Collective Resource Control and the Power of Complicity

Christopher Kutz, UC Berkeley

To UC Irvine readers: this essay is for a volume commenting on Leif Wenar’s recent book, Blood Oil. I think its central claim, which I complicate and contest, of “Popular Resource Sovereignty,” is clear enough as I describe it, but I have also attached a summary version Leif prepared of his excellent book. I would like to develop the positive argument I launch here for participant-based natural resource shares, and I will make a few further remarks on Thursday about how I have come to think about the underlying “natural” property rights claim at stake. I am, accordingly, especially keen to hear your thoughts on comments on whether there is an intermediate category of resource claims, between cosmopolitan and citizen.

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Abstract: In Blood Oil, Leif Wenar reveals a great philosophical problem with geopolitical consequences, and demonstrates its urgency, namely that the people whose rights to resources the international oil market violates are by definition not citizens of legitimate democratic states. How, then, can we identify them, which must be prior to restoring their rights to them? This essay develops a basis for rights to resources not in citizenship but instead in a form of collective action: participation in a social order. I also argue for the advantages of a positive Clean Trade program over a guilt-based, complicity model.

1. Leif Wenar’s Essay, like the book, Blood Oil, from which it is drawn, is an example of public philosophy at its best, especially in its role of making the unobvious obvious.¹ In this case, the unobvious obvious is the First World consumption of petroproducts, in complete indifference even by self-described
progressives, to the conditions of their extraction. As a life-resident in Berkeley, California, I know whereof I speak: there are few consumers in the world as concerned, to the point of ethical narcissism, with the ethical genealogy of their consumption. I don’t believe I could buy a cup of unfair trade coffee if I wanted, nor an unethical chicken egg; and I am reasonably sure the diamonds in the jewelry shops have not emerged from civil conflict. But while environmental concerns about petroleum versus electric are ubiquitous – SUV drivers receive dirty looks – I have never heard anyone even express the mildest concern that the gasoline they put into their Priuses has returned a profit to murderous oligarchs.

Given existing concerns with the ethical sourcing of our consumption, Wenar’s argument that we should extend those principles to petroproducts would seem incontestable or rather contestable only because of moral cowardice. It is a further virtue of Wenar’s approach that it intersects tightly with more straightforwardly pragmatic concerns about the negative effects of current global petroleum markets, insofar as they feed domestic and international terrorism and repression. The combination of a clear moral principle and a strong consequentialist argument can appeal across a range of both philosophical and political positions: a sanctions regime for Putin’s Russia and Saudi Arabia is something that both left and right can probably be brought to rally around. But a reader might worry that the intersection of principle and consequence is too easy, and rests too much on empirical predictions. If there is a vulnerability in Wenar’s argument, it lies at the level of mediating principle, a way of connecting the evil of the source to the wrongness of consumption, and of connecting the political value of
accountability for natural resources to the claims that inhabitants of the resource-rich territories can claim. My aim, therefore, is not so much to dispute Wenar’s general conclusions, nor even his premises, but instead to offer an alternative philosophical path between the two.

I thus aim to explore the following points. First, can Popular Resource Sovereignty be secured by arguments directly from principle, and not only as instrumental, welfarist claims? I will suggest that it can, modified to protect residents as well as citizens, by working through the moral status of a people understood in terms of collective political agency. Second, is the relevant concern popular control over natural resources, or popular access? I will argue that choosing control threatens to make Clean Trade more interventionist than Wenar might like. Third, what are the kinds of motivations that can best secure the success of a Clean Trade program that can come at a cost to the state imposing it? I will argue that shame and guilt, the emotions constitutive of complicity, are less likely to be reliable motivations for Clean Trade than more positive emotions, associated with human development.

I should say at the outset that while I offer criticisms, at the level of principle, of some of Wenar’s claims, those criticisms are mixed with admiration for the straightforward pragmatism of his approach, and his remarkable success in translating a set of widely shared but diffuse concerns into a genuinely viable path for political action. Whatever the abstract merits of founding a political philosophy position on a commitment to cosmopolitanism, nation-based popular resource sovereignty is, relative to the moral status quo, a defensible and attractive
improvement. Even without commitment to Wenar’s particular form of consequentialism, I believe that anyone can profit from his exploration of how we should think about relations of dominance and inequality in our commercial relationships.

2. Begin with Wenar’s principal philosophical question: who should own the natural resources of a nation-state? By “own” Wenar is engaging a public form of the traditional bundle of private property rights: ownership consists, in his sense, of the right to control, in the name of the state, the conditions of consumption or transfer of the resources in question. Call this a principle of resource allocation. Wenar contrasts three possible models of resource allocation. The first is the status quo, which he calls, rather contentiously, “Might Makes Right” (MMR). This name accurately describes the effects of contemporary practice, according to which, in the absence of sanctions, international buyers need pay attention only to who actually controls a resource in order to establish a right to purchase (and hence a right to sell). The second model is his preferred alternative, “Popular Resource Sovereignty” (PRS), according to which the control of the resources is exercised effectively even if indirectly by the citizens of the country where the resource is found. The third alternative is Cosmopolitanism: that all the earth’s resources should be treated as belonging to all the world, and thus that their benefits must be distributed globally on something like an egalitarian per capita basis.2

Wenar’s argument for PRS is principally pragmatic or consequentialist, as the last, best theory standing after considering the other two, and given what he sees as
widely shared values of political unity in diversity, or diversity in unity.\(^3\) The effects of the status quo, MMR model, speak for themselves: unless a country already has robust institutions of democratic self-rule in place prior to the discovery of oil (or any other natural resource), the MMR system generates powerful incentives for looting by internal power-seekers and exploitation by external powers. The follow-on effects of fueling international terrorism and armaments add additional power to the indictment.

Wenar, unsurprisingly, does not attempt to supply a prima facie basis for the MMR argument; he develops it as an uncharitable but not implausible interpretation of current international practice. With respect to the citizens of the resource state, there can of course be no principled argument that allocates all resources to him or those who can most effectively capture them. At best, one can construct a wobbly, pragmatic, Hobbesian argument that, in the absence of already present democratic institutions, a prize system will create proper incentives for state-wide consolidation of power, and resulting stability for a populace. Indeed, with respect to citizens, one might well dispute whether MMR names a normative principle at all – any more than the thief who pawns my stereo has a right to do so. Internally, MMR simply delineates physical control over a resource. The fact that someone occupying a position of power has seized and then sold the resource gives a citizen no normative reason to respect the claims of the sale.

Externally, with respect to other states, MMR is perhaps more like a normative principle, though not understood in those terms. Foreign buyers, not in contravention of UN or domestic sanctions, will come to hold a valid title to the
resource, in the sense that they can defend their purchase (at least within a narrow, legal frame) from objectors. Thus, Exxon is within its legal rights to buy oil from Saudi Arabia and resell it to gas stations, which then resell it to you. Because the legal titles of the intermediate and end purchasers are regarded by American (and all other countries) as legitimate, we can say that something like MMR is indeed the operative principle. In fact, a better description of the operative principle would probably be “Sovereign-Determined Transfer Rights” (SDTRs). Were pirates to seize a freighter of Saudi oil en route to the US and try to sell it, their right to sell would not be recognized – even though the pirates had physical control over the resource. Unless and until the seizure is cloaked with the garb of national sovereignty, no right can be found. Title to resources thus rides, normatively, on the back of the Realist principle of sovereignty with which the international system operates. By default, a nation is deemed sovereign with respect to international actors just so long as it has a government effectively wielding control over a specific territory and people. Such sovereignty is anything but absolute – it is routinely pierced overtly and covertly by international organizations and foreign powers – but it has the normative effect within the international system of regularizing certain acts and transactions as representing the state as a whole. MMR is one strand in the rope that together comprises the incidents of sovereignty: the capacity of the state to make its goods and resources available for export on the global market.

There is an obvious instrumental argument for a system of sovereignty in some form – roughly a Realist version of the argument made by Immanuel Kant in
“Perpetual Peace” and echoed in Rawls’ Law of Peoples. A system of sovereignty, which entails domestic control over fundamental property relations and structures of justice, enables a people to engage in collective self-government on equal terms. In brief, statelessness under-protects human interests, while world government would tend to oppress (and to stifle diversity in forms of human governance).

Indeed, Wenar himself asserts such a rationale for his preferred view. And there is a general value to stability in international markets, especially with regard to commodities as sensitive as petroleum. If sellers might come to be excluded from the international market because they will be deemed in violation of substantive norms concerning resource sales, then prices across the market might well rise, as the attendant uncertainty is internalized. The costs of market uncertainty can therefore be added to the costs of international instability, as part of a provisional case for SDTRs.

But of course the argument for a system of sovereign nation states with robust powers of self-government does not entail that the privileges of sovereignty should be conditional only upon the state’s capacity to maintain order. Even modest contemporary normative accounts of sovereignty condition it on respect for basic human rights. From the perspective of external actors, then, a further justification is needed for the exceedingly weak practice of SDTR, by which any transaction authorized by the resource state is legitimate. And here the functional argument for SDTR becomes much shakier. While international stability may be a good to states external to the resource state, it is an evil to those suffering under a longstanding autocrat. Put positively, if there is a consequentialist case to be made
for SDTRs, it would need to net out the costs to local populations against the gains to outsiders of stable affairs and stable markets. Hence the strongest case to be made for something like an SDTR principle rests on a presumption that the sovereign states are minimally human-rights respecting, as in the Rawlsian model; only with such a presumption could a consequentialist argument for SDTR plausibly go through, I believe. Such a restriction would still be weaker than PRS. Imagine a target state that is a more human rights compliant version of Saudi Arabia, whose rulers deliver a significant portion of its resource wealth to its citizens. Let us call it Petrostan. Petrostan would count as “decent” in a Rawlsian sense even if its citizens (and non-citizen denizens) cannot depend on those resource flows, except as a bribe to keep the peace. By any more robust normative metric of liberal democracy or republicanism, such a state would receive failing marks; but it would clearly stand within the much cruder constraints of international recognition. This, then, is the best case for SDTR: it is part of the package of sovereignty rights that are both normatively coherent, consistent with variation in democratic development, and internationally feasible.

It seems clear that a state meeting the minimum threshold for SDTR would not necessarily meet Wenar’s Clean Trade standard, which imposes the stronger PRS constraint. Wenar would prohibit oil purchases from “a state in which citizens lack basic rights and liberties to hold their government accountable.” By hypothesis, while Petrostan citizens enjoy basic human rights, such as freedom of conscience and freedom from arbitrary treatment, they lack electoral power to enforce accountability and may lack some of the further freedoms associated with
democratic rights, including freedom of the press and of association. So we have a clear conflict between application of a human-rights sensitive SDTR and PRS. And here is the rub for a pragmatic argument for PRS: while PRS is superior to unrestricted or barely restricted MMR, it is not clearly superior to SDTR. Continue with the Petrostan example, and imagine that a Clean Trade Boycott becomes internationally effective. Petrostan’s rulers may be able to draw down national savings for a time, continuing to buy the goodwill of their people. But a likely outcome, as well, is that they will engage, in the short term, in increased repression, and perhaps international adventurism, in order to distract from the state’s new-found money troubles. A principled case for PRS might be able to justify the case for sanctions, on the grounds that anything else is international complicity in theft. But it is hardly clear that a purely consequentialist analysis, even one as capacious in its theory of the good as Wenar’s, can tip decisively for PRS over a more modest claim. So it looks like the case for PRS needs to be strengthened, beyond a pragmatic case.

If PRS faces a pragmatic challenge on its right flank, it faces a complementary challenge from the left: the Cosmopolitan alternative. Cosmopolitans claim that, in the first instance, natural resources belong to all the peoples of the earth. While assigning property rights in natural resources to those living within the artificial boundaries of the state is preferable to concentrating those resources among an oligarchy, PRS still falls far short of justice. On a Cosmopolitan view, even Norway falls short of resource justice: though it is one of the most generous states in the world in terms of foreign aid, its distributions of aid in 2015 was about 18% of its government’s oil revenues. Given that Norway’s population, on whose behalf it
retained 82% of its revenues, is only about .06% of the world’s population, this is a dramatically inegalitarian redistribution, from a global perspective. Presumably a Cosmopolitan would criticize any national claim to oil revenues so far in excess of a state’s population ratio – and indeed, a Cosmopolitan might further insist on actual global control of natural resources.

The moral argument for a Cosmopolitan principle of global resource distribution is transparent, and needs no elaborate theory of justice (even if such claims are sometimes expanded by way of a Global Original Position). There would seem to be nothing distinguishing the moral claims to oil wealth of a citizen of Burkina Faso from those of a citizen of Nigeria, save for the accidents of colonial borders and birth. Nor, more generally, is there anything to distinguish claims in desert of a citizen of Saudi Arabia from a citizen of Bolivia. Thus, reason the Cosmopolitans, there is no rational basis for preferring a principle of national resource ownership over international ownership, at least for resources whose existence predates the state and in no way depend on it for their maintenance.

Wenar’s argument against Cosmopolitanism is, as I have said, primarily pragmatic: such principles rarely come with a plan for their realization, or with an accounting of their costs versus their benefits. He points out that the rhetoric of global resource ownership is almost exclusively associated with progressive voices in states with imperialist traditions, and are poorly received by developing, de-colonized states, whose principal national asset are liberated natural resources. Wenar says, entirely plausibly, that there is hardly any imaginary path whereby members of states housing resources would come to agree to a
confiscatory tax on those assets, or on institutions that would cause a major rupture with even progressive, human rights-permeated conceptions of national sovereignty. By contrast, he says, PRS fits within a generally recognizable model of sovereignty, is evidently attractive to any citizen in a resource rich state who is not in oligarchic control, and would create a virtuous circle of democratic development.

As I say, I think Wenar’s claims about the prospects of implementing PRS relative to Cosmopolitanism are correct. But he does so at the price of effectively conceding the point of principle: at best one can say that PRS is more just than MMR, and more feasible than Cosmopolitanism. But this still leaves PRS relatively undefended, and vulnerable to critique on both fronts. If its main argument against Cosmopolitanism is practical, not principle, then PRS it would seem at best defensible as a middle ground, instrumental principle, and so operating always in the shadow of the intrinsically more attractive global justice principle. Wenar’s argument that PRS better conduces to “unity” is, as I understand it, mainly relative to MMR: popular resource ownership better protects and promotes social and political interdependence than oligarchy. That point is inarguable. But it is hard to evaluate the claim that it better serves the unity of humanity than the alternative put forward by Pogge, Steiner, Beitz, et. al., which is a state system with a confiscatory resource tax. Cosmopolitan resource ownership, coupled with democratic states in all other respects, would seem to meet both goals of state level and global level cooperation and reciprocity.15 Such vulnerability itself has a practical problem: if it were widely understood that PRS institutions were a second-best to global justice, then it would be difficult to motivate citizens to fully support
them; and citizens of resource-rich states might reasonably fear an ultimate trajectory of globalization. “Partial unities are better than none” is not much of a slogan for a movement.\textsuperscript{16} Put another way, PRS institutions will be vulnerable to popular under-commitment unless they can be shown to represent a preferred model of justice. Wenar therefore needs to put forward an argument of principle, even by his own pragmatic lights.

There is a second, key concern with PRS as a self-standing conception. Although Wenar routinely uses the language of a country’s resources belong to its “people,” (and hence \textit{Popular Resource Sovereignty}), his view is more precisely defined as a matter of \textit{citizen} control of resources, by way of mechanisms of democratic accountability.\textsuperscript{17} But, in a literal understanding of a “people” in a region, citizens are a subset. Indeed, in the most important real cases of petrostates, noncitizens are a substantial percentage of the population: in Saudia Arabia, notably, about one in three residents is a non-citizen.\textsuperscript{18} While Saudi Arabia is an extreme case, most resource-rich states host many authorized and unauthorized guest workers, whose work is usually linked to resource extraction.

The citizen/non-citizen distinction matters because, at the level of distributive justice, it is hard to articulate a principle of ownership that hews to the positive, contingent criteria a state uses for citizenship. While a distinction between residents and non-residents might form the basis of a principle of ownership (as I will suggest below), it is hard to see why a legal distinction, formulated by insiders for the benefit of insiders, should have moral sway. The issue is not, as Wenar tends to describe it, lack of democracy, for democracies are as capable as non-democracies
of tightly restricting citizenship (even if there are more avenues for political pressure open for expanding the net of citizenship). The issue is that the reasons underlying the citizen/non-citizen line are unlikely to coincide with many of the reasons that support PRS. To continue with the Saudi example, Saudi citizens plausibly profit from its oil wealth through employment in national oil fields, in work serving the oil industry, and in government jobs financed by oil revenues – so that they receive its benefits as employees, though not as owners. It is hard to see why the formal condition of ownership vel non would be more significant than the formal characteristic of citizenship. While Saudi citizens have little control over the use of those fields, there is no reason to doubt that their de facto owners, the house of Saud, is doing anything other than maximizing long-term net revenue, and so the control deficit is not the issue. What does seem egregious in Saudi Arabia (apart from the use of oil wealth to fuel radicalism and conflict) is the condition of its guest-workers, who do not receive comparable benefits from oil wealth. That concern would be untouched by the Clean Trade requirement of popular control.

The upshot is that without more elaboration, PRS seems relatively unattractive in two dimensions relative to Cosmopolitanism: it fails to state a convincing principle of Popular as opposed to Global control over resources; and it fails to state a convincing reason for preferring citizen claims to resident claims. I believe Wenar would do better to start again, with a positive theory of popular ownership that looks to the people of a territory – the denizens, to use a current term. Such a theory might be able to make claim both to principle and to practicality. I cannot here do more than sketch a justification for a principle of
Denizen Rights Sovereignty, but I believe the promissory note I offer here can be honored.

I begin with what I have argued elsewhere is the key normative value behind the ideal of democratic legitimacy: active democratic political participation, or *agentic democracy*.²² The value of agentic democracy extends beyond the borders of functioning democratic institutions, such as voting and accountable political offices: it is the value that justifies at the temporal margins of those institutions, in times of revolution, resurrection, and national self-defense. Imagine a people, living together in a territory, and cooperating across a range of social and proto-political projects – defining for themselves systems of contract, social order, dispute resolution, cultural institutions, and economic cooperation. Such projects are essentially collective, in the sense that they typically reflect the agency of individuals who understand themselves as participants in a shared undertaking, orienting their own actions around the actions of others, in a familiarly reinforcing dynamic of cooperation. The work of players in a string quartet is a highly idealized version of this model: each plays her instrument, attentive to both the individual task of making the instrument sound right, at the same time fully attentive to the timing and intonation of the others in the group, and so ready to alter the performance so as to realize together the finest rendition of the quartet. Such collective acts typically take place as well amid a dense network of mutual claims and expectations.²³

The string quartet is, of course, an ideal type, and its extension to the national scale is non-obvious. But I believe that it is possible to understand the overlapping patterns of social, economic, political and cultural cooperation that take place within
the (historically contingent) borders of the state as more diffuse versions of the basic model. The normative point is that these networks of collective action are the basis for ascribing a we – a *moi commun*, in Rousseau’s words – to what is otherwise a collection of individuals. Through collective actions, we each understand ourselves as participants in a group, positively responsible for its accomplishments, negatively responsible for its liabilities. The criterion for inclusion in the collective is, therefore, agency itself – a criterion that supersedes, rather than supervenes on, merely formal, positive criteria of membership. A guest worker who help to pump a nation’s oil, or to harvest a nation’s crops, is no less a member of shared collective agency than the citizen who enjoys a white collar sinecure in Aramco, or at Archer Daniels Midland headquarters. Indeed, by many informal moral metrics, the roughnecks and farm laborers are much more central contributors than the back-office staff whose salaries dwarf theirs.

The denizens of a state are not, to be sure, fully co-extensive with the contributors to its social, economic, and political projects. Some are too young to count as meaningful contributors, some are past the point of contribution, some have no access (for external reasons) or no desire to engage in the collective projects of the people. And in an increasingly globalized economy, there are many non-denizens whose work and efforts also play a role in the domestic productions of the people, and many denizens whose primary affective orientation is around external ties (for example, through remittances). But, as Wenar says, even in a post-Westphalian age the modern state is a rough but useful unit of normative analysis, and it is the center of the densest overlap of collective agency. There is, therefore,
an empirical weight behind the normative claim that the world is composed of peoples inhabiting discrete territories, where “people” is understood as a collective composed of individuals mutually orienting around each other.

To say that a nation has a people, understood as a collective, is not yet to say anything about that people’s claims to natural resources. There are, however, at least two promising routes by which an argument for that people’s control of resources can be made. The first route is effectively procedural or general: a people acting together is the agent of its territory’s politics. Territorial order can, to be sure, be imposed externally, as under colonialism; or internally, as under despotism. Under such conditions, a people is not constructing a shared political order at all. But when there is a collective political agent, whether or nor the conditions of institutionally-realized democracy are met, the basic rules of property ought, morally, be a subject for specific collective decisionmaking. Historically, private property rules accumulate in fact through accretion, transnational borrowing, and more local forms of oligarchic control of the national legislative process. But the normative default must be that the rules are subject to determination of the collective agency of the people – an agency that extends beyond the border of citizenship. With respect to natural resources in particular, this presumption operates to secure PRS as a baseline. (Think of this as a non-formalistic version of Wenar’s thesis.) In particular, anyone defending an entitlement scheme to natural resources that vests control on same basis other than PRS – whether finders-keepers or oligarchic control – has the burden of showing why a people might reasonably have acceded to such an order.24 In the absence of such a justification,
members of the international community can justifiably assume that oligarchic
control is a result of subverting that collective agency, not recognizing it.

A second route from collective agency is substantive, and works by analogy
to private property claims. In Hegelian property theory, the strongest argument for
private property rights to land and resources in general is that such rights allow
individuals to self-realize; private property provides the means by which we can
securely realize and externalize our personal ends.25 This is what H.L.A. Hart calls a
general right: all individuals, by nature of an embodied will and equal worth
grounded in their rational capacity, have a claim to the means sufficient to realize
their wills.26 The legitimacy of any particular property scheme depends upon
satisfying the general claim. While the analogy between individuals and collectives
fails at many points (in particular, the value of collective goals depends, in my view,
on the value of the individual goals it collects), the analogy may hold with respect to
natural resources. A stock in natural resources is, when available, one of the chief
means by which a people can realize its collective political goals. A right to natural
resources is a condition of respect for the capacity of a people to self-actualize by
achieving collective aims. A principle that accords such resources only to a minority
– and, arguably, a principle according resources on a global scale, without any
corresponding collective – fails to respect the rational agency of the people as a
collective agent.27 Note that his argument, too, draws what force it has from a
conception of collective political agency understood organically, in terms
overlapping individual intentions and actions; it makes no reference to a post-
political criterion of citizenship. Indeed, it makes no claim to a juristic, institutional
understanding of property at all. As a claim on resources, it is satisfied when members have effective access to those resources (or the income stream into which they can be converted). Effective access is not the same as effective control, although control is a standard way of controlling access; a beneficiary of a trust, for example, has effective access without control. (I will return to this point below, in relation to the risks of Clean Trade as a way of seeking to guarantee popular resource access.)

A conception of PRS anchored in collective agency therefore achieves the aim of anchoring resource ownership at the level of the state, without being vulnerable to a concern about the denizen/citizen distinction. All those participating in the national project have a claim on its resources, guest-workers and citizens alike. This is thus revisionary, but not radically so, and is consistent with various forms of institutionalization, including most obviously, durable residency requirements. What it does not permit are criteria of control engineered to exclude some social cooperators from sharing in the bounty of the territory. But why, it might still be pressed, do I accept the contingency of the border as a boundary of resource claims, given that cooperation frequently spreads beyond the border? The answer is that the contingency of a shared border tends to lead to denser forms of cooperation and mutual dependence, and provides a frame through which large-scale collective projects are pursued. Put another way, the coincidence of a nation and a people is not a tautology, but an empirical truth. The relative density of intra-national cooperation may not be sufficient to block all trans-national justice claims, as some
4. I have argued that grounding a denizen-inclusive PRS in a conception of a people as a collective agent can secure PRS better against the pragmatically attractive alternative of human-rights conditional SDTR, and against the more normatively ambitious and transparent alternative of Cosmopolitanism. The special claims of denizens on each other, and on the resources through which they can realize collective aims, occupies an attractive middle ground. But this is only to state a principle of access, not a program. One of the many virtues of Wenar’s analysis of the problem is that his Clean Trade program, which I discussed above, in connection with assessing the pragmatic justification for PRS over SDTR, is that it offers a clear program of implementation: using a metric of resource accountability, a Clean Trade state will decide on what conditions it will conduct trade, rejecting trade with any state falling below a certain threshold.

The question I now pursue is whether a boycott-based program really is adequate to Wenar’s goals of cultivating popular accountability. Return to the imaginary case of Petrostan, which honors human rights and returns some significant portion of resource wealth to its citizens, but which is non-democratic and non-transparent. Wenar’s proposal would seem to entail denial of trade with Petrostan, because of the lack of accountability. I would not want to deny that Petrostan’s citizens are fundamentally unfree in an important dimension. I have mentioned above pragmatic worries about whether denial of trade with Petrostan is
net positive in welfare terms for Petrostan’s denizens, or the world as a whole, given
the instability such a boycott would create, and the risk that it will put purchaser
states less attentive to human rights in a favorable strategic position.

But there is also a deontological concern with blocking trade in a case like
this, stemming from the respect owed to decent but not democratic states. In
particular, I worry that an application of Clean Trade constraints, if done without
the active participation of target state civil opposition, looks more like external
value imposition than the fostering of democratic agency abroad. As I have argued
in On War and Democracy, I believe that democratic values impose deontological
limits on the kinds of pressure one state can impose on another. The chief demand
on a democratic state is that it respect the political agency of other peoples. This
means that a democratic state must understand democracy abroad as something to
be nourished but not imposed.31 I am thus inclined to stand with John Stuart Mill
and Michael Walzer, in worrying that too interventionist and belligerent a politics of
democracy disrespects and ultimately undermines the political agency of the people
we aim to support. While trade sanctions against what is likely a state’s most
valuable export are qualitatively different from the sort of military or covert
engagement targeted by a non-interventionist principle, they nonetheless are a
major form of coercive pressure.

I do not mean to suggest that Wenar is promoting the sort of coercive
democratization agenda associated Bush-era neo-conservatism. To the contrary, a
value of the PRS-conditioned approach is that it can be consistent with respect for
the political agency of the target state’s denizens, by reducing some of the internal
coercive advantages of oligarchs. Ideally, it empowers civil society actors by disempowering resource-controlling elites. Cases of raw petroleum theft, through civil war or crude autocracy, are easily analyzed. We already have sanction systems targeting rogue states and systems, grounded in a range of concerns about corruption and anti-democratic policy. But sanctions against major oil states have principally been implemented in response to direct national or international security concerns. The real challenge for Wenar’s view, it seems to me, lies in justifying the boycott approach for Petrostan and its real-life analogs—states lying closer to it than Equatorial Guinea.

In the actual case of Saudi Arabia, Wenar is right that we cannot infer from domestic peace to popular legitimacy, much less accountability. But the bargain its rulers have struck with its people is in significant part by pacifying them with the profits of resource sales. The Saudi oligarchs return a relatively high ratio of national income to human development. And that fact, of human capital investment even in the absence of democratic rights, differentiates the Saudi case from the Guinean. If the principal direct concern underlying PRS is securing a people’s access to natural resources, then it is hard to see why lack of control over those resources would be sufficient to justify sanctions. No one disputes the desirability of Saudi Arabia moving along a path of democratization, nor of the difficulty of a democratic opposition in Saudi Arabia arising. But the record, in long-term success and immediate chaos, of a highly democracy-sensitive trade policy is not persuasive—a point Wenar makes at length (pp. 18-19).
A last concern on this note is that making the Clean Trade program a salient part of political discourse implicitly suggests that the wrongs it targets are especially egregious. But how to weigh the wrong of resource theft against other wrongs? The issue is building a case for scorning normalized resource theft, without the additional human rights factors of mass displacements, slave labor, and civil war. Theft is, of course, wrong even when the scale of the theft or its material effects are relatively minor. If Denmark, say, had some petroleum resources, all of it claimed by the royal family, that would be a wrong relative to the Danish people. But if petroleum sales accounted for only a trivial portion of national income, while a high functioning material and service economy sustained an otherwise well-ordered society, the wrong of resource theft would seem to be of little international traction. And on the other hand, if another country, say Japan, had no natural resources to sell, but all of its agricultural production was tied to land held by a very few; or if all its industrial production came from factories owned by a single family, paying exploitative wages, then these other issues of inequality would loom very high. These quick reflections suggest that the central wrong of resource theft is not the theft itself, but the contribution of that theft to national inequality.

My point is not that Wenar ignores other forms of injustice. The point is that the very heavy weaponry, and heavy justificatory burden, of the sanctions-based Clean Trade program looks as though it is caught in a dilemma: either it is being irrationally selective in focusing only on resource theft, as opposed to other injustices; or that it risks becoming such a moralized system of trade regulation that it cannot possibly coexist in a world of imperfect states, each with incentives to
abuse such a system, and where trade even with imperfect states has strongly positive human development consequences for the least well off in those states. While I generally reject as a criticism that a policy cannot be applied everywhere, so it must be applied nowhere, such a criticism seems apt for an argument that requires singling out one form of injustice for uniquely severe treatment in international relations. I raise these points to suggest that the threshold for a Clean Trade boycott should probably be set at a level less demanding of target states than popular control.

5. Let me now put aside the question of the threshold for intervention and address a remaining matter: how can citizens of Clean Trade states be motivated to implement such a plan, when it might cause substantial price inflation? Whatever threshold is picked, if it is meaningful it will impose direct costs on consumers. Why should they forgo cheap gas for abstract principle? The problem is one analogous to that of climate change policies, where the principal direct beneficiaries of such policies are not those paying the costs. Wenar notes that, in the case of slavery, the British accepted very substantial costs for the sake of abolition (p. 34); in Blood Oil, he powerfully invokes the example of the citizens of Manchester who, in 1862, let their textile mills stop because of their decision to boycott American slave-picked cotton.34

Abolitionism is a powerful but perhaps incomplete example. I do not think it is merely the perspective of time which makes slavery, and trade complicit in it, seem like an especially significant form of moral taint.35 I suggested in the
beginning of this essay that even in Berkeley, California, there is no attention to concerns about petrocomplicity. I do not, of course, mean this as a criticism of Wenar’s argument. But it is striking that in a community in which opinion is clear on boycotting goods made in the Occupied territories of Israel/Palestine, and morally appealing pedigrees of goods and services are heavily advertised, there is so little salience to the idea of consumer complicity in petroleum theft. This fact is all the more striking given how morally charged petroleum use is, in relation to climate change. Is the relative silence simply that the facts of petrocomplicity have not been made sufficiently clear to consumers, or because ethically clean and the dirty hydrocarbon molecules have been sufficiently mixed?

I suspect that the cause is not because American consumers, even sensitive ones, underestimate the amount of oligarchic oil they consume. I suspect, to the contrary, that most Americans overestimate the ratio of Saudi to, say, Canadian oil in US imports. It is certainly possible that a guilt-based campaign, such as the blood diamonds campaign, or more recently, the campaigns concerning marine park practices surrounding whales and dolphins, would powerfully affect consumer. But the psychology of complicity makes the claim dubious in the case of oil, I believe. For consumers at the end of the supply chain, the original sin of resource theft is very distant – indeed, the apparent cleanliness of the consumer’s purchase, based on the legal title by the original autocrat, is a central part of the problem. This renders the oil case unlike that of blood diamonds in a crucial respect: the original sin in petroleum has been normalized over decades into market practice, except in exceptional circumstances. Blood diamonds, by contrast, are the loot of a hot or
recently concluded civil war. Conflict petroleum, such as that claimed by ISIS in Syria and Iraq, can be moralized into an analogous case. But this re-description of a resource as the fruit of a crime is harder when the original misallocation is rooted a century of accepting Sykes-Picot blessed oligarchs, or the cloudy but legalistic privatization of ex-Soviet resources. This makes it harder for consumers to see the oil as tainted by crime, and hence to develop the aversive motivation of guilt.

A second factor that distinguishes blood diamonds from blood oil is the luxury quality of diamonds. The moral cost of wearing a conflict diamond easily dominates the other values of the decision to consume a highly specific and salient luxury good – if a diamond is tainted, it is no good at all, because it can bring shame where one need not incur it, simply by declining to consume. But, again, the ubiquity of blood oil, its admixture into the general petroleum economy, makes its consumption seem both inescapable and morally tolerable, given that that petroleum is being used to get us to work, diaper our babies, grow our crops, and supply the other necessities of daily life. That dual context of necessity and ubiquity makes me wonder about the success of a complicity-based campaign, as Wenar presents the Clean Trade program.

By contrast, a positive Clean Trade campaign that centers on rewarding morally attractive actors, though probably less effective, would seem far more psycho-socially sustainable. Such a campaign harnesses the sense that consumers can, through market choices, actually increase their well-being through wise petroconsumption: consuming the products they want, while at the same time generating positive political externalities by voting with dollars for morally clean
petroleum. Instead of a boycott-based strategies, whose virtue is its binary clarity, endorsing PRS might support a more supple implementation program, building around the non-coercive promotion of access and accountability values. Since energy trade is largely outside the purview of the GATT/WTO system, there is room for a more conditional program of energy trading, reserving boycotts for extremes. Importing states could, for example, impose a duty indexed to the degree to which denizens of the export state benefit from the resource sale, or from metrics of public accountability and control, as in the Freedom indices Wenar relies upon. A tariff-based program, assuming defensible criteria, would fit better with a scheme of positive association rather than negative repudiation.

But these are, in the end, mere quibbles around a core of agreement with Wenar’s brave endeavor. Shifting the consuming, democracy-valuing publics of the west from dull acceptance of MMR to more ethically refined consumption would clearly be a marked step forward towards a more just world. I hope that Wenar’s work will transform consciousness around a product ubiquitous yet morally invisible.

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1 Leif Wenar, Blood Oil (New York: Oxford University Press, 2016). I shall mainly be referring to this volume’s essay.
2 I say “roughly” because, for reasons briefly discussed later, a somewhat inegalitarian distribution may, for familiar incentive reasons, provide a better flow of welfare.
3 That is, goals shared between Aristotelian/Millians, and Rawlsians. Wenar’s overall philosophical posture appears to be that of a Millian indirect utilitarian, who believes that Rawlsian nation-state structures of justice provide the best way of achieving the goals of the former. At the same time, he says that he believes PRS can be supported by a range of different philosophical positions, and thus enjoys the status of an object in a Rawlsian overlapping consensus of reasonable views.

4 America gets about 2.6% of its petroleum demand from Saudi Arabia, 10.1 million barrels per day, or 22 million gallons of gasoline; this amounts to 11% of petroleum imports. Source: US Energy Information Administration, accessed October 7, 2017. All petroleum imports are declining, however, in light of the expansion of the shale extraction industry in the U.S.

5 See generally Stephen Krasner, Sovereignty: Organized Hypocrisy (Princeton, N.J.: Princeton, 1999) for an account of sovereignty that recognizes its operational limitations while also ceding it some space in international organization. Krasner terms the specific form of sovereignty at issue when a home regime vouchsafes resources sales to the international market “interdependence sovereignty” (4). We can think of it more generally as one of the strands or sticks in the bundle of sovereign rights, to which Wenar has brought important attention.


7 And such stability can come at the international price, as Wenar argues, of providing a means support for international terrorism.

8 Of course, some might regard international stability, consistent with much weaker human rights protection, as consequentially justified. Such a position is, in fact, the status quo. To the extent that the position is not simply one of Realism, placing a substantially higher value on the stability benefits to the resource-purchasing state, it would be grounded in a claim that trade engagement leads to welfare and rights gains by the resource-rich nation. But I think Wenar has effectively disposed of that argument.


10 For Rawls, a society counts as decent if it is non-aggressive, human rights respecting, attendant (though not necessarily equally) to the interests of all its citizens, and “consults” with its citizens, even though it need not be democratically accountable. Law of Peoples, 64-67. Petrostan is Rawls’ “Kazanistan” plus oil wealth.

11 Wenar, 26.

12 Surprisingly, the U.S. has a much higher ratio of foreign aid to energy revenues, of nearly 62% of governmental receipts given to aid, thus retaining 38% of these revenues for 6% of global population. However, Norway does contribute a far greater proportion of its total Gross National Income to foreign aid than the US, at

13 Presumably any efficiency-constrained principle of global distributive justice, might permit oil-housing states to retain a somewhat greater national share, in order to incentivize production and extraction.


16 Wenar, 48.

17 “According to [PRS], anyone who sells off a country’s resources must be accountable to the owners of the resources – to the citizens.” (22).

18 In 2014, Saudi Arabia had roughly 27 million residents, and 8.5 million of whom were non-citizens. Estimates of unauthorized residents range from 2 to 5 million, presumably in addition; this would make the non-citizen/citizen ration closer to four in ten. https://en.wikipedia.org/wiki/Demographics_of_Saudi_Arabia, accessed October 4, 2017.


20 Wenar could, of course, add normative constraints on the citizen control requirement of PRS, such that control only counts if access to citizenship is sufficiently broad. But that would be just to concede that citizenship is doing no independent normative work.


22 In my *On War and Democracy* (Princeton, N.J., Princeton University Press, 2016), I call the ideal “agentic democracy.”

23 These paragraphs draw loosely on both my arguments in *On War and Democracy*, and the theory of collective action I put forward in *Complicity: Ethics and Law for a Collective Age* (New York: Cambridge University Press, 2000).

24 I am not trying to suggest that, with respect to all forms of real or resource property, collective communal ownership is the normative default. That may or may not be true. But the specific characteristics of oil and gas resources, given the size of the relevant fields, are such that it is hard to imagine a principled defense of
exclusive private control over windfall discoveries, much less revenue capture by officials of resources lying in public lands. (I recognize the conventional practice does treat the former as justified.)


27 My hesitancy on whether a global claim might be contradicted stems from the concern that states without natural resources also have a claim to self-realize, and it may be that a global natural resource tax, à la Thomas Pogge, is a reasonable way to meet the interest of other peoples.

28 There will still be difficult problems with particular cases, for instance the claim of resources of a foreign national white collar executive, working for years in-state. I assume that such cases can be handled by treating his or her salary as the channel by which they profit from the state’s resources.


30 I do not mean to exclude the possibility that culturally defined and collectively acting peoples might exist across state borders, thus raising questions about the claims of extraterritorial group members to resources found on only one side of the border.

31 See *On War and Democracy*, ch. 8, “Humanitarian Intervention and the New Democratic Holy Wars.”


33 The analogy to blood diamonds is especially weak in a case like this, since conflict diamond sales were never, to my knowledge, beneficial to any but the warlords who seized them.

34 *Blood Oil*, 333-34.

35 Reports of contemporary slavery in the Pacific fishing industry, whose products are used in US pet foods, has generated attention and change. Slavery still retains a charge.

36 The US consumes nearly four times as much Canadian oil as Saudi oil.