

Markets and global justice

Despite the world's economic and technological progress and the spread of democracy in a growing number of countries, many people around the world are still living in quite hard conditions. Massive poverty, malnutrition, civil wars and authoritarian rulers are some of the circumstances half of humanity have to face daily. The happenings afflicting many poor countries are often referred to as the *resource curse* as such countries' wealth of natural resources has been pointed out as one of the main causes of the dramatic conditions they are afflicted by. The sale of natural resources generates a flow of foreign money into resource exporter countries that provides extra-incentives for all those actors powerful enough to arrange a coup attempt, encouraging events such as civil wars and the establishment of repressive regimes, and providing a fertile ground for corruption and severe poverty.

Leif Wenar has discussed the challenges of the current world economic system in many of his recent works. Journal articles and essays such as *Property rights and the resource curse* (2008), *Realistic reforms of international trade in natural resources* (2011), and *Clean trade in natural resources* (2011), are all mainly focused on what has been termed resource curse, a series of dramatic events afflicting most of the world resource-dependent economies. Wenar starts from two claims: the only way to definitively address the resource curse is to enforce the people's property rights, currently breached by authoritarian rulers; the affluent countries have a serious responsibility towards the perpetuation of the resource curse, since they buy natural resources from undemocratic regimes in contrast with the norms of the existing international law. In his works, Wenar tries to identify which factors play a role in the tendency of the resource curse to afflict countries rich in natural resources, and he attempts to set out a proposal able to eradicate the curse. The main aim of this work is to understand on which grounds – moral and legal – Wenar builds his proposal, and to evaluate the actual chances for it to be implemented by wealthy resource importing countries.

Chapter 1 describes Wenar's clean trade approach in details, as the author presents it in “Property rights and the resource curse,” an article published in

Philosophy and Public Affairs (2008), and in other writings such as Wenar's book project, *Clean trade in natural resources*. This chapter presents also a comparison between Wenar's proposal and Thomas Pogge, who proposes his way of addressing the resource curse in *World poverty and human rights* (2002). Although Wenar agrees with Pogge on several arguments, such as on affluent countries' responsibility in reproducing the resource curse, he moves two criticisms in particular to Pogge. First, Pogge proposes the adoption of "constitutional amendments" for resource cursed countries to declare that only democratic governments are allowed to sell off the country's resources, in order to avoid the opportunity for authoritarians to be recognized as legitimate vendors. According to Wenar, this can only help in those countries that have already reached at least a minimal democratic government, thus countries where such minimal conditions of democracy are not yet achieved would not benefit at all from the proposal. Secondly, Pogge proposes the establishment of an international panel, a "Democracy Panel," to evaluate resource exporting countries' internal situation and to adopt decisions on whether to allow or forbid trade with a particular regime. In Wenar's view, resource importing countries are not likely to accept and implement within their domestic order decisions from an international independent panel beyond their control. Thus, Wenar points to national courts as the more suitable institution to adopt such dramatic decisions.

Chapter 2 examines which legal basis lie behind the clean trade approach: the principle of self-determination, property rights and human rights. Then, the discussion goes through the moral reasons behind the answer to the question of why should we, people of affluent countries, be concerned about the current living conditions of the poorest people of the world. Here, the arguments presented by Pogge will be of great help to address the issue and to justify the answer. The chapter discusses views about affluent countries obligations towards the poor of two famous and influential authors, John Rawls and Thomas Nagel. The examination of different views on what are our duties towards the poor can help us to understand if the implementation of the clean trade approach has some moral grounds or if it should come just as a remedy to the international community current violation of international law. Understanding if we, citizens of affluent countries, have some moral obligation to assist the poor may be helpful also

because Wenar's proposal entails some costs to be borne by the population, thus a moral theory may be necessary for the approach to be broadly supported.

Chapter 3 is entirely devoted to economic and political issues helpful to assess the actual feasibility of the clean trade approach, and it is where we are going to present our objection and criticism to Wenar's proposal.

At the end of the inquiry carried out in this work, we will find out that Wenar puts forward a viable recipe to address the resource curse, yet there are some flaws in the mechanism he proposes. In particular, Wenar fails to evaluate the reasons affluent countries have to enact the clean trade approach, not considering decisive factors such as foreign policy interests, energy supply problems, and the possible reaction of the citizens of resource importing countries, whom would have to bear some of the costs entailed in the changes required by Wenar. Eventually, some kind of supranational coordination seems to be necessary to encourage resource importing states to implement the clean trade approach.

Moreover, in our opinion, two main changes are necessary for the clean trade approach to be supported by the population of affluent countries and to give the best possible outcomes: increased information about affluent countries responsibility and contribution to the current conditions of resource cursed countries, as well as an improved awareness of the ability that affluent countries have to change the global system; and a partial decrease in wealthy countries consumption of natural resources such as oil or gas. A third desirable change is to increase resource importing countries reliance on sustainable means of energy production, in order to stop relying on resource extracting countries' exports for energy supply. Thus, Wenar's proposal is inextricably tied to moral and environmental concerns that are actually weak among the affluent people. In our view, the clean trade approach needs a moral theory on what our duties towards the poor are, and should be completed with elements of environmental ethics. We will try to provide such moral grounds.

Chapter 1: The clean trade approach

Recent studies have demonstrated that the countries where natural resources are originally placed are often afflicted by civil wars and coup, exhibit great economic dysfunctions and are more prone than others to be governed by authoritarian regimes.

The resource curse entails several different events: civil wars, authoritarian regimes, widespread and endemic corruption, frequent coup attempts, economic breakdowns and underdevelopment. At first glance, it may sound paradoxical to us that countries rich in natural resources intensely requested by the rest of the world are afflicted by massive poverty or civil wars and are governed by some of the most repressive regimes on earth. Yet we all know in what conditions the people of countries such as Sudan, Equatorial Guinea, Saudi Arabia, Libya, Sierra Leone, Burma and many others – all rich in natural resources – are currently living.

Richness in natural resources correlates with authoritarianism, which can be considered as the main resource curse. This correlation can be explained by the opportunity to sell off the country's natural resources for those agents exerting effective authority over the territory where natural resources are originally placed. The sale of such resources generates a flow of foreign money that ends up in the authoritarians' bank accounts, providing extra-incentives for several actors to seize power by whatever means, even by extreme violence and coercion. Of course, authoritarians who seize power in a country by undemocratic means will not be accountable to the people under their rule. They will not rely on tax payments, they will be able to enforce their rule by buying more arms and soldiers with the revenues from resource sales, and thus will have no reason to act according the interests of the people. Yet those people are the legitimate and ultimate owners of the natural wealth placed on their territory: they are entitled to the ownership of such resources by virtue of the right to self-determination, one of the most basic principles of current international law.

There are several international covenants and national constitutions where

the principle of self-determination is enshrined. For instance, Article 1 of both the 1966 United Nations covenants on human rights – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – states that <<All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.>> and that <<All peoples may, for their own ends, freely dispose of their natural wealth and resources...> The same statements may be found within the Universal Declaration of Human Rights, the African Charter on Human and People's Rights, the UN Declaration on “Friendly Relations,” in the United States constitution and the Indian constitution of 1949, as well as in many other official declarations.

The statements above provide the normative basis on which Wenar builds his clean trade approach. The main goal of his approach is to enforce public accountability in resource exporting states, where rulers are not accountable to the people for their conduct. Increased public accountability is the main aim since this principle combines the three basic norms of international law Wenar wants to enforce: self-determination, human rights, and property rights. This misappropriation of a country's natural wealth by actors who have no rights to its management and sale is the reason why Wenar's charge towards the current global trade system is not simply that it is not fair, but rather that it is actually encouraging the theft of natural resources. In his own words, <<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.>>

The flow of foreign money into the country generated by resource sales gives authoritarians the ability to strengthen their armies, enforce their rule, buy more weapons and soldiers to maintain their power. An undemocratic repressive government can be pointed to as the main cause of the consequent resource curses, such as frequent civil wars or widespread corruption. International community usually recognizes such oppressive regimes as legitimate governments, providing extra-incentives to seize power by coercion. The behaviour of international community is due to the persistence of a customary rule, a remnant of the Westphalian era of international law that Wenar calls *might makes right*. According to this norm, whoever has enough power to exert its authority over a

particular territory is recognized by other states as the legitimate governor of that land, thus entitled to sell off its natural resources.

Wenar sets out a policy framework to address the resource curse. In his view, there are four principal problems that have to be addressed if we want to reach a solution: the *grounding value problem*, the *critical problem*, the *problem of authoritative notice*, and the problem of *enforcement*.

Wenar points out to *property rights* as grounding values for deciding what regimes are legally entitled to the transfer of rights on public property to outsiders. According to him, such rights perform the task better than any other value. To find out what minimal standards regimes must meet, Wenar argues that to gain the legal right to sell resources a regime must have the consent of the people living under its rule. The people may agree to entrust the regime to natural resources management, they may ask it to sell their resources or even signal their acquiescence through their silence. Whatever the way people choose to express their consent, Wenar argues that three minimal conditions must be met to claim that they have authorized the regime to sell off their resources: the people must be able to find out about the sales, they must be able to stop the sales without incurring in severe costs such as exile, imprisonment, torture or death, and they must not be subject to extreme psychological manipulation by the regime. If one of these three cases occur, the regime cannot possibly have the authorization of the people to sell off their property.

Wenar notices that the three conditions he requires for regimes to have the legal authorization of the people under their rule correspond to minimal civil liberties and bare-bones political rights. Thus, to resolve the question of the search for a reliable and independent public indicator, he points to a report annually published by an American independent Non-governmental Organization, the Freedom House. The organization's report, *Freedom in the world*, annually published since 1971, provides an assessment to each country's performance in two indices: political rights and civil liberties. Countries are assigned a rating on a scale from 1 to 7, where 1 is the best possible score and 7 is the worst. Countries rated 7 by FH are countries where political rights and civil liberties are totally absent. According to Wenar, importing countries should ban from their

jurisdictions natural resources coming from countries rated 7 by Freedom House. Trade would be allowed only with those countries where minimal standards on political rights and civil liberties are satisfied.

Most of the reforms proposed by Wenar would take place within resources importing countries in five main areas: anti-corruption, transparency, revenue distribution, resource certification and commercial detachment and isolation. Once established which regimes do not satisfy the minimal standard required by the Freedom House to assign a rating lower than 7 national courts will adopt decisions to quit trade in natural resources with such regimes. The US national courts, for instance, will adopt rulings establishing whether trade in natural resources with a certain country is allowed or forbidden. Such rulings will set legal precedents and will regulate the activities of national resource corporations. There are no impositions on resource-exporting countries' policies.

Other features of Wenar's proposal are additional tariffs to be put on foreign goods produced by means of stolen resources and the *clean hands trust*. Wenar proposes to put additional tariffs on imports coming from countries that are still trading in natural resources with exporting states rated 7 by Freedom House, and to use the tariff proceeds to fill a bank account, the clean hands trust. The content of such bank account will be turned over to the people of the country where the original theft of resources took place, once they will have replaced the oppressive regime with one committed to the enforcement of property and human rights. Wenar calls this system the "trust-and-tariffs mechanism." Its main aim is to provide disincentives for states not enacting the clean trade approach to stop buying resources from oppressed countries, since their exports will meet trade barriers on the way to their final markets.

Chapter 2: Moral duties and what we owe to the poor

According to Article 1 of the UN human rights covenants, all peoples are entitled to the right of self-determination, namely they have the right to control the laws governing their lives and not to be subject to the rule of foreign or authoritarian rulers. The principle of self-determination is a human right, and is enshrined in documents such as the UN Charter and the Universal Declaration of Human Rights. We can reasonably state that when authoritarian rulers impose

their control in a country by violence and coercion, they are breaching some of the most important principles of international law.

These principles – self-determination, human rights and property rights – are further discussed in this chapter. While they provide the legal basis on which Wenar rely for his clean trade approach, authors such as Thomas Pogge argue that affluent countries should do something to help the world's poor and oppressed people not only because the principles above are not enforced within their countries, but also because of some historical and moral reasons. This chapter goes through different positions assumed on this issue by some influential authors, presenting the arguments of John Rawls, Thomas Nagel and Peter Singer, and mainly focusing on Thomas Pogge's view of the question.

In *The law of peoples*, Rawls argues that our duty towards what he calls “burdened societies” is just a duty of assistance, since in Rawls' view affluent countries and well-ordered societies in general do not have any responsibility towards the current living conditions of such burdened societies. Moreover, this duty as intended by Rawls finds a limit in the principle of *just savings*, originally proposed by Rawls in *A theory of justice*. According to such principle, our duty of assistance is no longer valid once burdened societies are able to maintain minimally just institutions by themselves. Rawls' view of the global order is shaped by his assumption that no justice is possible outside the single nation-state as the international level lacks an institutional framework, the object to which principles of justice apply. Nagel proceeds on the same way, since in his opinion citizens of a nation-state have a duty of justice towards one another because they are subject to the same sovereign power, they share institutions and are authors of the system and subject to its norms at the same time. Thus, it is the citizens' <<special relation>> itself what ties them together. No justice is possible outside the state, since there are no shared institutions nor a sovereign power at the international level.

Pogge's position contrasts with those of Rawls and Nagel. According to Pogge, developed countries have a fundamental role in shaping the global economic order and in reproducing world poverty, so our obligations towards the poor are not just the result of a mere <<duty of assistance>> as intended by Rawls, but rather assistance is something we owe to those people as a compensation for the harms produced by the unjust global order we have contributed to shape. Peter

Singer shares a similar position, but in his opinion eradicating world poverty is not something we are obliged to do because of our responsibilities towards its perpetuation. In *The life we can save* (2009), Singer argues that we ought to feel morally obliged to help the poor since we can do it at a very little cost, in relation to our standard of living and lifestyle.

Chapter 3: Realistic changes of the current global order

Wenar proposes a viable way to face the resource curse, yet there are some flaws in the clean trade approach and several questions the author fails to address. Objections and criticisms to the clean trade approach are the subject of chapter 3.

Wenar's proposal will have to face some obstacles external to its mechanism, such as contraband of natural resources and corruption within resource exporting countries. But the main objections we will move to Wenar's proposal are two in particular: the question of leadership and the incentives it should provide to affluent countries.

The main problem the clean trade approach fails to address is the question of which state should take the leadership of the initiative. Even assuming that a powerful state such as the US implements the clean trade approach into its trade policy, outcomes in terms of human rights and property rights enforcement may be very thin or entirely absent if the other states will not act likewise.

The first state implementing the clean trade approach would have to face a series of hard problems. For example, it would face a decrease in resource incomes and the consequent loss of competitiveness for national firms on international markets. Besides, once such state have enacted the clean trade approach there are no clues that other states will behave the same way. Even the enactment of additional tariffs on imports and the establishment of the clean hands trust would not give much help. Even if the US, for instance, puts additional tariffs on imports coming from countries that have not yet implemented the clean trade approach, we will not have any certainty that such countries will stop their purchases of oil, gas or other rough materials from resource cursed countries just as consequence of the US imposition of tariffs on their exports. We will not have any certainty that the trust-and-tariffs mechanism would work, and that oppressed people will have the chance to replace their repressive governments with others

willing to enforce human and property rights. The people could never have the opportunity to do it, since repressive élites will still sell off natural resources and maintain their rule over the country. The clean hands trust too risk to be useless.

In such a situation, the US would have to bear the cost of losing stable channels for energy supply – for instance, enacting the clean trade approach the US would lose oil coming from Saudi Arabia, currently rated 7 by Freedom House – and, moreover, see no positive result of their efforts. Of course, the natural consequence would be for the US to abandon the initiative. Our argument is that, if not simultaneously adopted by most importing countries together, the clean trade initiative risk to be ineffective at all. Some kind of supranational coordination is necessary, but Wenar do not even consider this possibility.

A second objection we are going to move to Wenar is that he seems not to consider the foreign policy interests of importing countries, in strategical terms. This is particularly the case of the US. We can argue that diplomatic and strategic interests play an important role within the analysis of positive and negative consequences governments would make before implementing the clean trade approach. Foreign and energy policy concerns are likely to count among the disincentives of the clean trade approach. Saudi Arabia is our example, since it appears on the list of countries rated 7 by Freedom House and is the linchpin state for American, European and many Asian states energy supply. Many countries would have to face the loss of a stable channel for oil provision, once the trade is quitted. We cannot expect the US administration to put aside national security or energy interests to promote the enforcement of human rights in foreign countries, since Saudi Arabia has a great importance for the US energy and foreign policy.

Stop trading with countries such as Saudi Arabia, that provides by itself around 14% of total US oil imports, would set out hard problems at the internal level too. Once enacted the clean trade legislation the US would have to get the oil they need by other means, since Arabian oil would no longer be available. The availability of the great amount of oil currently provided to the US by Saudi Arabia is to be proven. Western countries currently need oil from countries such as Iran, Iraq or from Saudi Arabia, and a ban on such countries oil imports would set out the necessity of redefining strategies for oil supply.

Enacting the clean trade legislation is a big risk for states also from an internal point of view. Wenar provides a list of actors who are supposed to be

pleased by the ban on oil imports from countries governed afflicted by the resource curse: committed citizens, security advisors, environmentalists and humanitarians, as well as free market advocates. We agree that citizens committed to the enforcement of human rights standards around the world would be certainly satisfied by such a change in trade policies. The same applies to humanitarians, and the change would please environmentalists too since the enforcement of the rule of law in cursed countries is likely to bring more control over resource extraction process and rough materials transport. Yet Wenar do not evaluate the possible reaction of the affluent countries' consumers, whom, in our opinion, have much less incentives to support the adoption of the clean trade approach.

Once the ban on oil from certain countries is enacted, oil price will inevitably raise along with commodity prices. Cost increases will be felt by national firms in terms of production and transport of goods, and finally will inevitably fall back on the population. Eventually, the population of the country enacting the clean trade approach will have to make some sacrifices and accept a partial rise in the cost of living. But we cannot be sure whether people are ready or not to make sacrifices in the name of the enforcement of rights in distant countries. Our argument is that the success of Wenar's initiative depends also on increased information of affluent countries responsibility and contribution to the current conditions of resource-cursed countries among their population, since it would have to bear part of the cost the clean trade approach entails, whereas improved awareness of affluent countries' ability to change the current global system may help for the people to support the changes involved in Wenar's approach.

Thus, in our opinion, for it to be possible for the clean trade approach to give the best outcomes a large change in the extent to which people of wealthy countries are concerned about living standards in others is an inevitable requirement. The clean trade approach involves changes that have to pass through the political, economic and social field. Wenar proposes a good framework to address poverty and oppression in resource cursed countries, but it is a long way to make it work properly.

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