dolphins.<sup>253</sup>

So, as long as there is even the smallest segment of the domestic market in which consumers show indifference between stolen and free resources, these goods will be considered “like” products.

## **2.2 Less Favourable Treatment**

To assess whether a measure brings about a “less favourable treatment” to imported products, we have to check in which proportion it affects the imported product and the “like”

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<sup>251</sup> WTO Appellate Body Report, *EC – Asbestos*, WT/DS135/AB/R, adopted 5 April 2001, paras 101-2

<sup>252</sup> WTO Appellate Body Report, *Philippines – Distilled Spirits*, WT/DS369/AB/R, adopted January 2012, para 221.

<sup>253</sup> WTO Panel Report, *US – Tuna II*, WT/DS381/R para 7.213.

domestic product. If the impact is disproportionate on the two goods, meaning that the measure affects the imported goods more than it does the “like” domestic product, then the measure amounts to a “less favourable treatment”. In *Thailand – Cigarettes* the Appellate Body affirmed that:

“What is relevant is whether such regulatory differences distort the conditions of competition to the detriment of imported products. If so, then the differential treatment will amount to treatment that is “less favourable” within the meaning of Article III.4”.<sup>254</sup>

Given the analysis above, it is clear that the *Clean Trade* Act violates Article III.4 GATT in that it draws a distinction between stolen and free resources and enforces a measure that affects in a higher proportion foreign resources than it does domestic resources.

### **2.3 The “Most Favoured Nation” Principle**

Article I.1 of GATT sets out the “most favoured nation” principle that makes sure that all countries have access to foreign markets on equal terms.<sup>255</sup> As a consequence, a ban on sales and importation of stolen resources would violate the non-discriminatory provision that a WTO member must accord “any advantage, favour, privilege or immunity” to products from other WTO members that it grants to “like” products imported from any other country. In addition, this has to be done “immediately and unconditionally”.

We have already seen that, almost certainly, stolen resources and free resources will be considered “like” products. Moving forward, the next issue to assess is whether, by allowing the sale and importation of free resources while prohibiting the sale and importation of stolen resources, the *Clean Trade* country would be according the former an advantage that it is contextually denying to the latter. In *EC - Seal Products*, the Appellate Body affirmed that:

“Article I.1 GATT permits regulatory distinctions to be drawn between like imported products, provided that such distinctions do not result in a detrimental

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<sup>254</sup> WTO Appellate Body Report, *Thailand – Cigarettes (Philippines)*, WT/DS371/AB/R, adopted 17 June 2011, para 128.

<sup>255</sup> The main exceptions to this general rule are: the regional trade arrangements (RTA – in the form of free-trade areas or custom unions) and the generalized system of preferences (which allows the most industrialized nations to apply lower tariffs to imports from developing countries than they apply to like products coming from other developed countries). Oatley 2014, 23.

impact on the competitive opportunities for like imported products from any Member”.<sup>256</sup> It is very likely that the *Clean Trade* legislation will affect in higher proportion resources coming from resource-cursed countries than it will resources coming from free countries.

Even if the *Clean Trade* Act did not generate such a disproportionate impact, there is a further requirement *ex* Article I.1 that the advantage of market access be “accorded immediately and unconditionally”. This provision literally prohibits all the rules of engagement and conditionalities designed by Wenar to support accountability in resource-cursed countries.<sup>257</sup>

For the reasons mentioned above, not only is the *Clean Trade* Act likely to violate Article III.4 GATT, but also Article I.1 GATT.

### **3. Article XX GATT: General Exceptions to the Principle of Non-discrimination**

WTO members are allowed, under Article XX GATT, to adopt measures grounded in non-economic concerns. For our discussion, the most important general exception is set out in Article XX (a) GATT that allows the adoption, by a WTO member, of measures necessary to protect public morals.

#### **3.1 Article XX (a) GATT: Measures Necessary to Protect Public Morals**

##### **3.1.1 “Public Morals”**

In *US – Gambling* the WTO Panel clarified that:

“the term ‘public morals’ denotes standards of right and wrong conduct maintained by or on behalf of a community or nation ... the content of these concepts for members can vary in time and space, depending upon a range of factors, including prevailing social, cultural, ethical and religious values”.<sup>258</sup>

Popular sovereignty over natural resources, it should be clear by now, is a human right. It is engraved in the 1966 Covenants that have universal ratification, and it has been reiterated in

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<sup>256</sup> WTO Appellate Body Report, *EC – Seal Products*, WT/DS400/AB/R, adopted 18 June 2014, para 5.88.

<sup>257</sup> Wenar 2016, 286-287, 325-326.

<sup>258</sup> WTO Panel Report, *US – Gambling*, adopted 20 april 20005, para 6.465. The Appellate Body endorsed this statement in its Report, *US – Gambling*, WT/DS285/AB/R, adopted 20 april 2005, para 299.

many other international treaties as well as in many national constitutions. This should be sufficient to affirm that a set of “public morals” that the *Clean Trade* legislation is designed to protect is identified in the protection of human rights in resource-cursed countries, in particular the human right to popular resource sovereignty.

But if we look closer, we will see that the public morals we are protecting are not just those of the resource-disordered countries, but they are indeed ours too. If “we”, the Western democracies, enforce and protect popular sovereignty over natural resources at home because we believe in that principle, we should refuse to disregard that principle when doing business abroad. Our liberal-democratic identity should not stop at our national borders.<sup>259</sup>

Given the concern to protect human rights in resource-disordered countries, a second sub-concern justifying a *Clean Trade* measure to protect public morals would be the obligation of the *Clean Trade* enacting state not to *contribute* to conducts that infringe these rights. As a matter of international law, a state or an international organization can be held responsible for aiding or assisting another state in breaching international law; that includes human rights violations. Article 16 of the Articles on State Responsibility states that:

“A State which aids or assists another State in the Commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; (b) The act would be internationally wrongful if committed by that State.”<sup>260</sup>

This norm sets high stakes for assessing whether a State is or not a partner in a wrongful act. It is not certain that importing stolen resources amounts to “aiding or assisting” a resource-cursed country in the commission of wrongful acts *merely* because the proceeds from those imports have helped the exporting government to buy weapons that he has then used against his own population to suffocate opposition and dissent, for example. As we have seen in the previous chapters, the resource curse is a complex phenomenon that is compounded with both political and economic factors, and over which different actors at different levels intervene. It is not an easy task to trace a linear and direct nexus of causality (therefore responsibility) from the importer to the violence perpetrated by the (illegal) exporter. Furthermore, even if weapons and armaments were purchased by the authoritarian leaders

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<sup>259</sup> In this regard, Nili 2016.

<sup>260</sup> Articles on State Responsibility, annexed to UNGA res 56/83, UN Doc A/RES/56/83, 12 December 2001.

with “clean” money, this would not entirely annul the chances that those weapons be employed to pursue ignoble ends.

It would also be necessary to demonstrate that the importing state had actual knowledge that the resource-disordered country was violating international law. Nonetheless, it is possible that these conditions can be met. In addition, if we interpret the right of popular sovereignty over natural resources as being a specific articulation of the higher and more general right to self-determination, we see how the *Clean Trade* rules could in fact be seen as protecting a norm of *jus cogens*, that is, the set of peremptory norms that are at the core of international law and that nobody, under any circumstances, can violate. Then, Article 41 of the Articles on State Responsibility would become relevant, in that it states:

1. States shall cooperate to bring to an end through lawful means any serious breach [of *jus cogens*]
2. No State shall recognize as lawful a situation created by a serious breach [of *jus cogens*], nor render aid or assistance in maintaining that situation.<sup>261</sup>

In the light of the foregoing discussion, it is safe to assume that the protection of human rights in resource-exporting countries, and the interest in not being complicit in another state’s violations of human rights in its territory, can constitute the “public morals” of a *Clean Trade* – WTO member.

### **3.1.2 Measures *necessary* to protect public morals**

Having identified the type of public morals that justify the adoption of *Clean Trade* measures, Article XX (a) GATT further require us to demonstrate that those measures are “necessary” to protect those public morals. The “necessity” of a measure is dependent on several factors.

Again in *EC – Seal Products*, the Appellate Body concluded that it is not necessary to identify any specific risk of harm to public morals to which the measure is directed.<sup>262</sup> It is a sufficient condition that the objective towards which the measure is directed is established to fall within the parameters of public morals in a general way. When this is ascertained, it is necessary to verify that the measure intended to be adopted actually contributes to the

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<sup>261</sup> Ibidem.

<sup>262</sup> WTO Appellate Body Report, *EC – Seal Products*, WT/DS400/AB/R, adopted 18 June 2014, para 5.198.

protection of public morals. This analysis can be qualitative primarily, but some degree of quantification of the contribution of the measure towards the realization of the objective is also necessary. This necessity arises in the light of the fact that, should the existence of an alternative measure that is less trade restrictive than *Clean Trade* and equally effective in realizing the *Clean Trade* goals be detected, the *Clean Trade* measure would lose the feature of necessity. Nonetheless, given the amount of foreign policy failures (in terms of military entanglement and economic sanctions) with regard to putting the resource curse to a halt, it is arguable that better alternatives to *Clean Trade* exist. If anything, because many different measures have been tried over the long term and none of them have worked. Indeed, we are still here discussing the issue.

### **3.2 The Preamble to Article XX GATT**

The introductory paragraph to Article XX GATT constitute a *caveat* to the permission of general exceptions to the rule of non-discrimination. It requires that:

“Such measures [contemplated by Article XX GATT as general exceptions] are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.”

The preamble thus sets three limitations to the applicability of the general exceptions.

First, it constrains the possibility of discriminating between goods coming from countries where the same conditions prevail. Second, and as a consequence, arbitrary or unjustified discrimination is prohibited in relation to such goods. Third, in relation to such products it is forbidden to disguise improper purposes (for example, protectionism) with proper purposes (human rights, self-determination, etc.).

As far as the first limitation is concerned, the “conditions” applying in the two countries (the *Clean Trade*/importing country and the resource-cursed/exporting country) are to be assessed in the light of the measure we want to apply. If the aim of *Clean Trade* is to protect human rights in third countries and avoid being partners in crime of the authoritarian governments that abuse their people, it is clear that the two parties (the importer and the exporter) are not subject to the same “conditions”. *Clean Trade* countries live in conditions described by rule of law, peace, human rights. Resource-cursed countries live in

diametrically opposite conditions. If this were not the case, we would not be discussing the *Clean Trade* measures at all.

Given the absence of “same conditions” between enacting countries and stolen resources’ exporting countries, even the “test” of the Preamble is passed, for further analysis of the other two constraints is not required.

In light of the foregoing discussion, we can say that a prohibition on sales and imports of stolen resources is highly likely to be justified under Article XX (a) of GATT and the Preamble of the article itself.

### **Duty on Imports from Intermediate Countries**

The second main policy tool for *Clean Trade* is the Clean Hands Trust. This piece of policy aims at avoid the indirect purchasing of stolen resources. It translates in a tariff imposed on imports from intermediate countries – meaning those countries that themselves keep buying natural resources from the country that is the primary target of *Clean Trade* Act. The tariff is therefore three-folded: it can apply to goods produced by using the stolen natural resource, to products that incorporate the stolen resource, and to unrelated products.

#### **1. Article II GATT: Obligations Related to Customs Duties**

Article II.1 (a) and (b) GATT sets the schedules of concessions that bound the level of tariffs that a WTO member can impose on imports coming from other WTO members. A duty that rises above the rate established by the schedule of concessions would therefore violate this provision. This is very likely to be the case for goods produced by using stolen resources, since tariff levels on most industrial products are usually very low, at least as far as developed countries are concerned.

With regard to products incorporating an exploited resource (for example, a smartphone containing coltan extracted in the Democratic Republic of Congo), it is probable that the duty to charge the incorporated stolen resource would take the form of an internal tax imposed on the whole good it is part of. If such a tax is applied to all “like” products in a non-discriminatory manner, the duty would be legal under the provisions of GATT. This condition is highly unlikely to be satisfied, since tainted goods and free goods are almost certain to be considered “like” products. Let us recall that the “likeness” of two products is assessed against physical features, end use, tariff classification, and consumers’ preference.

In light of the considerations above, for applying this tariff in a non-discriminatory manner, the enacting country should tax “like” domestic products (and “like” free foreign products) even though they do not contain stolen resources.

## **2. The “Most Favoured Nation” Principle**

As discussed above, such kind of duty would likely violate the most favoured nation obligation set out by Article I.1 GATT, which forbid a WTO member to grant advantages to products from one member that are not granted to the other members as well, unconditionally and immediately.

## **3. Article XX GATT: General Exceptions to the Principle of Non-discrimination**

Is it possible that the imposition of duties on tainted intermediate goods be justified under the general exceptions listed in Article XX GATT? Again, as discussed above, the objective of protecting public morals plays a key role in justify such measures. Yet, there is the further requirement that this tariff be “necessary” to protect public morals. This depends upon whether or not it turns out that alternative measures exist that are less trade restrictive and reasonably available.

For example, the United States requires annual reports on rough diamonds exporting countries that are not part to the Kimberley Process Certification Scheme, to monitor that “conflict diamonds” will not enter the US market.<sup>263</sup> Though these reports and the proposed *Clean Trade* tariff pursue the same goal (not contributing to a crime), they are nonetheless different both in quality and quantity. It is arguable that a report or an investigation be equated to the imposition of a tariff. Again, though the objective may be the same, these two measures have two completely different shapes, are applied at two different stages of the commercial relation between exporting and importing country, and affect they do not affect the exporting country in equal ways. So, in light of this “lighter” and accepted alternative measure, a duty on tainted intermediate goods might not be justified under Article XX (a).

Then, of course, there is the further test of whether “the same conditions apply” in *Clean Trade* enacting countries and in targeted intermediate countries that are exporting tainted goods. This might be an obstacle to the implementation of the tariff, insofar as the

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<sup>263</sup> United States Code, 2006 Edition, Supplement 4, Title 19 – Custom Duties, Ch. 25 – Clean Diamond Trade, Sec. 3911 – Reports

“conditions” analyzed with regards to duties on direct imports of stolen resources are the same, but these time they apply only indirectly to those stolen resources, because they have to be assessed against the importation policy of the intermediate country. If the intermediate country were found to be itself in violation of the Articles 16 and 41 of the Articles on State Responsibility discussed above, then the tariff on tainted goods imported from intermediate countries could be justified.

However, WTO has traditionally refrained from allowing the adoption of trade measures aimed at “forcing” a policy change in other members. In *US – Shrimp*, the Appellate body affirmed that:

“The most conspicuous flaw in this measure’s application relates to its intended and actual coercive effect on the specific policy decisions made by foreign governments, members of the WTO.”<sup>264</sup>

To be fair, in the very same report the Appellate Body contradicted itself in that it stated:

“It appears to us ... that conditioning access to a member’s domestic market on whether exporting member comply with, or adopt, a policy or policies unilaterally prescribed by the importing member may, to some degree, be a common aspect of measures falling within the scope of one or another of the exceptions ... of Article XX.”<sup>265</sup>

In light of this ambivalent posture by the Appellate Body, we might conclude that, even though not expressly allowed, it is nonetheless not expressly forbidden that exporting countries may be required to reform their policies with the aim of meeting the market access conditions set by the importing country – provided that the rationale of those conditions is justified under Article XX GATT.

Eventually, the “conditions” referred to in the Preamble to Article XX might not be considered the same in the *Clean Trade* country and in the intermediate country, therefore the tariff on intermediate tainted products could be justified. But in the event that “conditions” are instead considered to be the same in the importing and in the exporting country, we would again assess whether the duty the *Clean Trade* country wants to impose

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<sup>264</sup> WTO Appellate Body Report, *US – Shrimp*, WT/DS58/AB/R, adopted 6 november 1998, para 161.

<sup>265</sup> *Ibidem*, para 121.

on imports from intermediate countries discriminate between domestic and third countries “like” products, and if this is the case, whether that discrimination is justifiable. In light on the foregoing analysis, it is highly likely that a discrimination will be detected, then a justification is necessary. Yet, the justification of the discrimination cannot be based on the rationale of the measure, since the latter should already be considered when assessing the “same conditions” requirement of the Preamble. And if the rationale of the adopted measure does not differences in “conditions”, then it is unlikely that it would be able to justify discrimination.

### **A Waiver from WTO Obligations (Article IX.3 Marrakesh Agreement)**

A last resort option to avoid the illegality of *Clean Trade* policies under WTO rules is to grant a waiver from those rules, as Article IX.3 of the WTO Agreement allows. The fundamental precedent in this scenario is, of course, the waiver issued to implement the system designed by the Kimberley Process Certification scheme to block the smuggling of the so-called “conflict diamonds”.<sup>266</sup>

Participants in the Kimberley Process, on November 2002, issued the Interlake Declaration to express their intent to implement the international scheme of certification for rough diamonds to help break the link between armed conflict and the trade in rough diamonds. The waiver was requested by several countries – such as Australia, Brazil, Canada, Israel, Japan, Korea, Philippines, Sierra Leone, Thailand, United Arab Emirates and United States – that wanted to make sure that their domestic anti-smuggling measures would not clash with the obligations set out by the WTO.

In 2003, the WTO Council for Trade in Goods recommended the General Council to grant requesting members a waiver for trade measures taken for implementing the Kimberley Process. The agreed decision recognized that:

“the extraordinary humanitarian nature of this issue and the devastating impact of conflicts fueled by trade in conflict diamonds on the peace, safety and the security of

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<sup>266</sup> [https://www.wto.org/english/news\\_e/news03\\_e/goods\\_council\\_26fev03\\_e.htm](https://www.wto.org/english/news_e/news03_e/goods_council_26fev03_e.htm), accessed 20 march 2017.

people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts”.<sup>267</sup>

The three-year waiver was renewed in 2006 for six years and again at the end of 2012 for another six years. The simplicity of the Kimberley process lies in that there is no treaty nor agreement to sign. It is a voluntary agreement in that a country can decide whether or not to join. But if it joins, the undertakings become mandatory. Non-Kimberley Process members are not allowed to export diamonds to Kimberley Process members; likewise, no member of the Kimberley Process can ship diamonds to countries that are not parties to the Certification Scheme. The Kimberley Process is not a vague multilateral commitment, it has the force of law in each of its member states.

Nonetheless, whether a country succeeds in obtaining a waiver from WTO is essentially a question of policy and diplomacy. In the particular case of conflict diamonds, the subject had previously been discussed and gathered consensus within the United Nations.<sup>268</sup> This means that there was already a general agreement on the matter reached and negotiated before and outside of the WTO system.

Without such a broad-based political agreement, especially in light of the natural resource under discussion – that literally runs the world – it is difficult to foresee a smooth and quick approval of a waiver for the *Clean Trade* measures. In fact, the very fact that Professor Wenar has felt the need to come up with such a thoroughly conceived policy to tackle “*Blood Oil*” demonstrates that such agreement currently does not exist. That is why some sort of external support might be necessary, and the most effective tool of pressure on decision-makers ought to come from civil society.

## **Conclusion**

The features of the *Clean Trade* Act and the Clean Hands Trust are very likely to violate the basic principles of WTO, namely: the principle of market liberalism and the principle of non-discrimination. Chances of success increase if we justify the adoption of those measures with the concern of *Clean Trade* countries to protect public morals, as the Article XX (a) of GATT allows. Yet, ambiguities in the assessment of whether the conditions required to

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<sup>267</sup> Ibidem.

<sup>268</sup> Feichtner 2011.

invoke that general exception are met make the actual viability of this option uncertain. Therefore, the simplest solution is to request a waiver from WTO obligations. On one hand, this solution ensures that the incompatibility between *Clean Trade* measures and WTO rules do not result in *Clean Trade* illegality. On the other, a waiver is a solution highly dependent upon the existence of a broad-based political consensus among WTO countries. The very existence of a monumental book such *Blood Oil* shows that there is no such consensus at the moment. Therefore, a waiver would avoid claims that *Clean Trade* is illegal under WTO, but it would not solve the collective action problem.

A final consideration is due. As Professor Wenar correctly points out, not only the concept of free trade entails freedom “not to trade”<sup>269</sup>, but *Clean Trade* is in fact a project that totally support the WTO rationale. “The priority in reforming global commerce is not to replace *free* trade with *fair* trade. The priority is to create trade where now there is theft.”<sup>270</sup>

As a matter of fact, enforcing property rights can hardly be considered a move that restrict free trade, rather the opposite. What is more, those kind of restrictions on free trade should not be reasonably rejected by an organization whose Statute refers, among other objectives, to the protection of fundamental human rights.

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<sup>269</sup> Wenar 2016, 296.

<sup>270</sup> Wenar 2008, 2

## CHAPTER FIVE

### THE PRICE OF ENDING EFFECTIVENESS

#### **Introduction**

*Blood Oil* is a monumental work aimed at convincing individuals and governments that passing the *Clean Trade* legislation is the right thing to do for both exporting and importing countries. We have seen that the current system allows international trade of *stolen* resources and *stolen* goods, and this is both morally reprehensible and opposite to the rationale of a free market. We have also shown that, from a legal point of view, none of the economic tools set out by the *Clean Trade* approach would conflict with current international norms regulating global trade, chief among all the WTO legislation. Still, should countries decide not to uphold the *Clean Trade* approach, nothing would happen to them, with that meaning they would not incur in sanctions or other kinds of retaliation by any state nor by international organization. They would just keep doing business as usual, perhaps soliciting the disapproval of those governments that instead are committed to improving the status quo. That is why it becomes relevant to go through the possible reasons that would account for some countries' decision not to join the *Clean Trade* initiative. These could be singled out as: the collective action problem; the status quo bias; the foreign policy dilemma; and the energy supplies dilemma. As noticed above, by adopting an inward-looking perspective that aims at disengaging from practices that simply conflict with the deepest founding principles of liberal-democratic identity, western resource-importing countries can find an answer to those dilemmas.

#### **Collective Action Problem**

We have seen that the resource-curse is a phenomenon that entails a “collective responsibility” gathering different agents: individuals, groups, governments, and international rules. Accordingly, Wenar recognizes that: “the resource curse presents a collective action problem, but we cannot see ... what that action is”.<sup>271</sup> We have also seen that we can make a distinction between causality and responsibility, based upon the good or bad faith of the agent that contribute, with his actions, to the phenomenon of the resource

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<sup>271</sup> Wenar 2016, xxiii.

curse. Therefore, we have argued that even if consumers are material contributors through their private consumptions that fund petrocrats abroad via the sales chains, “tracing most raw materials through the world’s opaque, ever-shifting supply chains is too hard, especially since many raw materials are used as intermediate goods in the chains. It is difficult to imagine being a Fair Trade consumer of oil”.<sup>272</sup> Therefore, any boycott at the individual level, as praiseworthy as it may be, will not be very effective for tackling the resource curse. The ball then passes in the hands of national governments that have the effective information and powers to undertake more meaningful actions... if there is the political will to act. But if there is one feature that really characterizes the collective action problem is that, following a short-term rationality, every agent has an incentive to free ride on others’ efforts.<sup>273</sup> Every agent waits for others to make the first move and bear the costs of change, and therefore change never occurs. We see this kind of gridlock about international plans to tackle climate change: every country ought to reduce its fossil fuels consumption and greenhouse gas emissions, but it is rational for each not to do so. Adopting *Clean Trade* reforms with the aim of improving the conditions of the resource-cursed people would present the same order of problems. As Nili stresses, adopting an outward-look towards the resource curse generates a “buck-passing” problem: since any country by itself cannot plausibly achieve any major outcomes by disengaging from foreign dictators, “each state can patiently invite others to prove their seriousness before it commits to the task, with the result being, unsurprisingly, no commitment by anyone”.<sup>274</sup> As long as the adoption of *Clean Trade* legislation is dependent on the effectiveness of such proposal to improve the conditions of the people living in resource-cursed countries, in a fundamentally anarchic international system lacking a supranational authority with enforcing powers, each affluent country can deny to have any duty to make the first move, claiming it would be a worthless sacrifice. After all, if no other state undertakes the same reform, the costs linked to the duty of outcome would be significant for a single country to bear. Also from an ideal point of view, *Clean Trade* does not define what sacrifices can be expected of specific agents when in the real world they can legitimately doubt that other agents will make similar sacrifices. By adopting an inward-looking perspective instead, “collective action excuses cannot affect integrity reasons to end

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<sup>272</sup> Ibidem, xxiv.

<sup>273</sup> Hardin 1968.

<sup>274</sup> Nili 2011a,114.

entanglement in foreign rights violations”.<sup>275</sup> Each resource-importing democracy has a strong duty to disengage from severely oppressive regimes regardless of what outcome this may or may not bring, and independently of what other countries may or may not decide to do; because this is what the liberal identity of each democracy requires to safeguard its integrity.

“The inward-look manages to disaggregate the problem, breaking it down into its distinct components, and then accumulates the results – as each democracy addresses its own distinct responsibilities, and has a much greater incentive to act, without holding morality hostage to others’ conduct”.<sup>276</sup>

Most importantly, disengaging by virtue of one’s own liberal integrity ensure the longevity of the commitment because the reasons for acting are not tied to achieving a determinate outcome within a reasonable time horizon. As Wenar himself notes, tackling the resource curse is about progress.<sup>277</sup> Changes won’t occur overnight. And in the real world this might mean that even the most committed *Clean Trade* country might eventually start reassessing its cost/benefit analysis about pursuing the policy.

It could be appropriate at this point to stress that adopting an inward-looking perspective does not necessarily erase the possibility of undertaking multilateral initiatives. As Wenar points out:

“Successful strategies for *Clean Trade* will welcome all to join – and always leave the door open. [...] Ultimately, it is ideas that will win. [...] the overall strategy is to act positively and so to attract doubters”.<sup>278</sup>

It is indeed plausible that liberal democracies, sharing common standards of commitment to human rights, rule of law, and peace, may end up coordinating their efforts around these identity-based principles, as they have shown to be capable of in many other occasions across space and time. The difference between the two positions is that, by separating the individual duty of disengagement from the duty of outcomes, *Clean Trade* has more chances to be implemented and therefore the systemic change Wenar aims at may start more easily. From

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<sup>275</sup> Nili 2016, 154.

<sup>276</sup> Nili 2011a, 115.

<sup>277</sup> Wenar 2016, 319.

<sup>278</sup> Ibidem, 306.

a domestic point of view, citizens would know that the initial costs of change are not meant to be borne in the hope of “reforming” evil countries miles away from home. They would not be spending trillions of dollars and losing an uncountable amount of lives in the attempt to bring democracy abroad or oust some brutal dictator and yet end up being entangled forever.<sup>279</sup> Internationally, an inward-looking approach does not make the disengagement contingent on the commitment of big powerful countries like the United States. The United States has been the leader of the “free world” for the last century, and if the goal is to induce domestic change in resource-disordered countries, no state would commit to disengage and boycott unless the “heavy-weight” of democracy move first. But hoping for the United States to take the lead to address the resource curse is highly problematic because American politics are a highly oil-friendly environment,<sup>280</sup> and therefore powerful vested interests might vigorously oppose any attempt to infringe upon their business.

In sum, by adopting an inward-looking perspective the focus is primarily on redeeming one’s own integrity, rather than others’. This focus then is likely to inspire cooperation between liberal peoples that are already individually committed to seeking, even if they do not achieve, the realization of a more just world. As we can see, Nili’s inward-looking approach is not in any way opposite to Wenar’s proposal, but instead it supports it normatively.

### **Status Quo Bias and System Justification**

Strictly related to the issue of collective action, is the problem of system justification. Basically, it is a status quo bias:

“A form of motivated moral reasoning consciously or unconsciously aimed at defending, justifying, and bolstering aspect of the status quo, including existing social, economic, and political institutions and arrangements”.<sup>281</sup>

In a context of international anarchy, when problems arise states can either accept the state of affairs or try to change it. But given the complexity and the pervasiveness of most global

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<sup>279</sup> It is estimated that the US alone has spent over \$5 trillion in post-9/11 wars up to day. Over 370.000 people have died due to direct violence, and at least 80.000 more indirectly. War refugees and displaced persons are over 10 million. See the report “Costs of War” produced by the Watson Institute of International and Public Affairs available at <http://watson.brown.edu/costsofwar/>

<sup>280</sup> The former CEO of ExxonMobil, Rex Tillerson, is Secretary of State at the time of writing – just to give an example.

<sup>281</sup> Jost and van der Toorn 2012, 313.

issues, uncertainty about the chances of any reform to be successful and also about the seriousness of multilateral commitment to take action can lead into a gridlock that legitimize the status quo as the least worst state of the world. Again, this kind of justification is tied with an outward-looking approach to international issues, and we have seen that there is rarely empirical certainty that to a certain action or effort will follow a certain (hoped) outcome. This tendency yields to self-seeking realizations of the status quo that it yields, because:

“As long as powerful actors can attach social-scientific uncertainty to almost every global reform proposal, we are bound to see a proliferation of self-serving moral justifications for why it is morally permissible to avoid reform”.<sup>282</sup>

From an inward-looking perspective, instead, such an argument is unacceptable since ongoing entanglements in illiberal practices do not stabilize but rather worsen day by day the threats to the integrity of liberal-democracies. When a democratic society becomes accustomed to legitimating and benefiting from oppressive and illegal situations abroad, it is its own grounding values that are at stake. Once liberal states understand that the core of the problem is their own corruption, they do not need to look at external factors to improve their condition, because it is in their power to change reform themselves. As Nili puts bluntly:

“To say, for instance, that it is ‘just part of modern life’ that ‘some of the money we pay at the pump may go to support tyrants’ constitutes moral immaturity. Such casting away of responsibility means escaping, turning what is institutional into what is supposedly natural and hence beyond our powers. If democracies do not want to buy tainted oil, they can decide to boycott such oil”.<sup>283</sup>

Here is where the role of the citizens of western democracies, as distinct from their governments, becomes crucial. It will be up to individually liberal citizens to call for reforms that can protect the liberal integrity of the collectivity they are part of.

## **Foreign Policy and Strategic Interests**

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<sup>282</sup> Nili 2016

<sup>283</sup> Nili 2011b, 382.

Being conceived as a public policy, *Clean Trade* adoption has to be assessed by policy-makers against other national interests, chief among them the country's foreign policy. Even in this case, looking at *Clean Trade* from an outcome-bound perspective is more detrimental than helpful to bring Wenar's proposal to life. After all, if the aim is to enforce foreigners' human right to popular resource sovereignty, it is highly improbable that one state would unilaterally make it the central pillar of its official foreign policy. As Andrew Clapham argues, "there is a difference between proclaiming that human rights are at the heart of foreign policy and actually changing the way decisions are taken."<sup>284</sup> Human rights are more a topic dealt with by governments coordinating within broader multilateral forums, such as the United Nations. In fact, it has been highlighted that western democracies, when deciding whether to individually fight human rights violations abroad by imposing sanctions, do a basic cost-benefit calculus. Von Soest and Wahman argue that democratic leaders weigh domestic and international pressure to impose sanctions against the probability of success and the political and economic costs that those sanctions will imply.<sup>285</sup> They found that this cost-benefit analysis is heavily influenced by the strength of the triggering events that indicate an infringement of democracy or human rights has occurred. Standing by this analysis, *Clean Trade* would have little chances to be enacted since we have seen that the resource curse is in fact an ongoing state of affairs, more than a one-time event. Moreover, Western democracies have tended to sanction more vulnerable targets to a higher extent than stable authoritarian regimes. After all, popular resource sovereignty is a major principle of the modern international system but it is not the only one: governments generally prioritize international peace and stability, and enacting *Clean Trade* with the stated aim of inducing democratization in countries ruled by authoritarian leaders risks ignite wide and destabilizing conflicts.<sup>286</sup> Also, senders are more likely to sanction poor targets less integrated in the global economy and countries that do not align with the Western international political agenda.<sup>287</sup> Conversely, we know that Saudi Arabia for example has been a longtime fundamental ally to the United States, first to contain the expansion of Soviet influence in the Arab world during the Cold War, then to maintain stability in the MENA region since

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<sup>284</sup> Clapham 2015, 65.

<sup>285</sup> Von Soest and Wahman, 2015

<sup>286</sup> Wenar 2016, 187.

<sup>287</sup> Von Soest and Wahman, 2015.

the Gulf War.<sup>288</sup> The European Union is not in easier conditions since, while it has been reported that the terrorists of ISIS smuggle oil through Turkey, Turkey remains nonetheless a key-actor in EU's struggle with the current migrants crisis, having accepted to retain within its own territory all illegal migrants trying to enter EU.<sup>289</sup> Putting aside any considerations about the suddenness with which a friendly dictator can turn into an enemy,<sup>290</sup> it is true that ending effectiveness over natural resources requires a good deal of assessment over strategic concerns. As Wenar himself points out, along the "desirability spectrum", power will always be preferable to chaos.<sup>291</sup> The next move should be to affirm freedom over power, but "which one should prevail ... and how far [we can progress along the spectrum] is a question of how far one believes".<sup>292</sup> If we let foreign policy to be influenced by outward-looking concerns, then, *realpolitik* may impair the pursuit of justice outside the western nation-states' boundaries. This is surely not a praiseworthy behavior, but it is what is likely to happen. Ending might makes right is in fact puzzling because "the bads are tightly bound with the goods"<sup>293</sup> and without a supranational coordination or at least a multilateral agreement that plans a simultaneous action by all relevant actors, it is not sure that a single country would risk so much just to enforce a right of other distant people.

Moreover, if we agree that the right to popular sovereignty over natural resources indeed requires democracy, if only in its most minimal and procedural sense, adopting *Clean Trade* with the intention to favor the democratization of currently authoritarian countries might be highly counterproductive. It could spark violent political backlashes supported by arguments like interference in internal affairs, an attempt to force democracy on others even if not by a direct intervention – and even if not in by proposing, *à la* Pogge, the introduction of constitutional amendments directly in resource-exporting countries' constitutions.<sup>294</sup> Most importantly, for what concerns us here, it is crucial to avoid falling in an outward-looking

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<sup>288</sup> Bronson 2006.

<sup>289</sup> See "Inside Isis inc.: the Journey of a barrel of oil", by Solomon, Kwong and Bernard, 2015, in Financial Times, available at <https://ig.ft.com/sites/2015/isis-oil/>; for the EU-Turkey agreement on illegal migrants, visit <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan>

<sup>290</sup> See, for example, Root 2008.

<sup>291</sup> Wenar 2016, 369.

<sup>292</sup> Ibidem.

<sup>293</sup> Ibidem, 339.

<sup>294</sup> Even Kolstad and Wiig argue that to help lift the resource curse, policy initiatives ought focus on tilting the structure of underlying interests and incentives keeping the institutional equilibrium in place, rather than trying to impose democracy. Kolstad and Wiig 2009.

short-circuit that would tie our decision to implement *Clean Trade* with the effective ability of this policy to bring democratization in oppressive oil-exporting regimes – given that democratic procedures are a necessary condition to the exercise of popular sovereignty over natural resources. Again, we ought to distinguish between *their rights* and *our duty*. Adopting *Clean Trade* with an inward-looking purpose means that liberal democracies would do that just for the sake of not being complicit in practices that violate and conflict with their own legal and moral principles, *independently* of what this policy will bring about in resource-exporting countries. As Nili argues:

“We can maintain, as a supporting hope, the thought that under such ideational pressure ... dictatorships might gradually democratize. Yet it might just be that such a feat will become more, rather than less, likely if our own goal will not be to achieve democracy or banish the resource curse, but rather to achieve our own moral integrity”.<sup>295</sup>

One could argue that disengagement might do more harm than good, and that through international trade and political involvement those actors might eventually democratize. But, again, just as there is no certainty that disengagement will bring democratization, neither there is empirical evidence that commercial engagement has indeed improve the wellbeing and the openness of illiberal countries. Most importantly, there is no moral argument that justifies a *duty* to trade on grounds of the alleged improvements (political, economic, social) that this trade might bring about – especially if such *duty* is cast upon liberal democracies that ought to keep engaging in illiberal practices to fulfil it. From a normative point of view, then, no moral theory explains that western democracies *ought* to pursue change in other regimes, even when such change may be for the best.<sup>296</sup> When deciding whether to implement *Clean Trade*, then, western governments and citizens ought not to think of others’ conditions, but commit to the safeguard their own moral decency first. It is highly probable that this policy will then foster a positive development for other countries too, but maintaining a hope is not the same thing as having a duty of outcome.

## **Energy Supplies**

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<sup>295</sup> Nili 2011a, 117-118.

<sup>296</sup> Nili 2011b.

It may struck as an odd surprise the fact that, in an almost 500-page book whose purpose is to convince the reader to divest from authoritarian oil, *Blood Oil* discusses the topic of energy supply in barely two pages.<sup>297</sup> And those two pages are not convincing either. A state that commits to implementing *Clean Trade* will halt its oil imports from some of the world's largest reserves. At this point it should also be stressed that Wenar includes in his disengagement proposal not only oil, but also gas – and this is not a point to underestimate. Oil and gas are two fundamental commodities not only for transportation but first and foremost to sustain economic growth, productivity and energy demand. To this, Wenar answers with only two consideration. The first: oil and gas are global markets, and as such they are sensible to the basic law of demand and supply; should the demand shift, the supply would shift accordingly to meet it. He adds that the physical transition (that is, building pipelines and adapting the refineries) is “simple engineering”.<sup>298</sup> The second: even if analysts may differ on the specifics of timing and costs, the main message is that “the time frame will not be excessive” and that “North America and Europe will have enough energy even without the authoritarians”.<sup>299</sup> Now, while it is understandable that a book grounded mainly in political philosophy do not confer too much space to numbers, figures and data, it is indeed a concerning issue when one thinks that *Clean Trade* is sponsored as a *policy* to be adopted by *governments* of *real* countries in the *real* world. And in the real world, governments usually base their decisions exactly on timing, costs – especially costs.<sup>300</sup> So it is not at all convincing the fact that Wenar dismisses the debate so light-heartedly. To be sure, this is not in any way a criticism against the overall idea of the inherent wrongness of the current system of international trade in natural resources. It is exactly because the issue is so urgent that the best way to promote *Clean Trade* is to strengthen the arguments that speak in favor of its feasibility.

According to current estimates, 81.5% of the world's proven crude oil reserves are located in OPEC Member Countries, with the bulk of OPEC oil reserves in Middle East countries, amounting to 65.5% of the OPEC total.<sup>301</sup> Algeria, Angola, Gabon, Iran, Iraq, Libya, Qatar,

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<sup>297</sup> Wenar 2016, 302-303.

<sup>298</sup> Ibidem, 302.

<sup>299</sup> Ibidem, 303.

<sup>300</sup> Especially in democratic countries where political leaders are sanctioned by the ballots when they implement unsatisfactory policies.

<sup>301</sup> OPEC Annual Statistical Bulletin 2017, available at [http://www.opec.org/opec\\_web/en/data\\_graphs/330.htm](http://www.opec.org/opec_web/en/data_graphs/330.htm)

Saudi Arabia, United Arab Emirates and Venezuela, are among the major OPEC members, and are all ranked as not free by Freedom House.<sup>302</sup> Not to mention other non-OPEC major oil and gas producing countries such as Equatorial Guinea and Russia, both not free countries. The United States and the European Union are heavily dependent on foreign energy supplies,<sup>303</sup> therefore a disengagement from all of the above-listed countries would mean a major shift in their energy supply and consumption habits. Curiously enough, Wenar reasons that ending oil effectiveness would be easier today for the United States since they have recently experienced a boost in domestic shale production,<sup>304</sup> while he dismisses the recent global trend towards the development of green energy as a mere supporting argument, that one can seize on to strengthen the case against effectiveness but ought not depend on.<sup>305</sup> From a strategic point of view, the *Clean Trade* campaign could really strengthen its position if it tied the disengagement from authoritarian oil with a definitive shift towards green and renewable energy. By committing to a radical and definitive change in their energy outlook, *Clean Trade* countries would prevent any moral hazard by foreign petrocrats, who might be tempted to survive the temporary liberal disengagement without democratizing and wait until democratic importers come back in need of their stolen but vital oil reserves. As to the tainted importers, the liberal integrity call should guide the scientific efforts of western democracies and convince them to use their technological and economic superiority to urgently focus on alternative energy. Sure is that companies and firms are no charities and their aim is to make profits, but imagine if the amounts of money wasted in corruption scandals or in military interventions in resource-fueled wars were spent on developing green technology instead! As stressed during the last World Economic Forum, conflicts costs globally \$13.6 trillion per year, while nothing is spent on peace.<sup>306</sup> Furthermore, it is already estimated that renewable energy will be cheaper than fossil fuels in 2020.<sup>307</sup> At the same

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<sup>302</sup> Freedom House Report *Freedom in the World* 2018, available at <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

<sup>303</sup> U.S. Energy Information Administration

[https://www.eia.gov/dnav/pet/pet\\_move\\_impqus\\_a2\\_nus\\_ep00\\_im0\\_mbb1\\_a.htm](https://www.eia.gov/dnav/pet/pet_move_impqus_a2_nus_ep00_im0_mbb1_a.htm);

European Commission <https://ec.europa.eu/energy/en/topics/imports-and-secure-supplies/supplier-countries>

<sup>304</sup> Wenar 2016, 307.

<sup>305</sup> *Ibidem*, 278.

<sup>306</sup> See World Economic Forum <https://www.weforum.org/agenda/2017/01/how-much-does-violence-really-cost-our-global-economy/>

<sup>307</sup> See <https://www.climaterealityproject.org/blog/new-report-renewable-energy-will-be-cheaper-fossil-fuels-2020>

time, an extensive reallocation of democracies' national budgets from the military sector to the green-energy R&D will signal to foreign dictators that western countries have no disposition to eventually go and reform them by force, thus increasing the chances of a voluntary internal change in resource-disordered countries.

Domestically, even those who are not sensible to the problem of the resource curse, or the debate about the urgency of tackling climate change, could nonetheless support the adoption of *Clean Trade* if they were convinced that this is in fact to their own advantage.

Some may be skeptic about the fact that we ought to invest in green energy and environmental reforms for the sake of future generations, perhaps because it is not clear what our duties towards future individuals are, or maybe because in the past any doomsday predictions about humanity's survival has been repeatedly shown wrong by technological progress and so it will be in the future.<sup>308</sup> Again, an inward-looking perspective, linked with a focus on the present and on the importers' interests can strengthen both *Clean Trade* and environmentalist policies. Since we have argued that our liberal identity impose us to disengage and get rid of tainted oil independently of the chances that this will bring democratization in oil-cursed countries, then liberal democracies do not have to wait for that outcome in order to prove that they can disengage. Rather, they ought to develop green energy alternatives first, thus making it possible to disengage from petrocrats freed from the anxiety of bearing useless costs. Those who are worried about the costs that this transition might imply, ought to reflect on the fact that at some point the shift away from fossil fuels will be inevitable in any case because of the irreversible trends of global warming and climate change,<sup>309</sup> or more simply because oil is a non-renewable resource. Being finite, at some point the transition will be inevitable, so it would be rational to start right away. It would also be irrational and inefficient from an economic point of view to develop non-green alternative to oil (such as fracking) when stopping the imports from resource-cursed countries, since they are highly damaging for the environment (and it would be on importers' soil, since companies could no longer work in resource-cursed countries) and they have a low energy return on investment (which means that they costs more than they produce).<sup>310</sup>

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<sup>308</sup> Nili 2015.

<sup>309</sup> <https://www.theguardian.com/environment/2017/jun/28/world-has-three-years-left-to-stop-dangerous-climate-change-warn-experts>

<sup>310</sup> <https://www.investopedia.com/ask/answers/011915/what-are-effects-fracking-environment.asp>

Given that the development of anti-green energy, as an alternative to foreign-dictators' oil, within democracies' own territories is likely to cause environmental disasters that will be costly under any aspects, and given that these costs would be difficult to justify to, or hide from, the voters, it would be rational to governments of liberal democracies to develop green alternatives to cursed oil and gas right away.

## **Conclusion**

In this chapter we have addressed the main reasons that would account for some countries' decision not to join the *Clean Trade* initiative: the collective action problem; the status quo bias; the foreign policy dilemma; and the energy supplies dilemma. We have argued that these dilemmas are mainly inspired by a misleading outward look that focuses on the effects that *Clean Trade* might have on resource-cursed countries, namely on the ability of this proposal to effectively bring about positive changes. By adopting an inward-looking perspective instead, resource-importing countries can find the reasons to act beyond and independently from the hope for such an improvement to occur. We have also seen that many of the supposed strategic interests that might be jeopardized by adopting *Clean Trade*, are in fact more apparent than real, and they are mostly influenced by a short-term vision rather than more long-term pragmatic strategies. Our "what ifs" towards the implementation of *Clean Trade* are based on a status-quo bias that is dangerous for our moral integrity. Until now, keeping effectiveness in place has made some better off (impressively better off), but it has also made many (too many) worse than a more just, or simply legal, system would. Not only for "their" side, but on "our" side too. As Wenar points out,<sup>311</sup> curses are on us as well because we live in an interconnected world and what happens in one corner of the globe reaches us, in several and often highly negative ways. Think about the inability of western leaders to adopt a unite and coherent foreign policy in the Middle East: whether to intervene or not, whether to impose sanctions or not. These have been the West's no-win foreign policy strategies for decades now. Stopping the trade with dictators is not only a moral issue, it deals with the costs we have already been bearing every day in terms of military, political, economic, financial and psychological costs (living under the constant uncertainty of what crisis tomorrow might bring is not pleasant). Is is sometimes said that insanity is doing the same thing over and over again and expecting different results. If one wants different results,

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<sup>311</sup> Wenar 2016, ch.6.

one has then to try different approaches. *Clean Trade* constitutes a valuable alternative, if we interpret it from the perspective that its related costs are worth bearing for our own sake in the first place, before than to others' advantage. It might sound strange, but we just have to change our mindset.

## CONCLUSIONS

The purpose of this work was to analyse Professor Wenar's latest book: *Blood Oil*, and specifically the policy proposal outlined therein: *Clean Trade*. The aim of *Clean Trade* is to provide a resource-importing country with effective tools to end its entanglement in the phenomenon of the resource curse. The resource curse is a condition that many countries whose economy is largely dependent on the extractive sector suffer from. It is linked to grave issues such as authoritarianism, corruption, civil wars, poverty and economic instability. Most scholars and researchers have studied this phenomenon in its political or economic features and mostly focusing on the resource-exporting countries. The added value of Wenar's approach is that it unveils the central role played by the importing countries in fueling and perpetrating the curse. Indeed, while many researchers correctly highlight that all resource-cursed countries present a negative correlation between their endowment of high-value natural resources and their level of democratization, Wenar stresses that it is the existence of an external supply of money that keeps that negative correlation in place. Dictators, authoritarians and other oppressive regimes can avoid relying on taxes paid by their citizens, and therefore succeed in remaining unaccountable, because they keep as their private wealth royalties paid by foreign extractive companies and money spent by foreign consumers, that reach them via global supply chains. This is possible because the governments of the resource-importing countries accept and legitimize the power of these rentier regimes abroad through an outdated Westphalian rule: one who says that whoever is strong enough to effectively control a territory, becomes entitled to that territory and therefore to its resources. This is the principle of might makes right, and it goes against any modern principle of international and national law based on the concepts of popular sovereignty, self-determination and rule of law. By obeying to the might makes right rule, resource-importing countries act in direct conflict with their own identity-grounding principles, chief among them the principle of popular sovereignty over natural resources. *Clean Trade* thus represents a framework for action, a policy proposal that can help the free world to align their international behavior to the principles and norms that are already affirmed, entrenched and enforced within their own national borders. The tools Wenar outlines are already widely employed both unilaterally and multilaterally in international relations, and they can be summarized in three broad categories: commercial disengagement from countries where citizens have no civil and political rights and therefore cannot enjoy

their sovereignty over natural resources; a system of conditionalities to support and encourage accountability in resource-exporting countries where civil and political rights of the citizens are in place but they are weak; finally, rules of engagement for extractive national companies that operate in resource-disordered countries, so that they are subject to the same standards of transparency and accountability that they would face were they to operate within their home country. Whereas all of these tools are feasible from a legal point of view, they might nonetheless spark the resistance of several actors whose alleged interests would be harmed. Consumers in importing countries would face an important increase in the costs of living, since the price of oil commands any other prices; energy supplies would be put at stake, since a *Clean Trade* country would be disengaging from the world's largest natural resource deposits. Extractive companies would lose billions in profits, and governments would shake their foreign policy to the core, some resource-cursed countries being longtime political allies of western democracies. Those being the costs involved, *Clean Trade* demands a lot, and it is not sure that resource-importing countries would be ready to bear those costs just for the sake of enforcing the rights of foreign poor people. The two main approaches of global justice, statism and cosmopolitanism, are not able to provide a satisfying answer with regards to a just distribution of rights and duties in the purpose of tackling the resource curse: the first may demand too little, being constrained by a vision of justice confined to the national borders; while the latter too much, disregarding the political reality of a world divided in sovereign states and of international relations occurring between governments and not directly between individuals. Wenar has tried to avoid such topic, insisting on the urgency of putting the resource curse to an end and stressing that his *Clean Trade* framework is able to accomplish that task, if governments show the political will to implement it. The main problem with this perspective is that it focuses on the hope of achieving systemic improvements but, as Nili points out, hope cannot be the grounding value of a public policy.<sup>312</sup> In the anarchical context of international relations, in the absence of a supranational coordination that assures a simultaneous and enforceable commitment from all resource-importing countries, no government will unilaterally undertake such costly reform. The resource curse is a global issue that implies a collective action problem just as the issue of climate change: fighting it requires a global response, but nobody finds it rational to start acting. We have therefore suggested that a change of perspective on the problem

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<sup>312</sup> Nili 2011a.

might help individual countries move in the right direction. The inward-looking perspective suggested by Nili, solves the collective action problem because it simply requires democratic governments to stop engaging in practices that manifestly violate the grounding principles of their own national liberal identity, regardless of what outcomes might derive for resource-cursed countries, and simply because it is right to stop an inherently wrong behavior.<sup>313</sup> The *Clean Trade* proposal would increase its chances of come to life if supported by Nili's moral argument. Instead of focusing on an outward-oriented strategy, *Clean Trade* countries ought to adopt an inward-looking perspective that frees them from a paralyzing duty of outcome. If there is one lesson to learn from *Blood Oil* is not the one that may appear on the surface: namely, the lack of democracy in resource-cursed countries. Instead, the most important message of the book is a reminder to the citizens of the free world that they do enjoy democratic powers. They have the tools to control, influence and hold their governments accountable. As Wenar repeatedly points out:

“Since it is our own governments that are putting us into business with unaccountable actors abroad, the challenge is to summon our own powers of accountability, to make our own governments change their ways.”<sup>314</sup>

It is not about the life that resource-cursed citizens could enjoy were they to democratize; it is about the life we, in western liberal-democracies, are conducting in utter disregard of the principles that define our own identity. And if this happens because of how our governments manage their international relations, we ought to react, since *we* can. Some of the resistance about the duty to bear the costs entailed by *Clean Trade* might arise from the ignorance of how the international trade in natural resources works, and namely about the pivotal role played by the importing side of the supply chain in perpetrating the resource curse. Reading *Blood Oil* can help bridge that gap, raise awareness among the ordinary citizens of the free world and motivate them to act on their own interests and principles, for the sake of their own integrity. This will require to bear some costs, but a cost-based justification for putting aside our core moral principles can lead to appalling conclusions: the denial that there are moral rules that cannot be legitimately overridden, whatever the circumstances.

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<sup>313</sup> Nili 2016.

<sup>314</sup> Wenar 2016, 280.

Wenar clearly does not claim to have all the answers to the aspects related to the resource curse. Indeed he is aware that “finding solutions as deep as these problems will mean limning the foundations of the international system”.<sup>315</sup> But after all, he is a political philosopher, and his role is not to design the perfect public policy: that task is assigned to political leaders. The role of the philosopher is to provide “guidance where guidance is needed”,<sup>316</sup> to redeem the messy politics of the real world by advancing coherent arguments and indicating moral priorities. From that perspective, *Blood Oil* is without a doubt a successful initiative.

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<sup>315</sup> Ibidem, xxvii.

<sup>316</sup> Rawls 1999a, 18.

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## ABSTRACT

### A PRINCIPLED REFORM OF INTERNATIONAL TRADE IN NATURAL RESOURCES

#### Assessing Professor Wenar's *Clean Trade* Policy

## INTRODUCTION

“*Blood Oil: Tyrants, Violence, and the Rules that Run the World*”<sup>1</sup> is a monumental book that combines ethics, economics, history and international law in an unprecedented way to provide a *Clean Trade* strategy that links the reform of the current rules governing the international trade in natural resources to the broader goal of realizing a more peaceful and more just world. Buying natural resources from whoever can control them by force, means sending money to unaccountable actors and incentivizing authoritarianism, corruption, civil wars and economic instability. Western governments should instead support public accountability in resource-exporting countries, implementing *Clean Trade* policies that enhance citizen control over their natural resources. Implementing a *Clean Trade* system would constrain our own habits that up until today have been harming others, and it would be up to the implementing countries to bear the costs of change. My thesis tries to assess on what grounds, and to what extent, resource-importing countries have a duty to implement *Clean Trade*. This work is divided in three parts. In the first part I will describe the phenomenon of the so-called resource curse. Then I will compare the current way of trading natural resources, based on the principle of *effectiveness*, with Wenar's *Clean Trade* reform proposal, based on the principle of *popular sovereignty over natural resources*. In the second part, the two main paradigms of global justice – statism and cosmopolitanism – will be outlined and used to look for answers as to what we are demanded to do (if at all) to deal with the *resource curse*. I will then argue that by failing to formally engage in an analysis of global justice, *Blood Oil* remains a passionate plea for change that appeals to ethically indisputable assumptions, but whose realization ultimately depends on a voluntary, selfless and non-rational decision, both by consumers and governments. This *impasse* may be overcome if we shift the focus of our analysis from what are our duties towards distant others, to what are our duties towards ourselves, by an appeal to Nili's argument on preserving our “liberal integrity”. The third part of this thesis aims at assessing the practical feasibility of the *Clean Trade* framework, since it might influence the global economy,

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<sup>1</sup> Wenar, Leif. 2016. “*Blood Oil: Tyrants, Violence, and the Rules That Run the World.*” Oxford University Press.

political alliances, and international energy routes. Finally, I will briefly sum up the content of my analysis and present my conclusions.

## **PART I: REFORMING INTERNATIONAL TRADE IN NATURAL RESOURCES**

### **CHAPTER ONE: ENDING THE RESOURCE CURSE**

Most of the goods we own and consume are the combination of single components coming from all over the world. The global economy is one of the distinctive features of our time, and it has been running on oil for decades now. More than half of the world oil consumption is ascribable to countries that are not oil producers,<sup>2</sup> while most of those countries that do produce and export oil are also the cradle of civil conflicts, authoritarianism, poverty, corruption, economic instability, and other worrisome conditions. This paradoxical situation has been called by social scientists the “resource curse”. Sachs and Warner describe “the curse of natural resources” as the observation that countries rich in natural resources tend to perform badly, compared to resource-poor countries.<sup>3</sup> This finding has for longtime clashed against the general impression that most of the currently rich countries had a successful development exactly by virtue of their natural resource endowment.<sup>4</sup> Auty argues that there are four conditions that are necessary for natural resources to allow sustained, rapid and equitable development: relatively equitable access to land and primary education; effective markets and public accountability; an open trade policy; and competitive economic diversification to give resilience to shocks.<sup>5</sup> None of these conditions are present in relevant levels in resource-cursed countries. Other scholars have suggested that point-source natural resources such as oil, being extracted from a narrow geographic base and thus being easily controllable, incentivize rentier behaviors from those who succeed in seizing them, thus

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<sup>2</sup> The top ten oil importers are United States, China, India, Japan, South Korea, Nepal, Germany, Spain, Italy and France. Source: CIA World Factbook, country comparison – crude oil imports, available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2243rank.html>. Although it should be noted that the recent boost in domestic shale and gas production in the United States is likely to sensibly affect the volume of US imports.

<sup>3</sup> Sachs, Jeffrey D. and Warner, Andrew M. 2001. “*The Curse of Natural Resources*” in *European Economic Review*, Vol. 45, pp. 827-838.

<sup>4</sup> Habakkuk, John. 1962. “*American and British Technology in the Nineteenth Century*”, Cambridge University Press

<sup>5</sup> Auty, Richard. 2001. “*The Political Economy of Resource-driven Growth*” in *European Economic Review*, Vol. 45, pp. 838-846.

generating the resource curse.<sup>6</sup> Ross highlighted that governments that can rely on resource revenues have less need to tax their citizens, and thereby can avoid creating mechanisms of accountability through which the population can check and sanction their work.<sup>7</sup> Most of the countries hit by the resource curse are ruled by governments that can afford to remain unaccountable to their people because they enjoy an external supply of money coming from resource sales on the international market. This nexus is so evident today that a scholar has even translated it into “The First Law of Petropolitics”, stating that the price of oil and the pace of freedom always move in opposite directions.<sup>8</sup> Rent-addicted regimes are those who score the lowest on Freedom House ratings on civil and political liberties, including freedom of speech, freedom of press and freedom to assemble.<sup>9</sup> This picture however does not have to suggest the idea that all resource-dependent states are poor. Wenar distinguishes high-rent regimes, which spend large sums of their resource rent in public goods for patronizing over the citizens; and low-rent regimes, where citizens basically live in poverty and receive almost no public goods from the regime. Nonetheless, both types manage to get the revenues to stay in power from selling their country’s natural resources to meet the extensive demand coming from Western countries. Here Wenar introduces his *Clean Trade* argument. The current international trade in natural resources is based on the recognition and legitimization of physical possession rather than on legal property, through an outdated rule existing in the pre-modern international community, called “might makes right”: the principle whereby whoever physically controls the resources of a territory, is recognized as legally entitled to sell them and receive the money deriving from that transaction. That is why Wenar uses the word “effectiveness” as a synonymous of “might makes right”. The modern international law, conversely, is based on the protection of individual and collective human rights, especially against the forceful violations committed by the political leaders. Yet, if the idea of the state’s unlimited coercive authority over its people has been outlawed, this is not the

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<sup>6</sup> Isham, Jonathan et al. 2005. “The varieties of Resource Experience – Natural Resource Export Structures and the Political Economy of Economic Growth” in *The World Bank Economic Review*, Vol. 19, No. 2, pp. 141-174. Auty 2001 follows a similar argument when speaking of “predatory political state”.

<sup>7</sup> Ross, Michael. 2001. “Does Oil Hinder Democracy?” in *World Politics*, Vol. 53, No. 3, pp. 325-361

<sup>8</sup> Friedman, Thomas. 2006. “The First Law of Petropolitics” in *Foreign Policy*, 16 October, available at <http://foreignpolicy.com/2009/10/16/the-first-law-of-petropolitics/>

<sup>9</sup> Freedom in the World Report 2018, available at <https://freedomhouse.org/report/freedom-world/freedom-world-2018>. Freedom in the World is the annual report on the state of democracy in the world, produced by Freedom House, an independent organization advocating for the expansion of freedoms and democracy at the global level.

case for the international trade system of natural resources. What Wenar highlights, then, is that the negative features of the resource curse are not part of its origins, but instead the consequences, fueled by the silent decision of resource-importing countries to engage in commercial transactions with whoever effectively controls the resources, by whatever means. Trading by rejecting the rule of effectiveness seems to require special measures, the chief example being the Kimberley Process Certification Scheme for Rough Diamonds.<sup>10</sup> The real question is why the preeminence of effectiveness is the default state of affairs for international trade in natural resources, while its rejection seems to be exceptional. Wenar suggests that national politicians seem to have no choice but to dirt their hands to satisfy the energy and material needs of the communities they govern and to remain in power. A government that would fail in satisfying those demands would simply be replaced by another at the successive elections.<sup>11</sup> This reveals that the resource curse is also the fruit of voluntary choices made by the governments of resource-importing countries. The counter-powerful norm that Wenar opposes to “might makes right”, and that any government of any country ought to respect and enforce, is the principle of popular sovereignty over natural resources. It derives from the right to self-determination affirmed by the 1945 United Nations Charter (Article 1, para.2), and the principle of popular sovereignty set out by the 1948 Universal Declaration of Human Rights (Article 21, para. 3). Together, these international norms give the people of a country the right to rule their own country, not only without the interference of external powers, but also by exercising the ultimate authority over the decisions that regulate the internal organization of their country. As part of the wider affirmation of the principle of popular sovereignty intended as internal-self-determination, and for what concerns us most, we find the principle of popular sovereignty over territorial natural resources. It is engraved in the common Article 1, of two fundamental international human rights treaties: the International Covenant on Civil and Political Rights and the International

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<sup>10</sup> The Kimberley Process was promoted and inspired by the action of Southern-African diamond-producing states, who met in Kimberley, South Africa, in mid-2000 to discuss ways to stop trade in “conflict diamonds”: diamond purchases that were proven to be funding violence by rebel movements and their allies against national legitimate governments. The Kimberley Process Certification Scheme document, setting out the requirements for diamonds to be produced and traded legally, entered into force in 2003. It gathers fifty-four participants representing eighty-one countries, accounting for almost 99% of the global productions of rough diamonds. See <https://www.kimberleyprocess.com/>

<sup>11</sup> This point is relevant and will be dealt with more in detail when we will try to analyze the nature of resource-importing country’s duty to stop trading with unaccountable resource-exporters.

Covenant on Economic, Social and Cultural Rights, adopted by the United Nations in 1966.<sup>12</sup> These covenants make peoples' authority over the management of territorial natural resources a human right, and clarify that a government's daily management of its country's natural resources is subject to the ultimate authority embodied in the popular sovereignty of its citizens. Outsiders have no easy way to assess the status of internal self-determination of a sovereign state without risking to violate its external self-determination. At the global level, a state's regime represents the country and engage in international relations on its behalf, while at the domestic level it enacts laws over which outsiders cannot have a say. What outsiders ought to look at is the relation, based on ownership and authorization, that links a country's citizens to its regime.<sup>13</sup> Citizens are vested with original property rights in their country's resources, and by virtue of the originality of those rights they can "freely dispose of their natural wealth and resources", which includes also authorizing laws that delegate to their country's regime to manage the natural resources on their behalf. For people to enjoy their sovereignty over natural resources they have to find themselves in conditions to authorize, in a valid way, the regime to manage those resources. The tools that citizens need to exercise their popular sovereignty over natural resources, are basic civil liberties and political rights enlisted in all the major international treaties of human rights: freedom of information, independent authorization, freedom of assembly and vote, freedom to dissent.<sup>14</sup> Absent those minimal conditions, a regime that exports natural resources is doing so illegitimately, by virtue of effectiveness. Today, half of the world's proven oil reserves are in countries that do not allow minimal civil liberties and political rights to their citizens.<sup>15</sup> Outsiders who accept to buy those resources are literally buying stolen resources and are

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<sup>12</sup> Article 1 of both the International Covenant on Civil and Political Rights, and of the International Covenant on Economic, Social, and Cultural Rights, stating that: "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All people may, for their own ends, freely dispose of their natural wealth and resources." Full texts available at <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> and [https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch\\_IV\\_03.pdf](https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf)

<sup>13</sup> Wenar 2016, 222.

<sup>14</sup> Nothing is said about the benefits that the regime's management of natural resources might give to the citizens. If not authorized through the exercise of popular sovereignty those benefits are only a paternalistic imposition by the regime upon its population. This point will be analyzed more in detail later. For now, what is crucial to stress is that benefit and control are not synonymous from the perspective of the right to popular resource sovereignty.

<sup>15</sup> OPEC Annual Statistical Bulletin 2017, available at [http://www.opec.org/opec\\_web/en/data\\_graphs/330.htm](http://www.opec.org/opec_web/en/data_graphs/330.htm); Freedom House Report *Freedom in the World* 2018 available at <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

complicit in violating the sovereignty of the people of the resource-exporting country. Countries that accept, enforce and believe in property rights and popular sovereignty (basically, in human rights and rule of law) ought to disengage commercially from resource-exporting countries where state's authorities or effective rulers are not publicly accountable to their citizens, while supporting public accountability in resource-exporting countries where that accountability is present but weak. With regard to Not-Free countries, a *Clean Trade* country would have to pass a *Clean Trade Act* that: makes illegal for national actors to purchase natural resources from disqualified countries; closes all commercial and financial facilities within its domestic jurisdiction to a disqualified regime; denies all judicial venues within the home jurisdiction of the *Clean Trade* enacting country to all resource-controlling actors of the disqualified countries. The rationale of a *Clean Trade Act* is to stop the direct complicity of the enacting country to the perpetuation of the resource curse. Since Wenar envisages a framework to be enacted by each country individually, the risk is that some countries will decide to abandon effectiveness, while others will keep doing business as usual. Therefore, by engaging in commercial transactions with non-*Clean Trade* countries, virtuous resource-importers would still be contributing indirectly to the resource-curse by buying "tainted" goods. To deprive third-parties of the economic gains that they derive from their ongoing obedience to effectiveness, Wenar designs the *Clean Hands Trust*, a bank account in the *Clean Trade* country that is to be filled with duties imposed on imports from non-*Clean Trade* countries up to the same amount as the monetary value of the stolen oil purchased by the intermediate non-*Clean Trade* government from the disqualified regime. The goal of these policy tools, is to alter the structure of incentives generated by trading natural resources on effectiveness. As to Partly-Free countries, a *Clean Trade* country would have to change its own trade policies in order to encourage positive developments towards greater accountability: first, by setting rules of engagement for national extractive companies working in Partly-Free countries; second by tailoring commercial and economic responses to the evolving levels of public accountability in the resource-exporting countries. Nonetheless, ending effectiveness through *Clean Trade* entails some costs on the enacting countries that can prompt resistance to its implementation. As a matter of justice, it is therefore necessary to assess why and to what extent resource-importing countries ought to bear those costs.

## **PART II: GLOBAL JUSTICE**

## CHAPTER TWO: THEIR CURSE

Only recently has the debate over global justice gained academic attention in political philosophy,<sup>16</sup> mostly solicited by the speeding pace of globalization that has enhanced interconnection and interdependence not only among states but among individuals *per se*. Political philosophy has tried to respond to this challenge by adapting on a global scale concepts and theories of justice usually conceived to apply within nation-states that are endowed with institutions that enforce justice (with a political connotation, evidently). Rawls affirms that justice is defined by “the role of its principles in assigning rights and duties and in defining the appropriate division of social advantages”<sup>17</sup> Accordingly, global justice can be defined as the way in which fundamental rights and duties are distributed globally and how the distribution of the advantages fostered by global cooperation is determined. In extending principles of distributive justice to the global arena, global distributive justice implies that there are some entitlements of justice which have global scope, which in turn implies that there are some corresponding duties of justice which have global scope.<sup>18</sup> This contention separates statists from cosmopolitans. Statism links the concept of justice to the existence of institutions that can enforce justice, and focus on the special relation between those institutions and the recipient of justice. Accordingly, justice is first and foremost a political value that is best realized at the state level. The most relevant advocates of statism I have dealt with in this work are John Rawls and Thomas Nagel. Rawls sees justice at the international level as only existing between Peoples but not directly between individuals belonging to different Peoples.<sup>19</sup> Rawls identifies as the primary subject of justice what he calls the “basic structure of a society”, meant as “*the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation.*”<sup>20</sup> At the state level, this stable model of institutional interaction is usually embodied by the Constitution,

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<sup>16</sup> Nagel, Thomas. 2005. “*The Problem of Global Justice.*” in *Philosophy & Public Affairs*, vol.33, no.2, pp. 113-147

<sup>17</sup> Rawls, John. 1999a. “*A Theory of Justice.*”, revised version, Harvard University Press, 6.

<sup>18</sup> Armstrong, Chris. 2012. “*Global Distributive Justice.*” Cambridge, UK, Cambridge University Press

<sup>19</sup> Rawls, John. 1999b. “*The Law of Peoples: With The Idea of Public Reason Revisited.*” Harvard University Press. Rawls distinguished among liberal Peoples, decent Peoples, outlaw states, burdened societies and benevolent absolutism. The first two Peoples are described as well-ordered, while the latter three are not well-ordered. We will come back on the *Law of Peoples* when dealing with the justifications for adopting differentiated *Clean Trade* measures vis-à-vis not-free and partly-free countries.

<sup>20</sup> Rawls, John. 1977. “*The Basic Structure as Subject*”, in *American Philosophical Quarterly*, Vol. 14, No. 2 (April), pp. 159-165, 159.

by virtue of which the state legitimates, enables, and most importantly can enforce the rights and duties of the citizens. There is not (yet, nor for the foreseeable future) a World Constitution that exercises the same function at the global level. Rawls' perspective on global distributive justice is therefore more *international* than *global*. He seeks principles apt to regulate the interactions among territorially defined political agents, called Peoples – and thus only indirectly to regulate interactions among individuals.<sup>21</sup> As to Nagel's view on global justice, he affirms that we can only plausibly talk about, and practically have, charity rather than proper justice at the international level.<sup>22</sup>

On their account of global justice, cosmopolitans argue that our relationships as members of the more general and comprehensive category of humanity should have precedence over more specific relationships based on citizenship. Furthermore, cosmopolitans cite the intensity and extensity of cross-border economic activities to argue that the sort of horizontal relationship among citizens within the state also exists on the global level. Among cosmopolitan philosophers, Thomas Pogge has dealt directly with the issue of the resource curse. He contends affluent countries play a central role in shaping the global economic order and in establishing the rules governing international trade. In particular, the international community accepts and legitimizes dictators in resource-exporting countries by granting them the international borrowing privilege and the international resource privilege<sup>23</sup> – two arguments compatible with Wenar's rule of effectiveness and might makes right. Pogge's argument stresses the state of poverty into which the current international trade in natural resource forces the exporting countries. His goal is especially to redress this situation, and rebalance the global wealth among countries. Whereas Wenar, albeit acknowledging that poverty is a regrettable correlate of the resource curse, chooses to ground his *Clean Trade* policy on the protection and enforcement of property rights, in consideration of the fact that all the other negative externalities linked to the resource curse stem from the lack of enforcement of principle of the popular resource sovereignty.

The reason we are debating the nature and the extent of principles of justice in relation to the phenomenon of the resource curse is because currently there is a double standard in the enforcement of the principle of popular resource sovereignty: we protect this principle in our

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<sup>21</sup> Rawls 1999b.

<sup>22</sup> Nagel 2005.

<sup>23</sup> Pogge, Thomas. 2005. "Recognized and Violated by International Law: The Human Rights of the Global Poor." in *Leiden Journal of International Law*, Vol.18, No. 4, pp. 717-745

domestic orders and hold our leaders accountable if they violate it, but we turn a blind eye when this occurs daily and massively in foreign countries. The *Clean Trade Proposal* aims at leveling the national and the international standards. There is no plausible rationale for resource-importing countries to justify their refusal of bearing the costs associated to implementing *Clean Trade*; not even an appeal to the so-called problem of dirty hands, whereby political leaders might violate the deepest constraints of morality in order to achieve great goods or avoid disasters for their citizens. Implementing *Clean Trade* is hardly going to jeopardize the life of the enacting countries' communities, therefore keeping buying stolen oil from ruthless dictators is an immoral action that the problem of dirty hands cannot possibly justify. Another way to address the problem of dirty hands is by setting rules that forbid the hands to get dirty: the agent will simply choose the option that complies with them, avoiding the problem of dirty hands. This position is reflected in Nili's "liberal integrity" argument that will be discussed more in detail later. Another issue connected to the problem of dirty hands is linked to the question of authorization within democratic countries. If democratic citizens can plausibly be said to have authorized their governments to violate foreigners' right of popular sovereignty over natural resources, they would be tantamount responsible as the democratic government that represents them and engage on their behalf at the international level. Wenar himself affirms that "it is in fact a consumer's own government that links him in legal chains with foreign petrocrats and warlords and that brings their injustices into his own system."<sup>24</sup> Democratic governments and corporations are the ones who do the deals in practice, and they have easily access to extensive and thorough information on political and economic conditions of every country and every firm in the world. Conversely, it is not plausible to think ordinary citizens as purchasers that contribute to the resource curse with the same amount of knowledge, intentionality and extent. That is why citizens cannot be considered tantamount responsible for the resource curse as their governments. The democratic governments that accept to trade by the rule of effectiveness have a double responsibility, not only towards resource-exporting peoples but also towards their own citizens. Statism and cosmopolitanism give their answers to whether *Clean Trade countries* should, and if so, to what extent and on what grounds, pay the price linked to ending effectiveness. The concept of "costs" is relative to how those who are supposed to bear them feel about the cause they are spending money on, and to what extent they feel

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<sup>24</sup> Wenar 2016, xlv-xlvi.

responsible for the situation they are called to redress. But in the particular problem of the resource curse, individuals, groups of individuals, companies, governments and even the global institutional order (which is based on the principle of might makes right) play a role. Any contributing agent will be responsible on the level and to the extent it contributes, and that is why the issue of bearing the costs associated to ending effectiveness cannot be justified either by statism or cosmopolitanism alone. Since causality and responsibility can be traced at any level, in any kind of action or omission, by anyone, *Clean Trade* provisions adopt an all-encompassing approach to address the resource curse with various tools. Wenar names his approach an “ideal-based consequentialism”, which is *sui generis* since it gathers elements from both statism and cosmopolitanism, and it represents a middle-ground between a theory of global justice and a policy proposal.

### CHAPTER THREE: OUR CURSE

When it comes to analyse why and for whom one should implement *Clean Trade*, remaining in the realm of pure ideal theories of justice such as Statism and Cosmopolitanism is not effective because Wenar has not created a purely ideal theory of global justice. *Clean Trade* is presented as a realistic dissertation on a major adversity of our times, and little does it care about positioning officially within the global-justice debate. Wenar criticizes those academics that, by looking for an ideal form, try to provide the perfect description of what justice *is* and are less concerned with *what to do*.<sup>25</sup> Conversely, he maintains that moral rules and concrete policies are to be evaluated by their contribution in their time: they must be useful, more than they have to be perfect. This is what he defines as “ideal-based consequentialism.”<sup>26</sup> Wenar sets an ideal, then the principles compatible with that ideal and then the means that will help realize in concrete that ideal. *Clean Trade* guiding principles are popular sovereignty, property rights, human rights, rule of law and peace. *Clean Trade* tools are then chosen by virtue of their effective contribution to reach the end.<sup>27</sup> They gather initiatives that have been widely used to deal with international politics, and are crafted to hit every single causal agent of the resource curse. Even without proposing a pure ideal theory of global justice, *Clean Trade* is more keen to a statist approach than to a cosmopolitan one. Wenar himself explores whether there might be better principles to

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<sup>25</sup> Wenar 2016, 353. Italics are in the original text.

<sup>26</sup> Ibidem, 364.

<sup>27</sup> Ibidem, 343-344

choose, instead of the popular sovereignty over natural resources, to bring about a more just world. In looking for an answer, he firmly dismisses more cosmopolitan principles like the common ownership of the Earth. This principle considers that the worldwide distribution of natural resources is uneven and scattered, that if some people are born in countries that are highly endowed while others are not this is just a matter of circumstance, and that if this influences the wellbeing and the living standards of some, then a redistribution of resource wealth from the luckiest in resource-rich countries towards the less resource-rich countries is due. But this kind of reasoning is totally counter-productive. Peoples living in the most resource-rich countries belong to nation-states that born from the process of decolonization, and would look at such a principle as a new form of colonial exploitation. Moreover, for Wenar, the perspective to adopt to deal with the resource curse does not necessarily have to focus on poverty. Popular resource sovereignty is not about the material benefits; rather, it is about the citizens' ultimate authority over the resources. Focusing on alleviating poverty is therefore misleading. There is another feature of Wenar's argument that explains why he is more Rawlsian than cosmopolitan. Cosmopolitanism cannot fully be realized unless all countries democratize first. Far from trying to impose a kind of liberal western mindset worldwide, Wenar points out that the principle of popular resource sovereignty requires minimal standards of democratic procedures. Whatever the content of the decisions that will be taken democratically, that is not "our" business, as western liberal democracies, to judge or influence. This attitude emerges also from the difference in the treatment that *Clean Trade* reserves to not free and partly free countries. Wenar envisages the complete commercial and financial disengagement from not-free countries while partly-free countries face tailored responses and policies that match their progress (or regress) in public accountability. I argue that this difference echoes the Rawlsian conception of international justice elaborated in *The Law of Peoples*. Rawls affirms the moral significance of collective self-governance as condition to accept and compound the varieties of Peoples that are present at the global level.<sup>28</sup> Outlaw states that rule by tyranny and oppression do not deserve outsiders' respect because they are not collectively self-governing Peoples. Burdened societies that lack the political or economic resources to become decent societies are owed a "duty of assistance"

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<sup>28</sup> Macedo, Stephen. 2004. "What Self-Governing Peoples Owe to One Another: Universalism, Diversity and the Law of Peoples" in *Fordham Law Review*, Vol. 72, No. 5, Art. 17

from well-ordered Peoples, until they will be finally able to collectively self-govern themselves. In the distinction is possible to read the difference in treatment that *Clean Trade* attributes to not-free and partly-free countries. The first have to be totally disengaged from, because not-free countries do not present any feature of collective self-governance. Conversely, the partly-free countries have to be supported in their quest to full accountability through tailored responses and policies adopted by the *Clean Trade* countries.

That being said, the focus on the direct link between consumers' behavior "here" and effects on resource-cursed citizens "there" recalls the type of interpersonal relations that cosmopolitans insist on. Wenar accepts the *de facto* division of the world in territorial sovereign states, but taking into account the injustices created *in concrete* by the international trade system in natural resources, he refuses to settle for the existence of mere moral justice at the global level, let alone a mere humanitarian concern. Since international trade *is* based on *legal* transactions, then *legal* justice can be claimed by resource-cursed exporting peoples. A "legal" argument against effectiveness might prevent all those that are skeptics about moral principles from turning a blind eye on the problem of resource-curse only because they hold different views on the nature and extent of global justice.

The main problem with Wenar's ideal-based consequentialism, though, is that it employs the word "consequentialism". Wenar opens his work by saying that "the promise of systemic improvements pools this book investigation."<sup>29</sup> The *Clean Trade* argument maintains that trading on effectiveness constitutes a breach of the negative duty not to violate the popular sovereignty of resource-exporting peoples. Even if Wenar tries to dodge the classical objections generally addressed to the advocates of positive duties by saying that *Clean Trade* movement requires self-control more than sending aid,<sup>30</sup> eventually he only replaces our alleged duty to "send" aid with a more general duty of realizing a positive outcome. *Clean Trade*, as a public policy or legislation, cannot require citizens of implementing countries to improving non-compatriots' conditions. Linking the adoption of *Clean Trade* to the positive outcomes it *wishes* to bring about for others, risks raising more skepticism and attract more objections than this reform needs if it is to be implemented. The "liberal integrity" argument proposed by Shmuel Nili offers a moral support to justify the implementation of *Clean*

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<sup>29</sup> Wenar 2016, xliv.

<sup>30</sup> *Ibidem*, 333.

*Trade*,<sup>31</sup> by focusing on “inward-looking” reasons to act.<sup>32</sup> Western democracies ought to stop trading with severely oppressive regimes for the sake of their own liberal integrity.<sup>33</sup> He describes an agent’s integrity as “the pursuit of projects or commitments that the agent considers constitutive of its identity.”<sup>34</sup> By entangling themselves in manifestly illiberal practices abroad, western democracies become materially complicit in practices that betray the fundamental principles of their own liberal identity. And this is a necessary and sufficient reason for liberal governments to disengage from practices that go directly against their own identity-defining principles. If we follow Wenar’s consequentialist approach, the duty to stop entangling with brutal dictators would become totally dependent on the prospects of improving the conditions of resource-cursed people. But there is no certainty in this sense. The liberal integrity argument obliges western democracies to stop treating oppressors as legitimate vendors of their citizens’ resources because trading on effectiveness betrays the principles on which the liberal-democratic identity is founded. This position also reveals the inherent contradiction of Wenar’s suggestion to initially disengage only from the “worst of the worst” regime and not from the distributive dictators as well: it makes no sense distinguishing between the worst dictatorship and a benevolent despot because popular sovereignty over natural resources is not about benefits, it is about control. The idea of liberal integrity should guide the western democracies not to be influenced by material interests or greedy reasoning like the fear of doing more than their fair share. Rather, they should act according to their deepest moral principles, while leaving the hope for positive outcomes for others as a supporting rather than grounding justification for adopting *Clean Trade* policy.

### **PART III: FEASIBILITY ASSESSMENT**

#### **CHAPTER FOUR: CLEAN TRADE MEASURES AND WTO LEGISLATION**

The main policy tools of *Clean Trade* aim at erasing the economic gains obtained by trading natural resources on the rule of effectiveness. Conversely, they are conceived as levers to get both importing and exporting countries to enforce and respect the human right to permanent sovereignty over natural resources that is engraved in Article 1 of both the

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<sup>31</sup> Nili, Shmuel. 2016. “*Liberal Integrity and Foreign Entanglement*” in *American Political Science Review*, Vol. 110, No.1 (February), pp.148-159.

<sup>32</sup> Nili, Shmuel. 2011a. “*Conceptualizing The Curse: Two Views On Our Responsibility For The Resource Curse*” in *Ethics & Global Politics*, Vol. 4, No. 2, pp.103-124

<sup>33</sup> Nili 2016.

<sup>34</sup> *Ibidem*, 148.

International Covenant on Civil and Political Rights and the International Covenant of Economic Social and Cultural Rights. In a nutshell, the *Clean Trade Act* and the Clean Hands Trust<sup>35</sup> translate, respectively, into a direct embargo on stolen resources and the imposition of duties<sup>36</sup> on tainted goods imported from third countries that keep trading with resource-disordered states. Therefore, it is necessary to assess the legality of these two mechanism in the light of the norms that regulate international free trade: namely, the General Agreement on Tariffs and Trade (GATT) and, since 2005, the World Trade Organization (WTO) provisions. There are two core principles at the base of the world trade system: market liberalism and non-discrimination. The first principle entails that the more we liberalize trade, the more wealth we create, for all. The second principle entails that all WTO members must have the same opportunities to trade.<sup>37</sup> The features of the *Clean Trade Act* and the Clean Hands Trust are very likely to violate the principle of market liberalism and the principle of non-discrimination. Chances of success increase if we justify the adoption of those measures with the concern of *Clean Trade* countries to protect public morals, as the Article XX (a) of GATT allows. Yet, ambiguities in the assessment of whether the conditions required to invoke that general exception are met make the actual viability of this option uncertain. Therefore, the simplest solution is to request a waiver from WTO obligations. In this regard, an important precedent can be found in the waiver granted by the WTO General Council in 2003 to allow the implementation of the Kimberley Process Certification Scheme for Rough Diamonds, aimed at tackling the smuggling of the so-called “conflict diamonds”. On one hand, this solution ensures that the incompatibility between *Clean Trade* measures and WTO rules do not result in *Clean Trade* illegality. On the other, a waiver is a solution highly dependent upon the existence of a broad-based political consensus among WTO countries. The very existence of a monumental book such *Blood Oil* shows that there is no such consensus at the moment. Therefore, a waiver would avoid claims that *Clean Trade* is illegal under WTO, but it would not solve the collective action problem. A final consideration is due. As Professor Wenar correctly points out, not only the concept

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<sup>35</sup> The Clean Hands Trust envisages also the diversion of the proceeds of these duties into a Trust to be held by the importing countries on behalf of the citizens of the resource-cursed countries. The management of the Trust by *Clean Trade* countries and the eventual restitution of the funds to the populations of the exporting states are aspects that do not deal with WTO legislation.

<sup>36</sup> In the early sketches of his *Clean Trade* project, Wenar expressly names them “anti-theft tariffs”. Wenar, Leif. 2008. “Property Rights and the Resource Curse”, available at [https://www.biicl.org/files/4363\\_wenarpapafinal.pdf](https://www.biicl.org/files/4363_wenarpapafinal.pdf)

<sup>37</sup> Oatley, Thomas. 2014. “*International Political Economy*”, 5<sup>th</sup> ed, Pearson, ch. 2.

of free trade entails freedom “not to trade”<sup>38</sup>, but *Clean Trade* is in fact a project that totally support the WTO rationale. “The priority in reforming global commerce is not to replace *free* trade with *fair* trade. The priority is to create trade where now there is theft.”<sup>39</sup> As a matter of fact, enforcing property rights can hardly be considered a move that restrict free trade, rather the opposite. What is more, those kind of restrictions on free trade should not be reasonably rejected by an organization whose Statute refers, among other objectives, to the protection of fundamental human rights.

## CHAPTER FIVE: THE PRICE OF ENDING EFFECTIVENESS

Countries that decide not to implement *Clean Trade* would just keep doing business as usual. Adopting an inward-looking perspective that separates the duty of outcome from the duty to disengage, western resource-importing countries can find an answer to several dilemmas that might prevent the adoption of *Clean Trade*.

*Clean Trade* presents a collective action problem because Wenar does not envisage any sort of supranational coordination for its implementation. As long as the adoption of *Clean Trade* legislation is dependent on the effectiveness of such proposal to improve the conditions of the people living in resource-cursed countries, in a fundamentally anarchic international system, each affluent country can deny to have any duty to make the first move. By adopting an inward-looking perspective instead, each resource-importing democracy has a strong duty to disengage from severely oppressive regimes regardless of what outcome this may or may not bring, and independently of what other countries may or may not decide to do; because this is what the liberal identity of each democracy requires to safeguard its integrity. This focus then is likely to inspire cooperation between liberal peoples that are already individually committed to seeking, even if they do not achieve, the realization of a more just world. Nili’s inward-looking approach is not in any way opposite to Wenar’s proposal, but instead it supports it normatively.

Strictly related to the issue of collective action, is the problem of system justification. In the context of international anarchy, uncertainties about the chances of any reform to be successful and also about the seriousness of multilateral commitment to take action can lead into a gridlock that legitimize the status quo as the least worst state of the world. From an inward-looking perspective, when a democratic society becomes accustomed to legitimating

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<sup>38</sup> Wenar 2016, 296.

<sup>39</sup> Wenar 2008, 2

and benefiting from oppressive and illegal situations abroad, it is its own grounding values that are at stake. Once liberal states understand that the core of the problem is their own corruption, they do not need to look at external factors to improve their own condition, because it is in their power to change reform themselves. If the citizens recognize that the resource curse is linked to their own actions and hurts their own rights and duties, they may be ready to accept the costs of this reform and, as a consequence, they will pressure their own governments towards the right direction, that is, the disengagement from trading with resource-cursed countries.

Being conceived as a public policy, *Clean Trade* adoption has to be assessed by policy-makers against other national interests, chief among them the country's foreign policy. Even in this case, looking at *Clean Trade* from an outcome-bound perspective is detrimental. It is highly improbable that one state would unilaterally make the enforcement of foreigners' popular resource sovereignty the central pillar of its official foreign policy. *Realpolitik* is likely to impair the pursuit of justice outside the western nation-states' boundaries. Moreover, if we agree that the right to popular sovereignty over natural resources indeed requires democracy, if only in its most minimal and procedural sense, adopting *Clean Trade* with the intention to favor the democratization of currently authoritarian countries could be interpreted as an attempt to force democracy on others and violently backfire. It is crucial to avoid falling in an outward-looking short-circuit that would tie our decision to implement *Clean Trade* with the effective ability of this policy to bring democratization in oppressive oil-exporting regimes. Just as there is no certainty that disengagement will bring democratization, there is no moral theory that explains why western democracies *ought* to pursue change in other regimes, even when such change may be for the best.<sup>40</sup> Western governments ought to implement *Clean Trade* to safeguard their own moral decency first. It is highly probable that this policy will then foster a positive development for other countries too, but maintaining a hope is not the same thing as having a duty of outcome.

The energy dilemma derives from the fact that a state committed to implementing *Clean Trade* will halt its oil imports from some of the world's largest reserves of oil and gas. Wenar dismisses energy concerns rather quickly. It is indeed a concerning issue when one thinks that *Clean Trade* is sponsored as a *policy* to be adopted by *governments* of *real* countries in

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<sup>40</sup> Nili, Shmuel. 2011b. "Democratic Disengagement: Toward Rousseauian Global Reform" in *International Theory*, Vol.3, pp. 355-389

the *real* world. And in the real world, governments usually base their decisions exactly on timing and costs.<sup>41</sup> The best way to promote *Clean Trade* is to strengthen the arguments that speak in favor of its feasibility. The *Clean Trade* campaign could strengthen its position if it tied the disengagement from authoritarian oil with a definitive shift towards green and renewable energy. By committing to a radical and definitive change in their energy outlook, *Clean Trade* countries would prevent any moral hazard by foreign petrocrats, who might be tempted to survive the temporary liberal disengagement without democratizing and wait until democratic importers come back in need of their stolen but vital oil reserves. As to the tainted importers, the liberal integrity call should convince western democracies to use their technological and economic superiority to focus on alternative energy. An extensive reallocation of democracies' national budgets from the military sector to the green-energy R&D will signal to foreign dictators that western countries have no disposition to eventually go and reform them by force, thus increasing the chances of a voluntary internal change in resource-disordered countries. Furthermore, since our liberal identity imposes us to get rid of tainted oil independently from the chances that this will bring democratization in oil-cursed countries, liberal democracies ought to develop green energy alternatives first, thus making it possible to disengage from petrocrats freed from the anxiety of bearing useless costs.

## CONCLUSIONS

Most scholars have studied the phenomenon of the resource curse in its political or economic features and mostly focusing on the resource-exporting countries. Wenar's approach unveils the central role played by the importing countries in fueling and perpetrating the curse. Governments of the resource-importing countries accept and legitimize authoritarian regimes abroad through the principle of effectiveness, instead of observing the principles of popular sovereignty, self-determination and rule of law that constitute the identity-grounding principles of liberal democracies. *Clean Trade* represents a framework for action that can help the free world to align their international behavior to the principles and norms that are already enforced within their own national borders. Nonetheless, *Clean Trade* is a fairly demanding policy, and resource-importing countries may not be willing to bear those costs just for the sake of enforcing the rights of foreign poor people. The two main approaches of

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<sup>41</sup> Especially in democratic countries where political leaders are sanctioned by the ballots when they implement unsatisfactory policies.

global justice, statism and cosmopolitanism, do not singularly justify the duty upon *Clean Trade* countries to bear those costs. Wenar has tried to avoid such topic, insisting on the urgency of the issue and stressing that his *Clean Trade* framework is able to accomplish that task. This perspective focuses on the hope of achieving systemic improvements but, as Nili points out, hope cannot be the grounding value of a public policy.<sup>42</sup> The main reasons that would account for some countries' decision not to join the *Clean Trade* initiative are mainly inspired by a misleading outward look that focuses on the effects that *Clean Trade* might have on resource-cursed countries, namely on the ability of this proposal to effectively bring about positive changes. The *Clean Trade* proposal would increase its chances of come to life if supported by Nili's moral argument based on the inward-looking idea of liberal integrity that frees *Clean Trade* countries from a paralyzing duty of outcome. The lesson to learn from *Blood Oil* is not the one that may appear on the surface: namely, the lack of democracy in resource-cursed countries. Instead, the most important message of the book is a reminder to the citizens of the free world that they do enjoy democratic powers and they do have the tools to control, influence and hold their governments accountable. The focus is not on the life that resource-cursed citizens could enjoy were they to democratize; it is on the life that we, in western liberal-democracies, are conducting in utter disregard of the principles that define our own identity. And if this happens because of how our governments manage their international relations, we the citizens ought to react, since *we* can. Reading *Blood Oil* can help raise awareness among the ordinary citizens of the free world and motivate them to act on their own interests and principles, for the sake of their own integrity. This will require to bear some costs, but a cost-based justification for putting aside our core moral principles can lead to denying that there are moral rules that cannot be legitimately overridden, whatever the circumstances. Wenar clearly does not claim to have all the answers to the aspects related to the resource curse. But he is a political philosopher, and his role is not to design the perfect public policy: that task is assigned to political leaders. The role of the philosopher is to provide "guidance where guidance is needed",<sup>43</sup> to redeem the messy politics of the real world by advancing coherent arguments and indicating moral priorities. From that perspective, *Blood Oil* is without a doubt a successful initiative.

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<sup>42</sup> Nili 2011a.

<sup>43</sup> Rawls 1999a, 18.