

Public Ethics Radio

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Transcript of Episode 3, Leif Wenar on the Resource Curse

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MATT PETERSON: You're listening to Public Ethics Radio. I'm Matt Peterson. This podcast features conversations between our host, Christian Barry, and scholars and thinkers who engage with ethical issues that arise in public life. The show is a production of the Centre for Applied Philosophy and Public Ethics, An Australian Research Council Special Research Centre, in association with the Carnegie Ethics Studio at the Carnegie Council for Ethics in International Affairs. You can find us on the web at www.publicethicsradio.org.

MP: The Democratic Republic of the Congo is home to a wealth of natural resources. Prominent among these are coltan, a mineral that's used to make capacitors for cell phones, iPods, and other electronics, and cassiterite, a tin ore. These minerals are at the center of the brutal war that's been raging in parts of the DRC for over ten years. During one of the bloodiest parts of the conflict, from 1998 to 2001, the price of coltan skyrocketed from \$20 a pound to over \$200 a pound. This price crashed in 2001, and a peace accord was signed in 2003. But fighting has gone on, mainly in the Eastern DRC province of North Kivu, which borders Uganda and Rwanda. North Kivu is an important source of cassiterite, which today sells for \$17,500 a ton on the world market today.

A dizzying array of groups is fighting over these resources. They include former leaders of the Rwandan genocide, forces sponsored by the current Rwandan government that are purportedly hunting those genocidaires, active units of the Congolese national army, shadowy German businessmen, and a Col. Kurtz-like rogue Congolese general who has a penchant for describing himself in the third person. These groups are raping the country in an effort to secure and export these minerals to hungry markets all around the world.

In North Kivu, more than 2,200 cases of rape were reported in one month this summer. Some armed groups in the DRC regularly kidnap children and force them into combat. One of these groups has lowered its recruiting age from the mid-teens to the age of ten. In one incident in late December of last year, another group kidnapped 200 boys from a secondary school. This group sends the children to a military training camp for a month. Kids who try to escape are killed with whips or clubs. Overall, the conflict has obliterated the quality of life of people living in the Eastern DRC. One estimate puts total deaths from 1998 to 2007 at 5.4 million, including many from preventable disease and malnutrition.

I can't give you a full explanation of the conflict, but a number of scholars and NGOs have pointed to the sale of coltan and cassiterite as a major contributor. One NGO put the value of the cassiterite trade out of the DRC at least \$46 million in 2004. Yet the government only recorded \$1 million in official exports. And that means the vast majority of these resources are untaxed. And so this great natural wealth is being stolen from the DRC, and being sold on to consumers in developed countries. In some ways, this is a familiar story, with close parallels to the so called blood diamond problem. There may be systemic problems in the trade in natural resources out of countries like the DRC.

So what can we do? For an answer, we turned to Professor Leif Wenar of Kings College London. He spoke to Christian Barry from London.

CHRISTIAN BARRY: Leif Wenar, thanks for joining us on Public Ethics Radio.

LEIF WENAR: My pleasure.

CB: Leif, we're very accustomed to hearing about how smugglers and traffickers and copycats and all types of other nefarious underworld types are "hijacking the global economy." And I'm here paraphrasing the subtitle of a recent book by the editor of Foreign Policy Moises Naim. But we're much less accustomed to hearing that customers in rich countries like ourselves are regularly buying stolen goods everyday in our very mundane ordinary transactions. But you've been arguing that that is exactly what is in fact happening. And correct me if I'm wrong, that a very significant portion of U.S. oil imports, for example, are effectively stolen, and that therefore we are all guilty of buying stolen goods. Could you explain what you, why you think this is the case?

LW: Christian, you're right. We buy ordinary goods, every day, that are made from materials that are literally stolen from some of the world's poorest people. There's a flaw in the rules of global trade that allows some tyrants and some vicious rebels to rip natural resources out of some countries and to sell those resources on through some middlemen to consumers like us. These stolen resources get turned into the products that show up in our shopping malls and our gas station. So, the gas in your cars, or the diamond in your wedding ring, the circuits in your cell phone, all these things may be made from raw materials that were literally stolen from some of the most oppressed people in the world. And what's even worse is that many of the dollars that we spend in the mall and at the gas station go back to these tyrants and to these rebels and allow them to buy more helicopter gunships and more Kalashnikovs, which enables them to steal even more raw materials from these countries and to sell more of those stolen goods on to us.

CB: Can you explain a bit more what this thefts consists in? That is, who do these resources belong to, and how exactly are they stolen? Because of course any of the people who are involved in these transactions at the end of the chain will be consumers, but also of course the major oil corporations will claim that they have legally valid contracts that they bought from the legally authorized sellers, so on and so forth. So what kind of claim exactly are you making? Are they literally stolen in the sense that they are against the law, these types of transactions, or are you asserting a type of a moral right that's being violated in these cases?

LW: These middlemen companies who are buying the resources from the bad actors and sending the resources on to us, those middlemen are literally doing something illegal. They're just like

fences who take stolen goods from thieves, and to explain why the law is being violated in these cases, let me give you some examples of the kinds of places that we're talking about. Here's the resource cursed countries. For example, Sierra Leone. If you saw the movie Blood Diamonds, what you were seeing was, the dollars that we consumers pay for diamond jewelry ending up going back to these rebels in Sierra Leone. Those rebels recruited child soldiers and terrorized the countryside by rounding up ordinary people and chopping off their hands with machetes. The rebels enslaved part of the rest of the population to harvest these blood diamonds. And then sold those blood diamonds off for money, with which they bought more weapons and almost overthrew the government. So Sierra Leone is one example.

Another is Equatorial Guinea. The tyrant of Equatorial Guinea right now is richer than Queen Elizabeth. And he's gotten that way by selling off the country's oil. And he's gotten that way by selling off the country's oil to American corporations like Exxon and like Hess. This tyrant, Obiang, has used some of the money that he's gotten from the oil sales to pay for security forces that have been torturing the population and frightening off the opposition and he's used some of this petro money to buy yet another private jet for his own fleet. Meanwhile, there's raw sewage running through the streets of the country's capital. Three quarters of people in Equatorial Guinea are malnourished. And most of the citizens of the country live on less than what you and I could buy in America or Australia for a dollar a day.

So that's the context of these thefts. The best thing we can do for people in countries like these, is just to stop sending our money to the rebels and the tyrants and the militiamen who are stealing the country's resources. And the weak link the chain is these middlemen companies. We can take a few of those companies to court in the U.S. or in other countries like Australia, and sue them literally for receiving stolen goods. Once we win one or two of those court cases, no company will want to buy resources from these awful rebels and tyrants and militiamen.

CB: I'm just trying to imagine how such a court case would go. So if you were to bring a case against ExxonMobil, um, because presumably unlike consumers where it's very difficult for us to have any idea really what's gone into the resources we're consuming. These major corporations, which are, as you're putting it, middlemen, we do know where they're buying their oil from. What would a case look like against Exxon Mobil to the effect that they've been buying stolen resources, stolen from the people of Equatorial New Guinea? By Obiang, or something like that.

LW: The key thing here is to see these middlemen corporations as exactly parallel to fences. Imagine that you were the leader of some kind of criminal gang, who brandished weapons and shot the place up while they were taking over a warehouse full of merchandise. Now you could then sell the merchandise to me, and I can even sign a contract for that merchandise, but no one would think that I was going to get good title to the merchandise that I got from you. I would just be receiving stolen property. The key here is seeing that might doesn't make right. Your shooting up the place doesn't give you the right to sell someone else's property. It's just the same, legally, with these tyrants and rebels and militiamen, who rip a country's resources out of the country by force. They don't have good title to those resources, and so they can't pass good title on to these middlemen corporations, whether they sign contracts with those corporations or not. Might doesn't give them the right.

CB: But this happens all the time. Clearly corporations think that they do have a right to buy property from rulers in this way.

LW: Now, I mean, I said at the beginning there's a flaw in the system of international trade that allows this to go on, as it does today, and we've just found it. There is, in current practice, this archaic rule that says that allegedly, might does make right. According to this very old rule, which is left over from European colonialism, whoever can oppress or terrorize the people of a country enough does allegedly get the legal right to sell off the country's resources. But that old rule is clearly just outrageous. I mean it violates the most basic principles of property rights and free trade. And it also generates this terrible incentives towards despotism and civil conflict and chaos that we can see in the world today.

CB: Who exactly owns the resources of a country. That is, at least it seems to be a principle in international law that the rulers of a country can confer valid title to the resources in that country. So what is the basis for the claim that it's actually stolen, or that these goods are actually stolen.

LW: The main premise of the legal argument here, is deeply embedded in international law. The premise here is just that the natural resources of each country belong to the people of that country. So, the international law here just says that America's resources belong to the American people, Australia's resources belong to Australia's people, and so on. That's the law that's gonna take precedence to that bad old rule that might makes right, which says that whoever can be violent or coercive enough gets the right to sell off a country's resources. That idea, that the resources of a country belong to the people of a country is deeply embedded in international law. You can see it in Article 1 of the major human rights treaties that the U.S. and the other major powers, and in fact the vast majority of the countries in the world, ratified years ago.

CB: Now I can see that the idea that the resources of a country belong to the people of that country is at least arguably part of international law. But does anybody believe in this idea?

LW: You may know that the U.S. Congress approved auctions of drilling rights for oil off the coast of the United States, and that the proceeds of those auctions have gone into the public treasury. That's a normal thing to happen, there might be more of those auctions in the future, and that's a matter for public debate. But imagine, instead, that instead of those auctions, the President of the United States just decides one day, to sell off all of America's off-shore oil to Shell, or to Chevron-Texaco, and, that he puts the money from these sales into his private bank account. Then, imagine that he orders the FBI to go out and squash any protests to his selling off all of America's oil to make himself rich. Now that is just the kind of thing that would violate the law that the resources of a country belong to the citizens of that country. And that's just the kind of thing that's happening right now in oil producing countries all over the world.

CB: We've been focusing on very extreme cases of clear tyrants who are stealing resources from the countries in which they hold effective authority. But what kind of criterion would you use to distinguish between regimes which have a legitimate right to pass title and those which don't, because there are certainly a lot of pretty lousy governments in the world, and many lousy governments in resource-rich exporting countries. How broad is the scope of this type of claim that you're making?

LW: When we bring these cases to court, we want to use only the most secure criteria for countries where the political criteria are so bad that no resources sales could possibly be legitimate. Fortunately, in the United States, there is an officially used rating scale for the political conditions in all countries. And we are using this scale, the Freedom House scale, to distinguish those countries from which resources can be sold from those from which they can't. The Freedom House scales are the most respected scales for rating political conditions in the country. So Freedom House is a seven point scale, it measures political rights and civil liberties. We're just taking the worst of the worst. The sevens. Countries like Equatorial Guinea and Sudan, Zimbabwe and Burma, and saying if a country is a seven, if the political conditions are so bad that it rates a seven on the Freedom House scales, then the political conditions are such that the people, who own the natural resources of the country, couldn't possibly be consenting for anyone to sell those resources off. So no one can legitimately sell natural resources out of those countries.

CB: Uh, related to that, I was wondering um, I can see the value politically and for other reasons in focusing on the sevens, but if you go a little bit further up the Freedom House scale to the sixes, you see a lot of other regimes which uh it's very hard to think that there's such a principled difference between them and what are now the sevens. So even if we aspire to a world in which there are no sevens, isn't that putting the bar a bit low. That is, the kind of problem that you're talking about is one that affects many people in many different countries, not just the Equatorial New Guineas, would these types of countries simply be outside of the scope of the your proposal?

LW: Currently, yes. There's a lot of injustice in the world, and now doubt your show is illuminating different aspects of it. We just have to go for the sevens first. We have to win a case against some corporation that's dealing with a really, truly bad actor, like Obiang of Equatorial Guinea. And if we have the sevens, which are clear cases, then we'll have made a lot of progress.

CB: Uh, we're going to take a break, and we'll be back with more from Leif Wenar in a few moments.

MP: You're listening to Public Ethics Radio. We're talking to Leif Wenar of Kings College London. If you want to know more about Professor Wenar's views on property rights and the resource curse, you can visit our website, www.publicethicsradio.org, where we link to his recent paper in *Philosophy & Public Affairs*.

CB: OK, now suppose that you were that you're right now, of course at the moment the United States and many other countries buy tons of these resources from Equatorial Guinea and others. Suppose it was successful, suppose you actually brought these cases in the near, in the US courts, you you were successful or perhaps you put enough political pressure on these countries that they no longer bought from the sevens, and shifted their purchasing up to the sixes and higher. But what's to stop other kinds of buyers from simply stepping in and buying up these resources anyway, which will then of course get recycled and channeled back in the US economy or the economies of any country that actually refuses to buy the oil or natural resources directly. Is there really any way that this won't simply redistribute the sale of natural resources from one country to another?

LW: Now that's a great question, and that question leads us to put a second step into this proposal. You're absolutely right that taking middlemen corporations to court in American jurisdictions for example won't solve the problem entirely of this resource curse. So Sudan is the largest country in Africa and it's got tons of oil. But as you say it's not going to help Sudan for us to take American companies to court, because American companies are not buying any oil from Bashir's regime. In Sudan, a soldier named Bashir overthrew the government, since his militias attacked in Darfur, Pittsburgh numbers of Sudanese have been killed, and Nevada sized numbers of Sudanese have been forced out of their homes. Bashir has sold Sudan's oil to China for billions in cash and uh weapons, and he may well try to take over the rich oil fields of South Sudan militarily. And as you may have heard on the news in July the International Criminal Court uh, demanded that Bashir be arrested for crimes against humanity. To its credit, the United States imposed sanctions on Bashir's regime years ago, and it's tightened those sanctions ever since it's declared that there's a genocide going on in Darfur. So, it's not the United States that's buying oil from Bashir, it is China. China is getting all of that stolen Sudanese oil and sending billions to Bashir. Now that's terrible for the Sudanese, because it means that this glorified warlord Bashir gets more and more powerful. But as you say it's also a problem for Americans, because that stolen Sudanese oil goes to China, it percolates through China's factories, and it becomes part of the Chinese imports that Americans buy every day. So right now Americans can't help dirtying their hands with stolen Sudanese oil when they buy Chinese imports at Walmart or at uh Costco.

CB: All right then. So you acknowledge that merely preventing US companies from doing business with Sudan won't stop the flow of oil out of Sudan or even the flow of oil out of Sudan into the US. So what to do we need to do?

So we need a second step through trade policy. The U.S. government can protect the American people and the Sudanese people together. So say that China buys two billion dollars worth of oil from Bashir. The U.S. should immediately announce a Clean Hands Trust for the people of Sudan. This Clean Hands Trust is a bank account that the U.S. government is going to fill to two billion dollars and it's going to get the money to fill that bank account by imposing duties on Chinese imports as they enter the United States. The two billion dollars is going to be held in that trust until it can be turned over to a minimally decent government that respects the rights of all the people of Sudan. And then the Sudanese people will at least get the value of the oil that was stolen from them back. That Clean Hands Trust policy is win-win for the American people and for the people of Sudan. The duties on Chinese imports will keep Americans from getting tainted from that oil that's been stolen from Sudan. The Clean Hands Trust will save the value of that oil for it's true owners which are the people of Sudan. And, best of all, this trade policy will give the Chinese a big incentive to help ease Bashir from power instead of handing him more arms and more money with which he can start a new genocide or a civil war.

CB: Well, I imagine that uh, a uh hard headed trade economist would be very worried about this type of proposal. Um, just in the sense of uh, imagine how the Chinese would react to the U.S. or some other country trying to place such a tariff. I imagine that they would first of all probably challenge it as WTO rule-infringing. Even if you could make a case that it's not in strict violation of WTO rules, certainly the jurisprudence of the WTO suggests that objective, social objectives, even when they come to the protection of human health, have to be the least trade restrictive necessary to bring about this aim. And there may be other ways to try to engage with these

governments to make them try to change their ways, and so on. And at worst, that they might actually retaliate. And one of the problems with something like a clean hands trust is that unless it's incorporated into a transparent and rule-based system, like the WTO, for all its flaws, uh it's just going to be very much open to abuse and manipulation and can lead to all kinds of uh beggar-thy-neighbor trade policies and so on. That's least what I imagine the kind of response you might get from trade from trade economists.

LW: Yeah, the WTO dimension of this proposal is really important, and in fact it's really promising. The key again is to see that the WTO is the World Trade Organization and what's happening now with the movement of natural resources across borders is in many cases not trade at all. It's theft. And stolen goods don't count as trade. Now it's true that the WTO needs to recognize that there's a lot of uh, circulation of stole goods going on right now. But in fact it already has, for a different commodity. If you saw that DiCaprio movie Blood Diamonds, and you remember the final scene where the farmer goes in front of this international audience, what was happening there was something called the Kimberly Process. The Kimberly Process was an international uh mechanism to stop the flow of blood diamonds from Sierra Leone and similar countries. The WTO recognized Kimberly. The WTO says Kimberly is in fact now going to be part of WTO rules. So the WTO has already recognized that some commodity exports, in this case for diamonds, don't count as trade, and can be stopped by international mechanisms. All we're asking for here is something like a Kimberly for oil instead of for diamonds. The principle is already there in the WTO rules, that we shouldn't allow the transport of stolen goods across borders. We just need to extend that principle to other natural resources as well.

CB: We're going to take a short break, and return with more from Leif Wenar.

MP: This is Public Ethics Radio.

CB: Leif, I'm going to ask you another question that I imagine a hard-headed economist might ask you, which is, uh, that the type of proposal that you're offering, at least the clean hands trust idea, will amount to a kind of sanctions. And, arguably, at least, sanctions have been less effective than they're intended to be, and arguably they are harmful to the people they're trying to help. So how would you respond to the claim that this is just one more set of sanctions which can be used in an opportunistic way, which can be used to harm people rather than to help them, which will be easy to circumvent, and so on.

LW: That's a really good question. Let me say two things in response. It's true that the clean hands trust is a kind of sanctions regime. We're trying to get oil from leaving Sudan as long as it's being sold by Bashir who has no right to sell it. The Clean Hands Trust proposal is an improvement on a traditional sanctions regime. Because the problem with the traditional sanctions regime is that the sanctioned country just goes ahead and sells what it wants to other countries that don't sanction it. So Bashir sells oil to China even when it's sanctioned by the United States. The Clean Hands Trust is an improvement because here the sanctions follow the goods. Once the United States sets up a Clean Hands Trust for the people of Sudan, anyone who touches the oil that Bashir sells from the country will have the sanctions imposed against them. The sanctions here follow the goods instead of being linked to one specific country. . Now you also raise the point about the sanctions here harming the people that they're supposed to help. And that's a really important concern. In fact, the money that goes into these countries now, does not help the vast majority of the people. Most of the money that goes into countries like Sudan

goes straight to the dictator or the rebels who make life awful for almost everyone. And let me give you another example of that beyond Sudan. Take Burma. Now the Burmese junta cares so little about its people that they wouldn't even allow aid agencies in after that huge cyclone in May that killed, what, 75,000 people, and displaced many times more than that. This is the same junta that crushed that peaceful revolt by the Buddhist monks last fall. You might wonder how such a loathsome regime stays in power. Well it stays in power partly by selling about three billion dollars worth of natural gas to Thailand every year. And it's being protected against international pressure by the Chinese, who want some of the natural gas that's been found off the Burmese coast. If the Burmese junta couldn't sell off the country's natural resources, it would lose its grip on power. And it would be very likely replaced by Burma's Noble Peace Prize winner and its democratically chosen leader, Aung San Suu Kyi, and that would be good for almost everyone in Burma.

CB: Leif, if I just wanted to conclude by asking you a question about the morally appropriate response of ordinary people who accept your argument. That is, you've talked about what might be done in terms of bringing lawsuits against the large corporations who have large contracts with some of these countries. You've also talked about what might be done at the level of statecraft in terms of decreasing incentives of third parties to buy these sorts of resources. But in the mean time, the fact is that you and me and lots of other people, are by your accounts going to be continuing to buy stolen resources. So what kind of response ought we to have aside from supporting political initiatives of the kind you mentioned if we support the conclusions of your argument.

LW: The crucial thing is just to find out more about these issues. Maybe it'll turn out that you have some special skill or a special expertise or maybe just have a great idea about how we can stop this massive global trade in stolen resources. Maybe you can do political action. Maybe you can just find some way to interest your friends in these issues. The key thing is just to find out more. And so let me give you a couple of websites that have more information about all of this. If you're interested in what I've written on stolen resources, you can go to cleantrade.org. And there's a great NGO called Global Witness that's done terrific work on reducing the harmful global trade in resources. So that's cleantrade.org and globalwitness.org. The more you know about these problems, the more you'll know about what contributions you can make to the solutions.

CB: Leif Wenar, thanks for joining us on Public Ethics Radio.

LW: Thanks very much.

MP: Thanks for listening to Public Ethics Radio. We'll be back soon with another conversation about Public Ethics. In the meantime, you can find out more about us and our guests on the web at www.publicethicsradio.org.