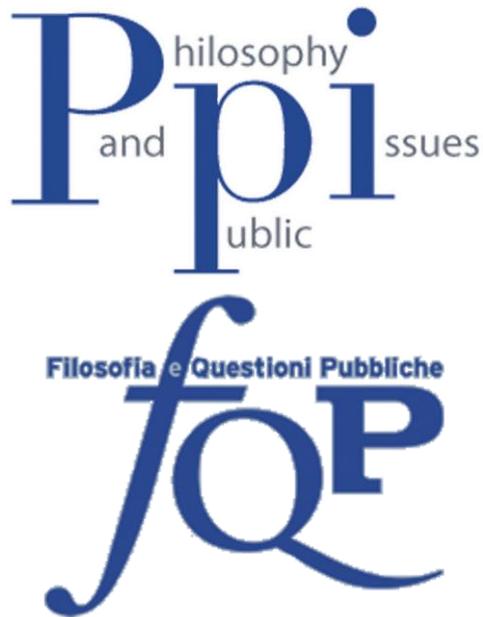


SYMPOSIUM
TYRANNY, DEMOCRACY, AND ECONOMY



BLOOD OIL
A PRÉCIS

BY
LEIF WENAR

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Blood Oil

A Précis

Leif Wenar

Looking back across the last four decades of headlines in the West, one word comes up again and again.¹ In 2014, Iraq became a war of oil against oil, as the Iraqi government, the Kurds and ISIS all funded their armies with large oil revenues. Syria's oil-funded autocrat, Bashar Al-Assad, ordered the barrel-bombing of his own cities, worsening a refugee crisis whose defining image became a Syrian boy lying drowned on a Turkish beach. By 2015, this refugee crisis was straining the politics of Europe.

The Iraq-Syria conflict soon became part of the cold war between the two oil-funded regional antagonists, Saudi Arabia and Iran. In 2015, Vladimir Putin—his coffers still full from years of high oil prices, which had paid for Russia's incursion into Ukraine—also began a more destructive campaign of urban bombing in Syria. By 2016, television news worldwide was showing the apocalyptic devastation in Aleppo. In 2017, the Saudi crown prince intervened in regional politics from Qatar to Lebanon, and most dramatically through an air campaign in and sea blockade around Yemen, which caused thousands of civilian casualties, a massive famine, and the largest cholera outbreak in modern human history.

¹ This essay is an overview of arguments in Leif Wenar, *Blood Oil* (New York: Oxford University Press, 2016).

Oil was not the only cause of these conflicts and crises—the world is never monocausal, or even oligocausal. But when we look back over the past 40 years, oil is often a factor in the West’s bad news.

In 2011, for instance, the West intervened against Muammar Gaddafi, who financed terrorists for decades—from the IRA to the Lockerbie bombers—with Libya’s oil money. Before Gaddafi, it was the genocide in the Darfur region of the oil state of Sudan. Before Darfur it was 9/11, in which 17 of the 19 hijackers were from major oil-exporting countries.

In 1990, Saddam Hussein launched his invasion of oil-rich Kuwait, triggering a Western invasion, then sanctions, then another invasion and an occupation. In the 1970s and 1980s, the Soviet Union, used its growing oil revenues to surge ahead of the West in the nuclear arms race. And since the 1979 revolution, the Iranian regime has used oil money to fund militant groups like Hezbollah while grasping for nuclear weapons.

When we about these oil-exporting states, we often critique our leaders’ decisions. Many, for instance, will lament George W. Bush’s decision to go to war in Iraq. Others will blast Barack Obama’s policies on Assad or Islamic State. Donald Trump’s relationships to Putin and the Saudi crown prince have drawn much scorn.

All of these complaints are correct. Western leaders have cost their countries dearly in terms of lives, money, and influence—and some of their decisions have simply been criminal. Yet there is a deeper level to these stories, which involves us all more directly. The stories above are not just disasters that we’ve watched—they’re disasters that we’ve paid for. After all, the bombs and the tanks and bullets in the stories above cost a great

deal of money. And, ultimately that money has come from us—the world’s consumers—paying for oil.

What consumers pay at the pump has also gone to grim places that never make the headlines. The president’s family in Equatorial Guinea, for instance, has for decades spent the country’s oil money on themselves—private jets, supercars, luxury residences in Paris, Washington and Malibu—while most Equatoguineans live in severe poverty, and half have no access to clean drinking water or adequate sanitation. The President has also quashed all resistance to its rule, including having its guards urinate on political prisoners, tie them down, slice their ears open, and smear their bodies with grease to attract stinging ants.

Somehow, consumers’ money is going to fuel suffering and injustice and threats worldwide. Understanding consumers’ complicity with these disasters and dangers overseas is essential for understanding the deepest flows of global power. And, as we’ll see, ending our own complicity is also the best way to drive positive change.

The Resource Curse

For as long as the world uses oil, we should expect headlines to feature big oil exporters like Russia, Iran, Iraq, and Saudi Arabia. The main reason for this might seem an obvious fact. Outside of democratic countries, whoever can control resource-rich territory by force today can make large profits by exporting those resources. Essentially, whoever can keep control over some holes in the ground will get rich.

When an authoritarian regime (like the one in Algeria) controls a country’s oil wells, it gets the money to buy the muscle and loyalty it needs to stay in power. When armed groups (like those

in the DRC) control the gold mines, they get the money they need to buy arms and pay their soldiers. Money—and, with oil, a lot of money—will go to whoever has the most guns (and help them buy more guns).

More, coercive actors can export resources even when the people of the country are very badly off. Even if most of the population is uneducated, unemployed or hungry—indeed, even if the country is in the midst of civil war—whoever can control the wells or mines will still gain large export revenues. Autocrats and militants do not need a productive population to get the money, and the people cannot stop exports by going on strike. In these countries, when an autocratic regime or an armed group controls resource-rich territory, it is like they are digging out huge troves of buried cash.

Political scientists call the results ‘the resource curse.’ Oil states in the developing world 50% more likely to be authoritarian, and much more likely to suffer from grand corruption. Since these authoritarians get all the money they need from the oil wells, many of these oil-rich countries are full of poor people: Angola’s elite lives in luxury, for instance, while the children of their country die from poverty at one of the highest rates in the world. Civil war is another symptom of the resource curse: oil countries are twice as likely to be at war with themselves.

Oppression, conflict, corruption—oil curses the world’s main artery of oil, which runs from Siberia through the Caspian to the Middle East through North to West Africa. Adding in the authoritarian and failed states that are cursed by the money from metals and gems would show an even broader resource curse, including badly fractured states like the Democratic Republic of the Congo.

Some of these resource-cursed countries suffered colonial exploitation by the Western powers, as well as more recent exploitation by the West's oil companies. Some of these countries have also been invaded and sanctioned. But the resource curse is a systemic phenomenon that strikes countries that are otherwise quite different in their histories and their geographies—compare, for instance, Azerbaijan and Bahrain and Chad. The resource curse calls for a deeper explanation.

The Cause of the Resource Curse

The cause of the resource curse is that today coercive control over resources yields entirely unaccountable power. Controlling oil, metal or gems is like holding huge troves of buried cash—cash that authoritarians and armed groups can use as they like.

With oil money, an authoritarian regime can pay the security forces needed to repress dissent (as in, for example, Algeria). The regime can create useless jobs in the state bureaucracy to keep citizens dependent for their incomes and status (Angola). The regime can play regions, tribes or religions against each other (Saddam was a master of this). It will have the cash to fund nationalist propaganda (as in Russia) or religious indoctrination (as in Saudi Arabia). If times get tough, it will have the money to distract the population by stirring up a military crisis with neighbors or with the West (as Gaddafi did many times). In the popular uprisings of the past decade, from Iran's Green Movement to the Arab Spring, the trend was that the authoritarians in oil states survived, while the authoritarians in non-oil states fell. (Syria, which is running out of oil, is the intermediate case.) Striking oil is every autocrat's dream.

Natural resources—and especially oil—are also sought by militants for the unchecked power they bring. Resource money

allows armed groups to start or continue a conflict—and the money comes with no strings attached, it never has to be paid back, and it comes in regardless of the condition or the wishes of the country’s people, who have to watch while the country’s natural assets are sold off beyond their control. (As Paul Collier once quipped, ‘Diamonds are a guerilla’s best friend.’) The unaccountable power of resources divides many countries against each other.

The results of the resource curse are striking. Most emerging countries have made great progress over the past four decades—China and India have grown remarkably, for example, while the ‘third wave’ of democratization swept over much of the world. In marked contrast, the major oil states outside the West are, on average, no richer, no freer and no more peaceful today than they were even in 1980.

Worse, resources curse not only the countries of extraction—they also curse the West. This is where we began, with the threats to the West that have come from oil-exporting states. The threats that have come from adversaries like the Iranian regime have been obvious. Yet even greater threats have come from the West’s allies like the Saudis.

For decades, the West has sent tens of billions of dollars to the Saudi regime in exchange for oil. In turn the Saudi regime has spent tens of billions of dollars spreading its archaic form of Islam worldwide, funding schools, mosques and ‘study centers’ from Indonesia to North America. With their oil money the Saudis have transformed once-tolerant Muslim communities into wellsprings of extremism from Pakistan to Belgium to Britain. This is likely the largest ideological campaign in human history, and the Saudis’ intolerant creed has now mutated into jihadi violence across the Middle East, in Paris, in London, and in the United States too.

The Rule of Effectiveness

The deepest cause of the resource curse is the fact that today whoever can control resource-rich territory will gain unaccountable power by selling the resources to foreigners. And, as we noticed, the ‘foreigners’ who buy the resources are us—the consumers of the world, who pay for the resources of other countries whenever we buy anything that is made from or transported with those resources. We are the ultimate source of the unaccountable power of the violent and oppressive men in resource-cursed states, and these men use our money to dominate and attack and indoctrinate their people.

Why does the money from our everyday purchases go to violent and oppressive foreigners? Why are consumers unwillingly in business with these men?

The answer is an archaic law, a relic of the days of the Atlantic slave trade. This is the Italian law, for instance, that makes it legal for Italians to buy natural resources from whoever in foreign countries can control them by force. This is in fact the default law of every country, which lawyers call ‘effectiveness.’ Effectiveness says that for the resources of other countries, ‘Might Makes Right.’

For example, when Saddam Hussein’s junta took over Iraq in a coup, Italian law made it legal for Italians to buy Iraq’s oil from the junta. And then, years later, when ISIS took over some of those same wells, all countries’ law made it legal to buy Iraq’s oil from ISIS. Every country’s default law for the oil of other countries is, ‘whoever can control it by force can sell it to us.’

Effectiveness has been the world’s law for natural resources since the Thirty Years War. Yet the law makes little sense today.

Say an armed gang seizes an Eni station in Rome. Should Italian law give Italians the legal right to buy the gasoline from that gang? No—that law would empower criminals and cause chaos. But when Gaddafi took over Libya in a coup in 1969, American law did make it legal for Americans to buy Libya’s oil from Gaddafi. And then during the Arab Spring, when rebels captured some of those same wells, American law made it legal to buy Libya’s oil from the rebels.

The world pays over a trillion dollars a year for oil imports, which is why there is such an extreme oil curse—but all countries use effectiveness for other foreign resources too. Your smart phone, for instance, may be made with a mineral that was mined at gunpoint by one of the vicious militias fighting the Congo’s civil war. These resource-funded militias have committed so many violent sexual assaults that the Congo has been called ‘the worst country in the world to be a woman.’

Yet even if your smart phone is made with metal plundered in the Congo, under the law of your country you own every piece of your phone, and your rights to it will be enforced by your country’s police and courts. Under your country’s law, plunder abroad becomes property at home. The militants’ violence turns into our legal rights—and our money goes back to empower the militants.

Our law of effectiveness turns violence there into property rights here, and it puts consumers into business relations with some of the world’s most ruthless men. The resources they extract flow through the world’s supply chains to us, trillions of our euros and pounds and dollars flow back through the world’s supply chains to them. Our laws today make foreign violence pay, and, without change, our laws will continue to incite ever more violence tomorrow.

Overcoming Effectiveness

Could we ever hope to lift the resource curse? Could we reform world trade so that it no longer generates so much suffering and injustice—and so that it stops sending the West these impossible threats and crises?

There is hope. In fact, we know for certain that effectiveness for natural resources can be abolished, because humanity has abolished effectiveness many times before. Indeed, abolishing ‘*Might Makes Right*’ has marked humanity’s greatest moral advances over the past three centuries.

Effectiveness was the primary rule for the Westphalian international system that solidified in the 17th century. In that violent era, ‘*Might Makes Right*’ was the world’s rule not only for natural resources, but for nearly everything—even for human beings.

Three hundred years ago, every country’s law was ‘whoever can seize Africans by force can sell them to us.’ Under that law, 12 million Africans were forced through the Middle Passage to the Americas, where the survivors were bought as legal property. Back then, might made right for people.

Even a hundred years ago, effectiveness made colonialism legal. Any state that could forcibly seize control over foreign territory got the internationally-recognized legal right to rule its people as their sovereign. Might made right.

Even 30 years ago, effectiveness made apartheid legal. A regime that could dominate a population gained the internationally-recognized right to maintain white rule. Ethnic cleansing, and even genocide, used to legal. International law was little more than the legitimization of coercive success.

Now, in our time, all of those instances of effectiveness have been abolished. The slave trade, colonial rule, apartheid, ethnic cleansing and genocide: all of these are now violations of international law.

More, the world has already abolished effectiveness for a single natural resource: diamonds. Nearly every major importing country has passed a law banning diamonds pillaged by armed groups. This progress on blood diamonds can now be extended to blood oil.

Clearly, the world is still far from perfect. Slaves are still secretly trafficked from poor countries; genocides still occur; blood diamonds still leak into global commerce. Still, the great progress that humanity has made over the past three centuries has been in turning what used to be accepted practices of violence into reviled crimes.

A Better Rule for Resources

There are even more grounds to be optimistic about reform: most of the world has already agreed on a principle for global trade to replace effectiveness. This is the principle that a country belongs to its people—a country belongs to all of its citizens, and the country's natural resources start out as their property. This is the principle of Popular Resource Sovereignty.

By Popular Resource Sovereignty, anyone who sells off a country's resources must be accountable to the owners of those resources—to the country's citizens. If a government wishes to privatize resources, or to sell them to foreigners, then the government must be accountable to the people when it does so. If a government decides to privatize or sell resources without any

possible accountability to citizens then it will literally be stealing the resources from their owners: the people.

The principle that a country belongs to its people is already widely affirmed. World leaders from Bill Clinton and George W. Bush to the Prime Ministers of Britain and Australia to the Presidents of Brazil, Mexico and Ghana to the Norwegian parliament to even the Ayatollah Khamenei have publicly declared that ‘the oil belongs to the people.’

This is natural for politicians to say, because it reflects public opinion everywhere. Large majorities of individuals in every part of the world say that they believe that citizens should be sovereign over their lands. And as far as the world has heroes, they are men like Gandhi and Mandela, who led the 20th century’s great struggles for the people’s rights.

More, the right words are already on the page. Both of the main international human rights treaties declare in their first article that, ‘All peoples may, for their own ends, freely dispose of their natural wealth and resources.’ Almost every country in the world is already party to one of these treaties: 98% of the world’s population lives in a country that has already officially signed on to those words. Many national constitutions and laws also assert the people’s resource rights. The battle over the principle that a country belongs to its people has been won.

Reforms for the People’s Rights

Peacefully and responsibly, resource-importing states can now change their own rules to abolish effectiveness and affirm all peoples’ rights to their resources. The main reform will be a Clean Trade Act that taper off imports of oil and other natural resources from authoritarian and failed states. States can change

our laws, on their own soil, for their own people, to say that we from now on it will only be legal to buy resources from those who could possibly be accountable to their own people. State leaders can say that who rules in, say, Saudi Arabia is ‘none of our business’—but that the wholly unaccountable Saudi regime qualifies for ‘none of our business’ in oil.

Other reforms can be added to a Clean Trade Act as needed. Clean Hands Trusts can pressure trade partners such as China, who continue to buy resources from unaccountable regimes, by putting duties on their imports equivalent to the value of the stolen imports that they buy. An Accountability Spectrum can shape trade policies toward countries ‘over the line’ so that they further encourage empowerment of citizens to control their resources.

The greatest power of these reforms is their soft power. Allow yourself to imagine the day that Italy, or the European Union, for example, declares it will no longer be buying authoritarian oil. By making this announcement, the people of the enacting countries will be declaring that they are taking a stand with the people of resource-rich countries—and that they will no longer be in business with anyone not accountable to their citizens. Such an announcement will greatly encourage the democratic reformers in resource-cursed countries—who live outside, and also inside the palaces—to press their regimes for greater public accountability.

Picture an American president declaring to the world that from now on America will be honoring the American principle—as stated in Abraham Lincoln’s first inaugural—that a country belongs to its people, and honoring Lincoln’s principle not only in words, but in law, to show a proper respect for the people of all nations. That will be the day on which America begins to help lift the world’s resource curse.

The reforms also work with the greatest shift in power in modern history. Europe's colonies, including the American ones, did not gain their freedom just because they had moral principles on their side. The people of the colonies fought to be free, and they won because they had become stronger: better organized, better armed, more confident. As we have seen in the uprisings of the past decade, the citizens of resource-cursed countries like Iran and Syria and Libya also want to be free—and they are getting better weapons, better technology, higher expectations. What is keeping these people down is mostly the money that we consumers keep sending to those who are oppressing and attacking them.

If we keep sending that money, these people will continue their struggle through uprisings and armed conflicts. Some of them will, in exasperation, turn to extremism. The regimes that we empower will respond to these challenges with more violence, more repression, more indoctrination. The peoples of these countries are getting stronger. Eventually they will win—the question is how violent and chaotic this transition will be. We can ease the transition by moving now onto the peoples' side.

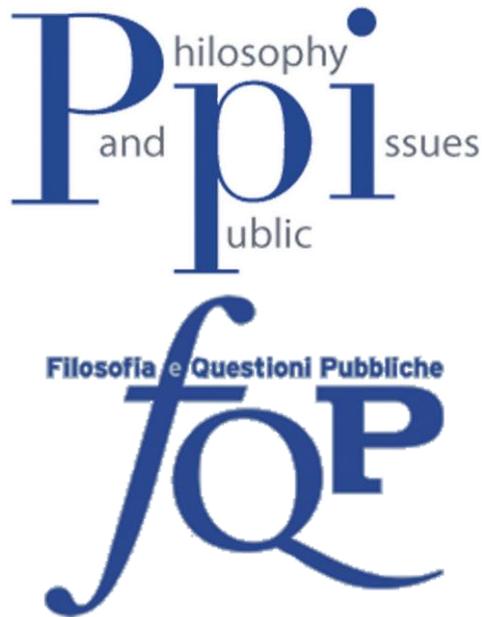
Abolishing effectiveness for resources will dissolve some of the coming threats and crises that the world will otherwise face. That will, in turn, keep the international agenda clearer for states to work together to address urgent issues like climate change. Stopping foreigners from dividing against each other will stop them from dividing against us so violently, which will open more opportunities for our countries to solve the problems of the future together. Abolishing effectiveness for resources will be a major step toward what all want, which is a human race that is more free while also being more united.

It may seem that today's rule of 'Might Makes Right' for resources is just the way that the world must work, and that it will

be too hard to change this. Yet that is just how the slave trade, and colonialism, and apartheid, and trade in blood diamonds seemed in their day. Humanity has now abolished its old law of violence for all of those practices. The world is now ready to abolish 'Might Makes Right' one more time. We can get ourselves out of business with violent and oppressive men abroad. We can look forward to a world beyond blood oil.

King's College

SYMPOSIUM
TYRANNY, DEMOCRACY, AND ECONOMY



TOWARDS LESS DIRTY TRADE, MORE
HUMAN RIGHTS PROTECTION, AND
MORE PUBLIC ACCOUNTABILITY
OVER RESOURCES

BY
GILLIAN BROCK

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Towards Less Dirty Trade, More Human Rights Protection, and More Public Accountability Over Resources

Gillian Brock

In Leif Wenar's highly engaging and accessibly written *Blood Oil*,¹ he makes a compelling case that consumers unavoidably send money to authoritarian governments -- and so contribute to human rights abuses -- when they do their ordinary shopping. As Wenar masterfully documents, oil molecules infiltrate pretty much all our purchases. If we thoroughly consider the crucial role oil plays in how goods are produced and transported, we must appreciate our role in contributing to suffering, since oil riches support authoritarian regimes. So, with our everyday shopping, we fund human rights abuses since there is a causal chain that links our shopping acts to the oppression, conflict, corruption and poverty that many governments of oil rich states sustain. Are there ways for consumers to clean up their act?

In considering this question, Wenar usefully notes that we are not the first group of people to face such moral problems. In the eighteenth century, English consumers faced the similar issue of "slave sugar". Sugar was harvested by slaves and formed a staple of British trade strongly supported by the British elite, including powerful church members. The first consumer boycotts of the

¹ Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules that Run the World* (New York: Oxford University Press, 2016).

modern era were organized around this issue and they were successful in ending slavery.

Drawing attention to the case of slave sugar is a powerful strategy for several reasons. Just as purchasing sugar harvested by slaves helped perpetuate the slave system, our continuing to support the oil industry can similarly be linked to the continuation of human suffering. The direct action that was taken in response to the injustice of slavery was effective in ending the practice. And so this case may provide a hopeful message. For the most part, this strategy succeeds but there is at least one important way in which this powerful case is quite dissimilar. In ending slavery it was pretty clear what we needed to do to remove the primary injustice: prohibit practices that allowed people to legally own other people and refrain from owning any slaves ourselves. The policies we should support to sever the link between oil and human rights abuses successfully are not as clear given contemporary trade practices and the range of ways in which we contribute to suffering. There are multiple policies we might adopt in the face of the injustices Wenar presents and, in deciding which to support, key issues such as which are likely to be effective and which are likely to be implemented will play important roles. This adds more difficulty in figuring out what would constitute a solution to the ills he documents and exactly which policies we should support here and now. There are, for instance, trade offs to be made between efficacy and implementability. There are also comparisons to be made within a large policy option set. Some policies might more effectively tackle multiple injustices rather than focus on a single issue, and insofar as they can effectively do so, might well be preferable. In order to understand how some of this complexity is relevant, we should first appreciate Wenar's bold project and situate it in its contemporary context.

I

Wenar's project: some core issues

Resources and securing human rights

Wenar's target audience is "we in the West" (and especially those residing in the USA) who need to "put our own houses in order" with respect to the way supporting resource regimes implicates us in failures to respect and protect human rights.²

Resources, Wenar notes, are not necessary for a country to prosper. Neither Sweden nor Singapore were well endowed with resources yet both have been extremely prosperous. Resources are also not sufficient for a country's success. On the contrary, the well-known phenomenon of the resource curse shows that resources can be quite detrimental to people's well-being. What factors make a difference? A key variable is what he calls "the strength of the people" before resources are discovered. This seems to be shorthand for a cluster of factors including the quality of governance and institutions in the country before resources were discovered. Prime supporting examples of this thesis would be Norway and Botswana. Norway has immense oil riches and uses that wealth for the benefit of its people. A sovereign wealth fund pays for pensions, public health, parental leave, public day care, unemployment insurance, public goods, and so forth. Norway was a strong country before the oil money started flowing. So Norwegians were well educated and economically prosperous. There were many mechanisms in place to hold governments to account including robust rule of law, free press, regular elections, and a vigorous civil society. So when the

² Wenar, *Blood Oil*, p. xxvii. While Wenar certainly does discuss a range of resources in the book including precious gem stones, minerals, and metals, he focuses on the case of oil, as I will here as well.

oil was discovered, the people were rightly considered as key stakeholders in distributing the gains from that windfall.

World trade seems, in practice, to recognize the position of “might makes right”.³ Whoever holds power in resource rich countries has the legal right to freely dispose of resources. But ultimately, might *there* makes right *here*. International trade permits oil purchases made with oppressive regimes to find their way into our economic system and these transactions are legally upheld on our soil. We need to change the situation so that consumers in the West are no longer in suspect relations with coercive actors in non-Western countries and so no longer provide them with a steady stream of funding for unchecked power. In fact, our commitment to human rights laws means that human rights neglect or violation is not just an internal matter but rather makes it rightfully a matter of international concern that we ought to address. We must put an end to the situation in which our international trade regimes issue licenses to sell resources to whoever is in command of those resources no matter how much they abuse human rights. And at least one important reason we must do so stems from our international agreements to protect human rights.

We should also consider how our support for authoritarian regimes threatens not just the human rights of people living in other countries but threatens our own human rights and security. Wenar carefully documents the West’s support for authoritarian regimes such as Iran, Iraq and Saudi Arabia, in efforts to show how this support, while it may have initially made sense given geopolitical interests at the time, has fuelled, and continues to fuel, decades of continuing threats. Consider the case of Saudi

³ Lawyers call this the rule of effectiveness (Wenar, *Blood Oil*, p. 74).

Arabia. The particular brands of Islam Saudi Arabia supports, Wahhabism (supported by Islamic State) and Salafism (a form of seventh century Islam), are quite antithetical to the promotion of respect for human rights. Indeed, adherents of these doctrines find justification in their faith's texts for killing Westerners "as part of an effort to bring down all Enlightenment institutions worldwide".⁴ It is worth recalling that fifteen of the nineteen hijackers on 9/11 were from Saudi Arabia. Oil money basically funded the spread of a large amount of Islamic extremism. For instance, the Saudi government spent \$70 billion to build Islamic fundamentalist institutions worldwide, in efforts to contain threats within Saudi Arabia.

So, in summary, our policies for trade in natural resources import injustice from other countries infecting our system of justice with injustice perpetrated elsewhere. These policies also perpetuate human rights abuses and continuing threats to peace, security and democracy, both in other countries and our own.

Popular resource sovereignty and state borders

As Wenar moves to considering an improved state of affairs, it is natural to consider the normative standing of borders. After all, if reducing injustice on a global scale is our goal, should we not challenge the important weight given to state borders in our world, especially as state borders often function as obstacles to progressive changes? Wenar traces the history of state borders and our state system, and argues they can play a valuable role. As Wenar notes, "Stable borders keep invaders out, but they also divide up the world's natural endowments in ways that some

⁴ Wenar, *Blood Oil*, p. 92.

philosophers believe is unfair. Compared to Westphalia, set borders are real progress, compared to some philosophical ideal, they are themselves wanting”.⁵ He also draws attention to how state borders have led to a more peaceful international system. He says:

... the period of force-proof borders has seen the virtual elimination of a whole category of armed conflict – the war of territorial conquest – that has filled many pages of human history. Our era, with its assumption of set borders, has been more sturdily peaceful. And a more peaceful international system provides a platform, never to be taken for granted, for greater moral ambitions. Almost every plan for progress will be thwarted by widespread war. No justice if no peace.⁶

I think this last point needs emphasizing. Without a reasonably peaceful world order improvements in the direction of reducing injustice are unlikely. State borders have enabled and continue to enable a reasonably peaceful world order that is not to be scoffed at or abandoned in a hurry in favor of some brave new world order.

In addition, Wenar notes how popular sovereignty is widely accepted as a norm of international law. The idea is that the people of a country should rule the country. It embodies two principles:

External self-determination: outsiders should not rule the people.

Internal self-determination: the people should rule themselves.

For Wenar, the struggle for self-determination from external forces is entwined with the struggle for self-determination

⁵ Wenar, *Blood Oil*, p. 154.

⁶ Wenar, *Blood Oil*, p. 154.

internally. He notes that “a large majority of countries have a written constitution that proclaims popular sovereignty”.⁷ We find high levels of support for democracy even in countries where it does not yet exist.⁸

Almost everyone lives in a country which has accepted one or both of two main treaties on rights as a basis for law, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights. So almost everyone has committed to these two principles:

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.⁹
2. All people may, for their own ends, freely dispose of their natural wealth and resources.¹⁰

According to the doctrine of popular resource sovereignty, the resources of a country belong to its people. Most constitutions also recognize this principle. To underscore how widely accepted these principles are Wenar points out that 95% of states are party to one of the covenants and 98% of humanity lives in a country that accepts these ideas.¹¹ Fortuitously for Wenar, then, the

⁷ Wenar, *Blood Oil*, p. 182.

⁸ For instance, in Arab countries, support ranges between 83 and 96% (Wenar, *Blood Oil*, p. 185).

⁹ Wenar, *Blood Oil*, p. 190.

¹⁰ Wenar, *Blood Oil*, p. 190.

¹¹ The idea of “the people” plays a key role here and one complication might be that it is not always clear exactly who the people are. The people of an independent country are its citizens, according to Wenar. We might well have some cases in which a people is nested in another people (such as in the cases of Quebec within Canada or Wales within Great Britain) but this presents no real difficulty for him.

principles we need for the solutions he prefers already enjoy widespread agreement.¹²

According to Wenar, four conditions must obtain for the people to rightly authorize actions in relation to their resources:

1. Information: Citizens “should be able to obtain reliable general information about who is getting the revenues from resource sales and how these are being spent.”¹³
2. Independence: The approval must be given in a way that is sufficiently free of force.
3. Deliberation: Citizens should be able to discuss the management of these resources with each other without reasonable fears of harms.
4. Dissent: Citizens should be able to dissent without risking severe costs and there should be the possibility of reasonably responsive action on expression of that dissent.

Basically, for these conditions to obtain citizens need to enjoy basic civil liberties and political rights. If they do not enjoy these rights, it is unlikely the conditions would be met and the people cannot be said to have authorized resource sales.

Of course, it is sometimes difficult to know what exactly is happening in foreign lands and how citizens view their governments. However, even in such cases it is clear that we often have sufficient information to know that the conditions are not met. He runs through the example of Saudi Arabia to

¹² It is not clear whether Wenar believes that these principles are the best of all possible principles, or rather whether this is all we can reasonably hope for here and now, but at any rate these are the principles he works with in this book.

¹³ Wenar, *Blood Oil*, pp. 227-228.

illustrate. Importantly, Saudi Arabia does not enjoy free media, citizens cannot deliberate freely in public without risks of significant consequences, and public protests are prohibited. In fact, Wenar believes that many countries in the world do not pass these tests.¹⁴

II

Towards Less Dirty Hands

According to John F Kennedy, “the purpose of foreign policy is not to provide an outlet for our own sentiments of hope or indignation. It is to shape real events in the world”.¹⁵ Similarly, Wenar’s clean trade policy aims to affect real change in our actual world and the policies aim to “end the global trade in stolen natural resources and to *support public accountability over resources everywhere*”.¹⁶

To achieve these goals he recommends that we “disengage commercially from resource-exporting countries where public accountability is absent” and “support public accountability in countries where it is weak.”¹⁷ The Clean Trade Act for which he advocates would make it illegal to purchase resources from disqualified countries. Those regime members from the disqualified countries would be barred from entering the home jurisdiction or making purchases and other transactions in it.

¹⁴ Interestingly, he believes that the US adequately meets these four conditions. Considering the role of big oil, gas, coal (and so forth) in campaign funding, one might really wonder whether politicians are as free to enact the wishes of the people as some might like to believe is the case in the US.

¹⁵ Wenar, *Blood Oil*, p. 281.

¹⁶ Wenar, *Blood Oil*, p. 281. Emphasis mine.

¹⁷ Wenar, *Blood Oil*, p. 281.

Any changes would need to be gradually implemented to allow time for improved performance. “A Clean Trade Act should instead be set to taper off engagement with ‘Not free’ exporters, and in a way that encourages them to rise out of that category”.¹⁸

Which metrics should we use to measure which countries should be disqualified? We can use those that evaluate civil liberties and political rights such as those of Transparency International or the Brookings Institution, or use an index of indices such as Freedom House to minimize bias.

As Wenar envisages the situation, the Act could be bolstered by numerous other individual initiatives such as clean trade mutual funds. A clean hands oil company index has already been developed. Students can create Clean Trade divestment campaigns, like the one on “Fossil Free”.

Some challenges to the proposals

Is this really clean trade, as the name suggests?

The details of how all of the parts of the policy machinery would work are quite complicated. For instance, he envisages setting up a Clean Hands Trust to keep trade revenue in trust while the status quo persists. Here is the idea. Say China buys 3 billion of oil from a repressive ruler such as Teodoro Obiang of Equatorial Guinea, the US government should then set up a bank account that the US fills until it reaches \$3 billion made up of duties on Chinese imports as they enter the US. This money would be held in trust until a minimally accountable government is in place. On his proposal, he believes that everyone both inside and outside the country would have an economic incentive

¹⁸ Wenar, *Blood Oil*, p. 286.

to improve governance in the affected state, in this case Equatorial Guinea.

But this cannot be the end of the matter in our complicated world in which there are multiple trading partners. Will we not have to set up further trust accounts to capture similar funds that come into our country via intermediary trades? So if China sells products not directly to the US but to (say) South Korea, Portugal, and Brazil (inter alia), which in turn sell goods to the US, should the US not be setting up accounts to capture stolen oil that finds its way into the US via these other avenues? If they do not, an obvious loophole has been created. So the US will have to act. But then just how many intermediary trades will the US be required to keep track of and capture in clean hands trusts, given its cleansing quest? It is unclear that any simple arrangement will be straightforwardly available, given these clear ways to circumvent penalties on goods made with stolen oil.

Even if we were to find a satisfactory resolution of this issue, it seems the quest for clean trade will remain elusive (and illusive). There is a background assumption that all the other property rights involved in world trade have sufficiently pristine lineage. So when we put our \$3 billion in a fund for the Equatorial Guineans, we can be confident that that money will be a gift that we can permissibly give back to its rightful owners, the Equatorial Guineans. But if the money we are putting in trust is just as tainted or belongs to others, one wonders just how well one has cleaned up one's act.

How might the concerns about other sources of taint arise? In multiple ways. One might wonder, for instance, how different is this stealing of oil revenue that rightfully belongs to people who own the oil, which undergirds oil property rights, from the origins of many other property rights or amassed wealth, which might be equally scarred by theft and injustice? There is after all a

certain amount of “stolen labor” that results from exploitative wages rampant throughout the world. Tax evasion and avoidance “frees up” much revenue for the evaders, revenue that rightfully belongs to a government to spend on agreed purposes, such as meeting highly disadvantaged citizens’ basic human needs. When those funds fail to be collected but are instead spent on other goods and services, those funds stolen from the people seep their way into circulation, similarly tainting the flow of money. And, more generally, much property possession in the world today has resulted from all manner of impure histories, including slavery, conquest and colonization.

If we are really talking about clean trade it seems that we should also be addressing other sources of grime such as those already highlighted. Relatedly, but changing to consider other sources of uncleanness related to the environment, another worry one might have with Wenar’s naming his initiative one concerning clean trade, is that oil extraction, distribution and consumption cause massive environmental damage, which cumulatively threaten the long-term viability of our planet, taking account effects on climate. Other policy options that Wenar does not consider might be able to address these related ills and therefore have stronger claims to being the ones we should support. We continue discussion of these ideas below.

Some other policy options

As Wenar points out, there are a number of categories of action one could undertake in aiming to combat the problems he highlights.

1. One might focus on combating corrupt sales, or corruption more generally, through legal reforms.

2. One could try to strengthen transparency, as NGOs such as the *Extractive Industries Transparency Initiative* or *Publish What You Pay* do.
3. One could support resource validation initiatives like certification programs, such as the Kimberley Process.
4. One could endorse commercial disengagement programs that support sanctions.
5. One could support revenue distribution programs, whereby revenue from resource sales is distributed to benefit citizens more directly, such as is the case with the Alaska Fund or with Sovereign Wealth Funds.

Wenar focuses much of his energy on initiatives such as how to manage a just disengagement scheme skillfully that would, at the same time, incentivize positive change. But one might wonder whether he has backed the right horse. Might some of these other plans of action not yield better results more efficiently? Instead of doing a detailed comparison of these five options, I want to shift our perspective to consider some other salient issues that are not part of Wenar's core focus. This will also allow us to see that there are many other possible courses of action and the policy option set we should consider is wide. It is to that project that I turn next.

Has Wenar backed the right policy? Effectiveness and Implementation Likelihood

In getting behind a particular policy we will want to know that implementing the policy is likely to be (1) adopted and implemented (or at least that it could feasibly be adopted and implemented in some reasonable time frame) and (2) effective at bringing about the desired change without compromising other

important goals. Both (1) and (2) raise a host of important issues worthy of consideration. In addition, there are sometimes tensions between (1) and (2) that affect judgments about what we should support here and now.

The responsibilities we have must track effective remedies for the problems documented. So it matters whether the proposed policies are likely to be effective at securing the goals aimed at, such as ending suffering and promoting public accountability over resources. It also matters whether they are the right ones for our current political moment, as this affects implementation possibilities.

While it is possible the proposals could be adopted and be effective under the leadership of some politicians (President Obama in his first term, perhaps), my judgment is that this agenda has about zero chance of being enacted in the US in the next 4-8 years. For instance, recently President Trump signed a \$110 billion package of trade in weapons to the Saudi Arabians, weapons that will further entrench an authoritarian regime that continues to show scant regard for human rights. Trump has made it abundantly clear through his actions and words, that he plans to prioritize trading relationships, especially ones that promote American jobs, and human rights protection is not a major policy concern for him. These sorts of trading activities pave the way for yet further erosion of respect for human rights, which is likely to exacerbate the problems we are seeking to address rather than helping us orient in the right direction.

But perhaps Wenar has a longer time frame in mind, perhaps more like a target of 15-30+ years? If this is the time horizon, we must consider also the multiple pressures concerning resource extraction and use likely to be brought to bear from various quarters. Notably, this will include stronger pressures to address the fallout of climate change, and are likely to make even more

urgent policies that incentivize innovation and growth in clean, renewable energies. Might incentivizing such policies not in fact also be a way to reduce the suffering of those who currently must endure the authoritarian regimes they do?

The growth of affordable, renewable, clean energy forms is likely to be advantageous to those in developing countries as well as those in developed ones. Focusing on developing countries (as Wenar does), such renewable energy options are likely to offer those citizens further beneficial development opportunities¹⁹ and might well reduce the power of those authoritarian regimes under which they suffer. Oil prices have already fallen dramatically over the last three years, especially as alternative energy sources have become more available. If the price of oil reduces to a level at which oil extraction becomes much less profitable, this might mean that for those authoritarian governments that are our focus, they can no longer rely on oil sales to consolidate the power they once secured through oil revenues. If they are less dependent on resource sales they will need to look for alternative ways to secure power. In other non-resource rich countries this typically takes the form of becoming more reliant on taxing citizens. Such dependence in turn requires governments to be more responsive to citizens' interests or citizens will not pay the taxes owed. In addition, relying on revenue from citizens means it becomes

¹⁹ Consider how China has benefited from taking up new manufacturing opportunities to produce solar panels. In fact, it has become the leading supplier of solar panels globally, providing many job opportunities that were not in existence prior to the uptake of this commercial opportunity. See, for instance, World Bank and Development Research Center of the State Council, and the People's Republic of China. "China 2030: Building a Modern, Harmonious, and Creative High-Income Society" *Report from the World Bank* (Washington, DC: World Bank, 2012). Available here: <https://openknowledge.worldbank.org/handle/10986/12925>.

more beneficial and rational for governments to invest in citizens' education, training, health and well-being, so that citizens can be economically productive and thus return more tax revenue to governments. And history has shown that, in general, the more a government is reliant on revenue from citizens the more accountable it needs to be in the exercise of power. The dynamics for a natural evolution towards more responsive, accountable and democratic governments might well be set in motion, the less governments can rely on oil revenue for funding their activities.

So there is a plausible story to be told about how helping wean economies off oil revenue dependence might more effectively promote accountable governments that respect and protect human rights. We are, of course, quite a far distance from abandoning oil-based economies, so it is not clear that governments have sufficient incentive to wholeheartedly embrace such alternatives now. But momentum towards this might well build in 15-30+ years. Complementary policies that contribute to such momentum or change the background conditions under which decisions are made might hasten the day in which authoritarian governments evolve in a more responsive and democratic direction. And so it may well be that these are the kinds of policies we should support, rather than those that help tidy up trade through a technological mode bound to become obsolete.

So should we be supporting policies that strengthen initiatives that promote the development and use of renewable energies? Would that be a better bet at this political moment? Does Trump's recent withdrawal from the Paris Climate Agreement not suggest that this path is equally fraught with obstacles? The response to Trump's withdrawal has been revealing. Instead of a collapse of the climate accord, we have seen an outpouring of resistance and renewed resolve from leaders across the USA and

the world. Indeed, this is at some level perfectly understandable. It is a huge advantage that the actors have strong economic incentives for staying on their current course, whatever additional motives are also in play. Many CEOs, industry leaders, mayors and local government officials have already made the decision to back increasing reliance on renewable energies and made important investments in bringing this about. Financial and policy commitments have already been made and, as the California governor, Jerry Brown, recently emphasized, there are perfectly good economic reasons to stay on their current course.²⁰ Job growth in the renewable energy sector far outpaces job growth in other areas, including many of the sectors that Trump is hoping to revive (notably coal). Far from a collapse of commitment we have witnessed a wave of solidarity in staying on track with efforts to limit global warming.

Having raised some skeptical concerns about the policy Wenar believes we ought to back, let me emphasize some areas in which I agree that his chosen scaffolding is sturdy, even if we should use it in the service of alternative construction, before returning to make some further remarks about the policy options in the final section.

Has Wenar chosen the best principles to guide institutional reform?

Wenar's guiding principles are ones of respect for popular sovereignty, property rights, human rights, the rule of law and the importance of peace. Some might wonder whether we would further the cause of a more just world using other principles. As he puts it: "Are there points on the moral horizon that we should

²⁰ Interview on CNN news channel, 1 June, 2017.

recommend humanity sail toward instead?”²¹ For instance, would a view according to which all natural resources everywhere belong to everyone lead to better results in terms of promoting justice? There certainly are philosophers who hold such alternative positions, for instance, according to which there is common ownership of the earth.

According to Wenar these positions are not preferable since they cannot counter power now. In his view such principles are not likely to gain traction in our current world. In fact invoking such principles may be counter-powerful.

So while there are many attractive ideals of justice what we need is to find “the paths that will actually achieve these worthwhile ends”.²² We must pay attention to the world as we find it now.

With the globally shared vocabulary that we have now – which includes concepts about the importance of human rights and popular sovereignty – Wenar judges that his program is more achievable. I think he is importantly right about this.²³

Has Wenar taken seriously skeptical concerns about why people would make the changes he thinks are needed?

Wenar outlines three concerns readers might have about reforming our current arrangements in the direction of justice. First, readers might worry that people are not prepared to bear

²¹ Wenar, *Blood Oil*, p. 344.

²² Wenar, *Blood Oil*, p. 350.

²³ This is not to deny that what it is possible to do now may be a highly contested notion. We need arguments to support judgments. I provide some in this paper.

costs for the sake of change. Second, there is a first mover fear: no nation will be willing to start the reform process. Third, short term thinking will always dominate, blocking the path to long-term reforms.

He offers responses to these concerns. Illustrating with the case of the Atlantic slave trade, he shows how boycotts cost thousands of Britons their jobs and about two percent of national income was sacrificed for sixty years. Another response to the cost issue is that failing to make reforms will be more costly than making reforms if we consider the costs imposed on us through hostile authoritarians, extremism, terrorism and economic crises. In response to the second and third concerns, he argues that because of the close connection between sticking to principles and our identities he is more optimistic that people are prepared to take a moral stand when injustice is grave. So good responses are available to all of these concerns.

As I signaled earlier, however, there are other more serious concerns that he fails to address, which mean the issue of sufficient motivation for change in his preferred direction lingers. I return to these issues below.

The path ahead: Towards less dirty trade, more human rights protection, and more public accountability over resources

So, to recap, first note some points of agreement. I agree with Wenar's view that we need to work within the state system and within some of the widely accepted international points of intersection. I do not side with those who would prefer to challenge popular sovereignty. We do have to work with some of the constraints we face for our policies to have traction. And there are perfectly worthwhile projects to be pursued by looking

at our current entrenched commitments and showing what is feasible within them. My central worries lie elsewhere.

In considering effectiveness and implementation issues, we notice that judgments about the policies we should support depend on our assessments of what we can do effectively here and now, given (possibly conflicting) judgments about what is achievable at our current political moment.²⁴ When we are in a position where likelihood of implementation seems at best unclear or suggests that there will be a delay, we should consider broadening our target timeframe and we should consider whether there are other policies that are likely to be better ones to support on a more extended timeframe for implementation. Here we should widen our search to consider the convergence of other agendas and the likelihood that support for those might bring about more profound desirable change. Also, given that one of Wenar's other stated goals is to bring about more human rights protection and public accountability over resource use in the future, we should also consider whether securing these goals is even more likely if we move to supporting other policies that might align better with all of these goals as well.

Given this broad collection of issues and the supporting reasons offered for them previously, it seems to me that a strong case can be marshaled for backing a set of policies that incentivize development and uptake of renewable energies. I also believe there is a compelling case to be made that supporting such policies will help Wenar better realize some of his stated objectives, such as incentivizing better protection and promotion of human rights and accountability. In fact, if he truly has in

²⁴ We also may have different assessments about what to regard as a relatively fixed point and what is subject to alteration, given our current political moment.

mind that we ought to “support public accountability over resources everywhere”,²⁵ accountability in the use of resources will require accountability to both internal and external stakeholders. We see how this is a quite familiar notion in international practice today. Consider, for instance, that with the Paris Climate Agreement each sovereign nation decides what commitments to make in our shared goal of limiting global warming. Popular sovereignty and popular resource sovereignty are fully respected on this strategy. Failure to make any commitments at all, as only three states (Syria, Nicaragua, and the USA) intend to do, means a failure of accountability to partners and stakeholders in the international community, along with a failure of accountability to citizens (for instance, in helping them discharge their local and global duties). This is a more comprehensive notion of public accountability over resources, as it more fully respects the internal and external communities who are properly owed accountability. And it is a model of accountability that Wenar should endorse given his project, core assumptions, goals, and chosen framework.

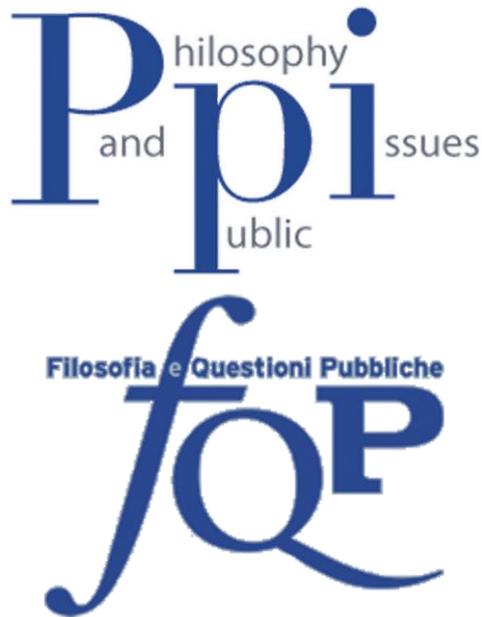
While the oil economy will not end tomorrow, it is likely to end at some point in the future. Anyone who has lived through at least the last four decades must be impressed at how the rate of technological change has accelerated and radically altered the way we live. It seems to me entirely possible that within the next forty years there will be a phasing out of an oil economy, to be replaced with one based on renewable energy options. The momentum is already growing in this direction and support for this goal can be found from multiple quarters. This is likely to increase as effects of climate change become even more profoundly visible. So a plausible case can be made that we

²⁵ Wenar, *Blood Oil*, p. 281.

should put our energies into supporting policies that will further incentivize or hasten the arrival of these more planet and people friendly options. Policies that aim to disengage with, disinvest from and in other ways dis-incentivize oil trade might well be more fertile areas for our activism and support.

The University of Auckland

SYMPOSIUM
TYRANNY, DEMOCRACY, AND ECONOMY



OF BLOOD, OIL, AND
ENGAGED POLITICAL PHILOSOPHY

BY
PIETRO MAFFETTONE

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Of Blood, Oil, and Engaged Political Philosophy

Pietro Maffettone

Leif Wenar's *Blood Oil: Tyrants, Violence, and the Rules that Run the World*¹ is an important book. It is extraordinarily well written, advancing a fascinating moral and political theory, and using it to offer clear guidance about how to change the world for the better. That guidance is sorely needed.

In this commentary, rather than reflecting on the arguments laid out in *Blood Oil*, I want to focus on what I take to be its deeper aim. My interpretive hypothesis is that *Blood Oil* offers us a different model of political philosophy itself, in the sense that it should be developed for the public, and its aim should be to contribute to moral progress by affecting politics in the real world. Thus, a political philosopher's most important addressees are fellow citizens; and the main task of political philosophy is not simply to search for truth but rather to attempt to contribute to the practical advancement of the moral ideals that constitute the core of one's philosophical vision. If such an interpretive hypothesis is correct, one of the main questions raised by *Blood Oil* concerns the standing of what I shall call engaged intellectual work.

¹ Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules that Run the World* (New York: Oxford, 2016).

I

Who is Political Philosophy For?

The philosophical foundations of *Blood Oil* are easy to ascertain, if not explicitly discussed at great length, and should not detain us too long here. Wenar's meso-theoretical conclusions are familiar: the people should rule, and their rule should be limited by the requirements of human rights. But the way in which such claims are explained, situated and defended is highly original. With his concept of 'free unity of ends', Wenar offers an overarching value that can act as a currency within his specific kind of consequentialist approach. Wenar also advances a grand theoretical narrative – of the kind rarely seen in contemporary philosophical works – concerning power and counter-power. A world with greater free unity of ends is a better world, one in which power and the divisions that can fracture the relationships between self and others are tamed. In the world as it is, we can come closer to achieving free unity of ends if we stop allowing murderous regimes to sell natural resources that do not belong to them. Free unity in our world is much better served by popular resource sovereignty.

Yet, while *Blood Oil's* foundations are relatively clear, what is less apparent – but far more intriguing – is why they are offered in the way they are. Why is the book's fascinating and controversial narrative of the human (political) condition told in such broad and bold strokes? Why so many examples about the ills of the resource curse? It would have been (more) straightforward for Wenar to spend several hundred pages detailing the foundations of his theory more explicitly, and in a manner more characteristic of the scholarly political philosophy literature – so why did he choose not proceed in that way?

One possible answer is that the greater emphasis on foundational commitments implies less ability to retain consensus regarding political proposals; thinner, less controversial foundations, as laid out in a more esoteric fashion, might allow readers to form an overlapping consensus about the kinds of policies Wenar wants to put forward. Travelling light on theory might allow one to travel very far.² But while there is undoubtedly an element of truth in this, I am not sure I find the diagnosis fully convincing. *Blood Oil* reads very ambitiously, theoretically speaking: among other things, it appeals to a new kind of consequentialism; it offers a new account of the effects of political power on human societies; it develops the idea of counter-powerful principles; it suggests new readings of the canon of political thought (notably Hobbes, Rousseau and Mill); and it develops an original genealogy of international law since the age of Christendom. Light on theory, then, it is not. Overlapping consensus on the need to fight the resource curse, one might add, does not require *Blood Oil's* illuminating political philosophy of modernity. If Wenar's one goal is to convince us that what Teodoro Obiang does in and to Equatorial Guinea is wrong and that we should stop sending him cash in return for (stolen) oil, unity theory does smack of overkill.

So, why does Wenar proceed the way he does? The answer is relatively simple: his audience. I am not Wenar's audience, or, to be more specific, what makes us all his audience is not the fact that we (you and I, here and now) are professional philosophers, but that we are all citizens of real political communities (specifically, Western political communities). Wenar is not simply doing public philosophy, he is doing philosophy addressed to the

² Aaron James, 'APA Comments on Leif Wenar's *Blood Oil*' (2016), available at: www.faculty.uci.edu/profile.cfm?faculty_id=4884 (accessed May 2017).

public. The public does not respond well to long and detailed philosophical arguments – so Wenar ensures the philosophical foundations of his work are compact, clear, easy to follow and relate to. The public does not respond well to strings of data in tables, either; they may want to know that such data exists (and Wenar never forgets to tell them where to actually find it), but they also want to know what such data means, and they can grasp this more effectively by following individual cases rather than statistical correlations.

The contrast between Rawls' *Political Liberalism*³ and Wenar's *Blood Oil* is instructive. *Political Liberalism* wants us to think about the reasonable acceptability of political principles by hypothetical citizens. *Blood Oil* is concerned about those principles being actually accepted by real persons. *Political Liberalism* is concerned with stability. It starts by assuming the existence of a liberal democratic regime, one in which popular sovereignty and a robust class of liberal rights are already guaranteed, and then invites us to consider if that kind of regime can be stable in the right way. *Political Liberalism* wants to offer the intellectual resources needed to preserve a virtuous equilibrium in idealized liberal societies. *Blood Oil* invites to take a hard look at our world as it actually is. It is a place where 'might makes right' is the practical norm governing property rights in natural resources. As Wenar tells us, popular resource sovereignty is already 'all the world's ideal'.⁴ Yet popular resource sovereignty is not an ideal to which the vast majority of human beings adhere. The world is stuck in the wrong place. *Blood Oil* wants to offer the tools required to destabilize a pernicious equilibrium in global politics.

³ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

⁴ Wenar, p. 195.

II

What is Political Philosophy For?

Blood Oil has a different purpose than the standard contribution to academic philosophy. It seems to care deeply, not just in the truth of its ideas, but that its intended audience should be able to appreciate such truth in the fullest possible way. It would be tempting to categorize this kind of approach using the relatively neat terms provided by recent discussions about the nature of political philosophy – to see *Blood Oil* as implicitly committed to a more ‘political’ political thinking, for instance, or as an antidote to the ‘moralism’ which has, according to some, plagued Anglo-American political philosophy.⁵ Wenar could be portrayed as starting from real political life, from power, its sources and how it relates to basic institutions such as law and property.

While here, too, there is an element of truth in the idea that Wenar’s work is not part of the ‘moralistic’ genre often exemplified in contemporary political philosophy, my sense is that the reasons for this are merely contingent: *Blood Oil* does take us on a less moralistic journey, but not for the reasons that the ‘new Realists’ often cite as a justification for their theoretical efforts. New Realists and, more broadly, critics of political moralism often ask the following question: What is the nature of political philosophy? Their answer is that political philosophy cannot be applied ethics, or applied moral philosophy. To see political philosophy in that way would, at best, deprive it of its

⁵ Bernard Williams, *In the Beginning Was the Deed: Moralism and Realism in Political Argument* (Princeton: Princeton University Press, 2005).

specificity, and at worst, simply reflect an implausible and impoverished understanding of what ethics and morality are.⁶

Instead, *Blood Oil* seems to ask a different question: What is political philosophy for? It is of course possible to reduce the second question to the first – that is, to think that political philosophy should be devoted to whatever it is that political philosophy is. But the two questions, while they certainly overlap, are not one and the same. Being committed to the idea that political philosophy should take into account the nature and features of real political life from the start (e.g. deep disagreement about the good and the right and the pervasive use of coercive power) does not tell us much about the purpose or function of political philosophy. The historical record seems to confirm the at least partial orthogonality of the two questions. For example, sticking to the well-known ‘Realists’, Weber and Pareto saw social scientists as committed to truth and value-neutrality with respect to the object of study, not political engagement; Machiavelli, on the other hand, worked as a high-level politician and addressed some of his intellectual efforts to a specific set of political leaders. Having a certain picture of the nature of political philosophy does not determine one’s attitude towards its function.

So, what is political philosophy and what is it for? The answer provided by *Blood Oil* seems to be that it is philosophy addressed to the public and its purpose is to shape political reality. As we have seen, knowing what political philosophy is won’t necessarily help us to assess what it is for: the extent to which, for example, political philosophers should be engaged in shaping political reality cannot be deduced by the role such reality should play in

⁶ Edward Hall and Matt Sleat, ‘Ethics, Morality, and the Case for Realist Political Theory’, *Critical Review of International Social and Political Philosophy* 20:3 (2017), pp. 278–95.

theorizing about politics. But, we can perhaps go further than this. We may conjecture that something like the opposite is true: knowing what political philosophy is for might actually provide us with clues about what it is and what it is about. The path from function to nature might be easier to follow or more fruitful than the uncertain one that leads from nature to function.

Blood Oil starts from an analysis of how power is abused and how power can be countered to achieve more free unity of ends in the world. And this is not because power is the essence of political life, but because countering power is the essence of making progress towards free unity of ends. The nature of political philosophy is, then, not something we can distil from the nature of politics, but something that follows from the desire to promote a specific picture of how human beings can live together in freedom. What Wenar gives us is a more realistic political philosophy, and yet one with moralistic underpinnings.

Wenar's approach is certainly original in many ways. Yet, allowing for some historical distance from the current professional milieu, Wenar's work follows the way of many canonical works of Western political thought. Exiled, imprisoned, tortured, publicly vilified for their ideas, their lives often threatened and sometimes taken, over the centuries the intellectual giants in the field saw their disputes about the nature of political society as anything but strictly theoretical or limited to narrow technical circles.

III

The Virtues and Perils of Engagement

Blood Oil leads us away from the shores of professional debates to the sea of political change. In doing so it forcefully re-

introduces the idea of the political philosopher as an ‘engaged intellectual’. Being an engaged intellectual is not necessarily the same as being a political agitator. Engaged intellectuals need not occupy squares – and I think it is safe to say that we won’t see Wenar burning stolen oil in front of the Saudi embassy in London any time soon. Engaged intellectual work is not a reference to a monolithic code of practice.

Can something more be said about *Blood Oil* as a specific form of engaged intellectual work? My sense is that this style of intellectually engaged political philosophy offers us something of a mapping exercise: a clear moral goal to aim towards, as well as lucid directions on how to get there starting from our current location. Topography is key: explaining the destination is one thing, but more important is what kind of terrain we will encounter between where we are and where we need to be. The cartographically inclined engaged intellectual, in other words, is in the business of consolidating reasonable hope for moral and political progress. Knowing that moral progress is possible might make us hopeful. Knowing exactly which steps are required to achieve such progress and that these steps are not out of reach politically speaking might make us feel that our hope is reasonable. In turn, the consolidation of the reasonableness of our hope for moral progress, if shared widely, might actually make the realization of such progress more likely.

Of course, engaged intellectual work can raise concerns. Such concerns have been part and parcel of the ongoing historical conversations among professional thinkers over at least the past two hundred years.⁷ My point in outlining and discussing them in

⁷ See Norberto Bobbio, ‘Intellettuai’, in *Enciclopedia del Novecento* (Rome: Treccani, 1978).

what follows is to instigate debate rather than argue for a specific or settled conclusion.

Four general criticisms have been levelled at engaged intellectual work. First, it has often been – witness Marxism in the latter half of the twentieth century – the close companion of a certain disregard for pluralism. Engaged intellectualism, that is, often tends to postulate the subject’s philosophical commitments as forming part of an unwavering, and at times outright ideological, political vision – a commitment that treats contestation and debate as at best, an obstacle towards progress, and at worst, a pernicious exercise conducted in bad faith. Second, engaged intellectualism asks its participants to shoulder a great deal of responsibility – certainly more than many professional intellectuals today are prepared to accept, and perhaps more than is reasonable to ask. To be an engaged intellectual requires philosophical depth and imagination alongside a commitment to engage with the full complexity of the world. It also necessitates close scrutiny of the development of philosophical thought with regard to how it will be received by the wider public, in a way that professional intellectuals are not necessarily accustomed to. Third, engaged intellectual work, at least when it comes to philosophy, may probe the self-understanding of the discipline about what constitutes its specificity. Engaged philosophical work, some will inevitably complain, is not really philosophy because the training and expertise that it requires are not the kind that most practicing philosophers believe to be central to the social practices of doing philosophy and becoming a philosopher. Fourth, and perhaps most important of all, being engaged might make intellectual work, and philosophical work in particular, less objective. Concentrating on affecting progress in the real world might detract from the required candour and dispassionate attitude that

many philosophers have seen as central to their attempts at discovering truth.

I believe these four concerns can, to a large degree, be mitigated. I do not mean that they are implausible; indeed, some are tangible and felt, if not intrinsically, then at least in certain contingent historical circumstances. Accordingly, we should see them as risks rather than inevitabilities, with probabilities of occurrence that are not always high or fixed; or at the very least, not as foregone conclusions.

The first concern, regarding the connection between engaged intellectual work and intellectual pluralism, is extremely complex. To answer it fully – to give, that is, a historical appraisal of the claim – would require more space than is available here. My view, then, simply stated, is that the connection between intellectual engagement and pluralism is mediated by historical context, the content of the ideals that the engaged intellectuals profess, and the choice of the specific mode of engagement. In other words, lack of concern for pluralism in intellectually engaged work is a contingent feature and one that depends on many variables; it thus cannot constitute a general argument against the approach.

Second, it cannot be denied that engaged intellectuals are required to accept more responsibility; at the very least some responsibility for affecting change in real political life. Many will feel uncomfortable with the idea. The interesting question, though, is whether their discomfort is reasonable. I am not sure. At least as far as political philosophers are concerned, their theories often speak of the virtues of engaged citizenship, of political participation, of the role civil society plays in checking the use of political power. To my knowledge, very few strands of contemporary Western political philosophy laud a conscious refusal to take political life into account. The point then is whether political philosophers should feel a special kind of

‘integrity pull’ – to provide an active example of what they so often seem to praise. This might be reinforced by the fact that political philosophers do not simply praise active citizenship: they are often the people who develop the theories in which active political participation is explained and justified as an activity to be praised in the first place.

Third is the specificity complaint. Once again, I will limit myself to the case of political philosophy. Some will claim that engaged intellectual work in political philosophy is more like sophisticated political activism than ‘real’ philosophy. To my mind, this complaint is largely misguided. Leaving aside the fact that the social practices defining what philosophy is, not to mention the variety of alternative conceptual proposals to define its scope,⁸ are in state of continuous flux, the accusation ‘this is not philosophy’ often rings hollow. Even engaged political philosophers can do more than one kind of work. To be an engaged political philosopher does not require the abandonment of technical projects or sophisticated professional discussion; it just signals that these are not the only (or perhaps not the main) point of the activity. Thus, for example, even engaged political philosophers can produce technical writing, followed by less technical explanations of their ideas aimed at connecting with a broader audience. I think it would be strange to refer to the first kind of work as philosophy, but not the second.

Furthermore, the critique seems to assume that philosophy requires well-policed boundaries methodologically speaking – that the discipline cannot accept more than one means of approaching

⁸ E.g. Wilfrid Sellars, *Science, Perception, and Reality* (London: Routledge & Kegan Paul, 1963); Bernard Williams, ‘Philosophy as a Humanistic Discipline’, *Threepenny Review* 85 (Spring 2001), pp. 8–13.

its goal and developing its tools. Clearly, many philosophers do behave as if this was the case. While I cannot hope to address this here, my sense is that their views often derive from the idea that the acceptance of significant methodological pluralism might make philosophical work less credible. That is certainly a possibility. But it could also be the case that a methodologically more pluralistic philosophical world might lead philosophers to greater focus on what philosophy can achieve than concern over what it shouldn't try to. To be sure, accepting this kind of methodological pluralism does not require one to enthusiastically endorse all of its features. It is compatible, paraphrasing Rawls, with the idea of applying the principle of toleration to philosophical methodology itself. We might dislike some ways of doing philosophy, and yet we may concede that there is reason not to banish them from the scope of the discipline.

Last, and perhaps most important, is the fourth issue concerning truth and objectivity. To be an engaged intellectual, some say, may lead us to lose some of our objectivity, and thus impair what many see as the core mission of intellectual work: to seek truth. This is, once again, an immensely difficult topic which I cannot hope to fully discuss here. In what follows I shall try to offer reasons to doubt that the tension is as stark as some seem to believe. Yet, the point of doing so, to repeat, is not to suggest that these reasons are categorical; rather, it is to start a conversation and to suggest avenues that engaged intellectuals might pursue if they wish to defuse the concerns that are often raised about their way of doing intellectual work. Perhaps the best way to describe what I put forward here is (very) sympathetic agnosticism: whilst the case for engaged intellectual work is not proven, there is much to be said for it, and some reason to doubt that the tension between engagement and truth-seeking is as strong as some conjecture.

One initial thought goes as follows. The extent to which engaged intellectual work might derail the search for truth by affecting objectivity in part depends from the amount of objectivity that non-engaged intellectuals are usually able to muster in their work. In other words, engaged intellectuals might argue that the possible loss of objectivity resulting from their engagement cannot be so significant given there isn't much objectivity to start with. Taken at face value, the critique of engaged intellectual work seems to be made against a fresco painted in excessively bright colours: the idea that intellectuals in general, and political philosophers in particular, are normally capable of being more detached from their thinking than they usually are. One possible reason why political philosophers, for example, might not be immune to deficits of objectivity relates to the sociology of the profession. Many of 'us' tend to become known precisely because we are committed to certain views on specific arguments. Arguing for those views seems, from time to time, a deliberate exercise in developing justifications for a foregone conclusion rather than a pure search for a true answer. And, to be sure, there is nothing necessarily wrong with that. Inference to the best explanation is a legitimate mode of argument; "[w]e often take some considered conviction or judgment as (provisionally) given, and then seek the combination of values or theories or principles that best explains, from a normative point of view, why we might think so-and-so".⁹

Engaged intellectuals may also press a deeper objection. Objectivity, understood as a form of complete detachment from one's arguments or values, is a chimera. Engaged intellectuals might argue that professional political philosophers, for instance,

⁹ Andrea Sangiovanni, *Humanity Without Dignity: Moral Equality, Respect, And Human Rights* (Cambridge: Harvard University Press, 2017: 8).

develop their views about moral and political principles and values in the same way that most other people do – through socialization, not sheer intellectual discovery. Socialization processes are not, of course, destiny. Yet the idea that a political philosopher might begin her work by simply asking what is the most worthy set of moral and political values and principles in the abstract seems implausible. In fact, a more engaged style of intellectual work might commend itself by allowing for much more transparency and sincerity. Some disagreements might be difficult to resolve through pure argument in part because those who are committed to those arguments find it extremely difficult to negotiate the bases of them.

This, engaged political philosophers might add, neither implies that there is no such thing as truth, nor that political philosophers cannot develop a great deal of critical distance from their initial moral and political commitments. It is rather a reminder that these commitments exist, that they often loom large, that they are seldom the object of constant and dispassionate evaluation, and thus that seeing them for what they are, and caring about their fate in the real world, might not significantly deprive engaged intellectualism of objectivity – there being rather less of it generally than we would care to admit.

Accepting the comparative justification, some may still counter that political philosophers and intellectuals more generally should try to minimize the kinds of circumstances in which their ability to dispassionately search for truth is impaired.¹⁰ This is not entirely convincing. First, it seems to presuppose that the overriding purpose of doing political philosophy and intellectual work more generally is searching for truth. But that

¹⁰ Bas van der Vossen, 'In Defense of the Ivory Tower: Why Philosophers Should Stay Out of Politics', *Philosophical Psychology* 28:7 (2015), pp. 1045–63.

seems to me to beg the question: how exactly are we supposed to know that? Second, engaged intellectualism might incur some costs, but its evaluation cannot be said to be complete without considering the potential benefits. Not to do so would entail proving not only that truth is the weightiest goal of intellectual work, but also that it should take lexicographical priority over all other goals. Finally, the strength of the objection depends in part on the stringency with which we define the idea of intellectual engagement.

If by intellectual engagement we simply mean ‘being a member of a political party, campaigning during elections, making political donations, volunteering in advocacy groups, political community organizing, putting up yard signs, displaying bumper stickers, promoting a political party at dinner parties, generally rooting for one side or another, and so on’,¹¹ then the tension between objectivity and engagement seems nigh on inescapable. If political engagement is described as a matter of taking sides, objectivity will inevitably suffer. But that is not the only account available. As we have seen, engaged intellectuals can be engaged in many different ways, not all of which seem to necessarily lead to pure partisanship; indeed, many engaged intellectuals will welcome active distrust of political parties precisely because most people, and thus most engaged intellectuals, are aware that they are not the best forums through which to dispassionately seek the truth. Engagement, even engagement with pressing social and political issues, does not necessarily entail links to the formal political system.

In short, it seems plausible to believe that the magnitude of the trade-off between engagement and objectivity is not fixed and

¹¹ Ibid.

depends on the mode of engagement one adopts. Furthermore, even accepting that some trade-off between objectivity and engagement exists, and unless one is committed to the idea that the commitment to truth is lexicographically prior to any other goal when it comes to intellectual work, then a fully considered judgement on intellectual engagement requires an assessment of its potential benefits, not just its costs.

So, what are they? Whatever one's view of the potential risks of being an engaged intellectual (and, more specifically, an engaged political philosopher), there seem to be features of the activity that speak in its favour. I shall cite, but not discuss, three.

First, philosophy and the humanities more broadly are increasingly faced with demands for ever-greater accountability concerning the use of public resources and increased tuition fees (the UK is, in this regard, a clear case in point). Whether we like it or not (and, personally, I don't – because these accountability mechanisms are usually poorly designed and end up distorting work rather than making it more accountable), justifications which make reference to such subjects 'making you a better human being' or funding 'allowing us to search for the truth' seem to have gone out of fashion. Doing engaged intellectual work might make it easier to satisfy these accountability demands; it might allow, for instance, political philosophers to make a stronger case for why philosophy is important both for the public and to the public. Even taking a purely strategic approach to one's relationship with governments' accountability procedures, engaging with them seems the only way to allow resources to steadily flow to the humanities and social sciences.

Second, and more importantly, engaged intellectual work has the potential to do some tremendous good. Clearly, the reverse is also true. But the risk seems worth taking for one simple reason: the risks connected to political engagement do not disappear if

engaged intellectuals fail to take them, they simply get transferred (whatever their magnitude in a specific case) to different people – and these other people are not necessarily better placed to manage the risks in question.

Third, over the long term, engaged intellectual work would allow more intellectually well-trained persons to be ‘in the room’ when decisions are taken.¹² This, of course, is not necessarily a recipe for better policies, but it might bring to bear some of the traditional skills associated with intellectual, and more specifically philosophical, work on the policy process.

IV

Arguing About Our Future

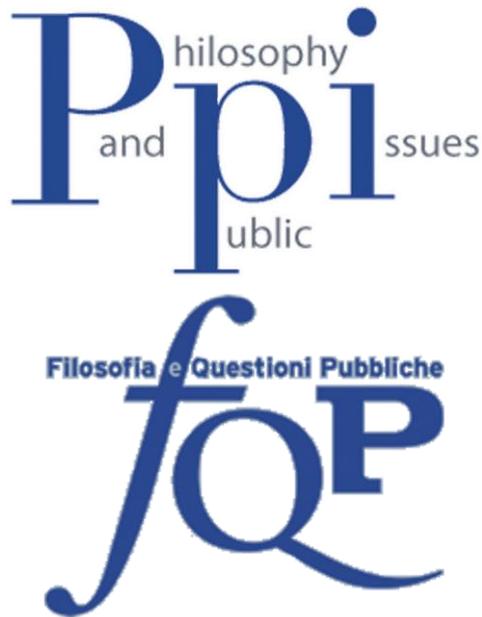
As is often the case in life, the best we can do to inspire others is to lead by example. *Blood Oil* does that. What remains to be seen is whether leading by example is the only task that engaged political philosophy can or should set for itself. *Blood Oil* has given a powerful idea to the world: to want more may seem like asking for too much. Neither am I unaware that if one does accept the centrality of engaged work, discussing the philosopher’s role might initially appear to be something akin to pontificating on the meaning of life while one’s house is burning down: perhaps intriguing to start off with, but ultimately irrelevant and unhelpful. Yet this is far from a trivial issue. With specific regard to political philosophy, engaged political thinkers surely believe that there is value in doing it in a certain way; if so,

¹² Ryan Muldoon, ‘Using Philosophy to Improve Development Policy’, talk given at the School of Government and International Affairs, Durham University, 31 May 2017.

they should be committed to the idea that more philosophers follow suit. Clearly, however, fewer political philosophers than one might hope for seem inclined to do so. Surely we should offer them reasons for why they should. And yet, if we are to accept political philosophers for what they currently are, we should address to them arguments that they can evaluate in the style they are accustomed to. The bare arguments alone might not immediately change the way political philosophers approach their discipline. Yet, coupled with the splendid example provided by *Blood Oil*, they could start to win them over.

Durham University

SYMPOSIUM
TYRANNY, DEMOCRACY, AND ECONOMY



IS ‘THE PEOPLE’ THE BEST WAY TO
MAKE OUR GLOBAL WORLD JUST?
SOME REMARKS ON
WENAR’S *BLOOD OIL*

BY
INGRID SALVATORE

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Is ‘the People’ the Best Way to Make Our Global World Just? Some Remarks on Wenar’s *Blood Oil*

Ingrid Salvatore

Blood *Oil* is a wonderful book. It is a book of philosophy, geo-politics, history, social sciences, law. While it is not a book for experts, no technical question is avoided. Rather, in the second part in particular, very sophisticated metaphysical, juridical and philosophical problems are dealt with in a simple and accessible way.

Its specific topic is a detailed analysis of the so-called ‘curse of natural resources’. This is the phenomenon according to which, contrary to what one might expect, the more a country is endowed with rare and precious mineral resources—from oil to diamonds, silicon and so on—the higher its chance of being authoritarian and dominated by a brutal dictator, and its people poor.

The book focuses on oil, as one of the most precious goods that developed and developing countries need to sustain their own economies, although a similar story could be told for many other materials.

From a theoretical point of view, one way to approach the book is to see it as offering an explanation for the curse of resources, showing how the correlation between mineral resources and political condition is not a spurious one. Appropriate mechanisms (or an appropriate theory) can be

offered to explain both why this phenomenon occurs and why, in certain circumstances, it does not; Norway being an eminent case in point (p. 11, p. 56).

When pre-existing institutional arrangements are weak, mineral resources ‘dope’ the country (p. 9), allowing an elite already in power to gain complete control over the country’s resources and complete sway over its people as a consequence. The huge amount of money acquired by the elite, through selling their country’s resources on the global market, are the means by which it holds on to power, buying either weapons and soldiers to suppress any form of rebellion or acquiescence to it; expanding the bureaucratic apparatus; reducing taxation and using money to pit one oligarchy against the other and thus ruling over the division (*divide and rule*, p. 26, see also pp. 41ff).

The most distinguishing feature of the book, however, is that once the political impact of the global market on countries endowed with mineral resources has been explained, a second, less appreciated and less understood, ‘phenomenon’ appears. This is the phenomenon of the irrelevance of popular sovereignty in the matter of resources.

The large majority of us probably consider the political situation in countries suffering from the curse of natural resources to be disastrous and unjust. We see their ‘rulers’ as authoritarian or dictatorial. We feel concern when they violate human rights. And we judge the institutions they create, if any, as unjust.

However, when it comes to resources no particular consequence follows on from this.

We believe that those populations are in some way exploited, but we continue to carry an iPhone (silicon), heat our houses (gas) and buy products that either contain oil (the possibilities are

almost endless; Wenar's partial list is disconcerting, ranging from asphalt to shampoo, aspirin to vitamins: p. xxxvi) or depend on it.

Part of this phenomenon, according to Wenar, is easily explained. The chain connecting what we own to those regimes is long and very complex (p. x). We do not know, because of this complexity, where either our mobile phone has been assembled or the components to assemble it have been produced. Even less do we know where the minerals to produce those components came from.

But this is not the essential point. Most important is the fact that we *own* our mobile phone, as we do any of the artefacts that we can *buy* (as distinct from *appropriate*) on the market. We *legally* possess them, according to laws of *our own* state (p. xxv).

The fact that we can legally possess artefacts that ultimately depend on mineral resources shows that whoever is controlling the mineral resources of a country, irrespective of the way in which they took that power, we recognise as being entitled to do that (p. 103, p. 254). It has not happened by chance. For it relies on the fact that the chain of resources ultimately rests on an implausible rule of effectiveness (p. 74), stated by Grotius in 1625 (p. 137) and enshrined in the Westphalian consensus of 1648 (p. 142). On the matter of resources, according to Wenar, it is still true that a conqueror has the right to rule conquered territory and that 'all the nations must recognize these titles to territory and property' (p. 142). On the matter of resources we continue to apply, whether explicitly or implicitly, the old and discredited notion that 'might makes right'; a principle that we nonetheless explicitly deny in both our signed international treaties and our public culture (p. 138).

The consequence of focusing on this aspect of the resources chain is that the political recipe we are being offered in *Blood Oil*,

in normative terms, does not reveal what those countries should do in the first place nor what we should try to make those countries do, but rather what *we should do in our own countries*.

This is a fundamental point, both in political and theoretical terms.

Wenar's main interest is in clarifying how, if the mineral resources necessary for producing all that we eat, wear and use *are stolen*, then our legal systems validate something that is already illegal according our own legal systems (pp. 148ff, esp. p. 150). We should not.

In critically discussing this book, the task I wish to accomplish is to raise questions; but my questions should be taken as being addressed as much to the author as to myself. I will start by describing two background aspects of the book that I found particularly helpful and original, both theoretically and politically, for defending globalisation as a process we need to govern politically, not fight against contrast.

Next, I will pose my questions. I will concentrate on the philosophical part of the book (part III, in particular). Despite the author discussing the question at length (sorry about that!), I will raise questions on the role that the people, as owners of a country's resources, are called on to play in Wenar's thesis.

I will try to describe persisting difficulties in identifying the people, the nature of the rights they are supposed to have and the necessity of this notion.

Finally, I will raise some questions on the problem of authorisation, which Wenar also discusses.

I

Globalisation Is Not the Devil (But It Can Become the Devil)

The first pages of *Blood Oil* present a series of data showing how, in the last decades, the life of people at a global level has never been better, on many fundamental aspects. Although much remains to be done, rates of maternal mortality, malnutrition and poverty have never been so low, the rate of literacy never so high (p. xii).

Thanks to globalisation, more and more people in underdeveloped countries have had the chance to enter the wider market, producing goods for the richest countries and improving their living conditions.

Yet at the same time, we in the rich countries are facing the rise of social and political movements strongly opposed to globalisation. The reflexes of national sovereignty are permeating many countries and many political movements are embracing them. Parts of these movements explicitly declare themselves to be right-wing, and from this point of view one ought not to be surprised by such revanchist resurgence. Nationalism, national sovereignty and national identity have long been part of their political patrimony, after all. What comes instead as a surprise (not to say alarm), is the fact that while the right is waving its revanchist and nationalistic slogans, we hear no alarm bells on the part of the left. What we do observe is a certain timidity in contrast with the right's slogans, not to say a certain fascination for the very same ideas¹.

¹ L. Ramiro, R. Gomez, "Radical-Left Populism during the Great Recession: Podemos and Its Competition with the Established Radical Left", *Political*

The working class, as a result of immigration and delocalisation (an aspect of globalisation) provoking its actual or feared impoverishment, is shifting from the left to the right (Brexit, Trump, Lega and Five Stars in Italy, Farage in the UK, Le Pen in France, to mention but a few). Its traditional representatives are following them.

But while the social phenomenon is perfectly understandable, the political answer is not.

Not only it is politically disarming—do we really believe that Italian workers deserve more protection than Ghanian workers? Were we not told *Workers of the World Unite!*—it is also dangerous. Masking the difficulties we face in offering political answers to globalisation (especially on the left) with general anti-globalisation attitudes, we confuse problem with solution.

By treating the problems thrown up by globalisation as being addressed specifically to us, (viz. western countries) Wenar disarms anti-globalists of two main arguments they often appeal to in order to obfuscate their difficulties and embarrassment.

One of those arguments is that controlling globalisation can be reduced simply to the West exercising political control over other countries in order to promote its own interests, by either imposing and/or supporting acquiescent authoritarian regimes (the Shah of Iran, 1941, p. 85) or exporting democracy on the wings of fighter-bombers (Iraq, p. 87; and more recently, Libya, p. 45). Nevertheless, as Wenar maintains, anti-globalists are right to reject these kinds of interventions. According to Wenar, each

Studies, 1 (suppl), 2016, pp. 108–126; L. March, "From Vanguard of the Proletariat to Vox Populi: Left-Populism as a 'Shadow' of Contemporary Socialism." *SAIS Review of International Affairs*, 1, 2007, pp. 63–77.

intervention can be seen as a phenomenal failure of Western foreign policy, creating fear and political instability for us and human disaster for them (p. 86). What anti-globalists are wrong on, is maintaining that this is all that governing globalisation *can* and *should* be.

Governing globalisation is a process that starts at home, according to Wenar. In this way he severs the connection between unjust and arbitrary intervention in other countries and global policies.

By insisting that that the burdens of governing globalisation fall to *us*, more than and ahead of others (non-western countries), Wenar also cuts the link between globalisation and the social injustice that feeds so much of anti-globalism. While Wenar is more interested in regulating the sale of resources, his idea that governing globalisation is a question of *reshaping our institutional arrangements and laws* carries with it the idea that such a reshaping will be possible and feasible only if we succeed in not offloading the main costs of globalisation onto the working class.

Regardless of whether rhetorical arguments can often sound redundant, it does not seem inappropriate here to remind politicians as well as the wealthy classes that the marriage between nationalism and the working class has already happened once before in Europe, the result of which was Fascism, Nazism (never forget: National Socialism) and the war.

Globalisation is not the devil, but it can become the devil if we do not find the appropriate political instruments for controlling it. This is not a matter of realism; it is a matter of justice.

Globalisation is a chance for poor and oppressed populations to improve their living conditions. To govern it, is to make it possible. This leads me to the second point I want to underscore.

II

Realism and Idealism: a Happy Mix

After decades of debate focused on normative political philosophy, a recent trend in political philosophy is to criticise ideal, normative theories on realist bases.² Realists do not consider the ideal approach a promising way to understand politics and political philosophy.³

Much of what there is about this new realistic trend is directly and explicitly connected to the positivist philosophy of law: the direct target of some Wenar's passages in *Blood Oil* (Kelsen, p. 212; Holmes, p. 209).

The work of the old philosophers of law was to surgically sever law (the guarantor of political order) from morality, avoiding any possible contamination of the latter by the first. Seen as part of metaphysics, morality could only be the source of intractable conflicts, making political order impossible.⁴

Conflict is also the prominent question of the new realism and that by virtue of which ideal approaches are criticised.⁵ The ideal approach, according to realists, far from severing politics (law) and morality, appears to take for granted that conflicts can always be harmonised in a systematic theory of justice. But there is no

² For an examination of realism, see C. Burelli, "Verso una concezione realista della politica: Conflitto, ordine e realismo politico", *Biblioteca della Libertà*, 51, 2016, pp. 23–47.

³ B. Williams, *In the Beginning was the Deed: Realism and Moralism in Political Argument*, Princeton University Press, 2005.

⁴ H. Kelsen, *Introduction to the Problems of Legal Theory*, Translated by B. Litchewski Paulson and S. Paulson, Clarendon Press, 1992.

⁵ B. Williams, *In the Beginning was the Deed: Realism and Moralism in Political Argument*, Princeton University Press, 2005.

guarantee, according to realists, that people share or can come to share a sufficient portion of their values to attain a just social order, and there are many reasons to believe that conflict is a much more pervasive affair.⁶

Given the requirement for the absolute moral neutrality of the state, the realist view of international relationships comes as no surprise. States are not supposed to base their reciprocal recognition on anything moral. National interests must be the only guide for politicians in their relations with other nations (p. 209, p. 212).

Because Wenar's book proposes not an ordered world but a just one, it is clearly a denial of such a claim. But it is the way the rejection takes place that is interesting. From a philosophical perspective, it helps to spread light on the opposition between realism and the idealist position.

As with the old ones, the new realists, assuming that the problem of order is the eminent political problem, are interested in distinguishing the question of social order from that of a just social order. In a way, they accuse idealists of assuming an ideal world as a model for the actual one, despite the fact that the actual world continually takes care to demonstrate that it does not resemble the ideal. I do not understand exactly what distinguishes the problem of order from the problem of just order. To say that the question of attaining political order is an important one is to say that we attribute to it some value, some special importance. But if social order is a value on which we can agree, despite our differences, what makes us confident that other values cannot be shared in the same way?

⁶ S. Hampshire, *Justice is conflict*, Princeton University Press, 2001; J. Waldron, *Law and disagreement*, Oxford University Press, 1999.

I suspect that what really supports the realists' intuition is the old anti-foundationalist critique, according to which an idealist is somebody looking for something that cannot be found: a self-evident solution immediately approved by all as soon as it is presented to their reason.⁷

Wenar's book is a step in the opposite direction, suggesting a 'realist' approach to applying our ideals⁸. This is not because, as my students believe, morality demands high standards, but, well, you know, we are only poor human beings. It is because the things to which we attribute importance are many and of many different kinds. The problem is not distinguishing order from just order, but finding an appropriate way to structure those different values in a system: more a matter of reflective equilibrium than of foundation. In designing our just, global world we must be careful to evaluate the consequences of what we do, taking multiple considerations into account and where 'no single principle can be pressed too hard' (p. 276).

In its 'realist' defence of an ideal perspective, *Blood Oil* offers the instruments we need for creating a just, global world, giving politics its own role in reducing uncertainty, reciprocal mistrust and injustice (p. 276).

Now, I turn to my more critical comments.

⁷ S. Hampshire, op. cit.

⁸ See L. Valentini, "Ideal vs. Non-ideal Theory: A Conceptual Map", *Philosophy Compass*, 7, 2012, pp. 654–664.

III

We, the People

One prominent aspect of *Blood Oil*, that we have seen above, is that it is addressed more to *us* (western countries) than to *them* (non-western ones). We are warned to open our eyes to the fact that it is something that *we* do that makes it possible for us to legally own much of what contributes to an enjoyable life.

Per se, it is not legal, for there is vice in the first step of the long chain through which we are connected to the raw materials. They are stolen from the people by the elites in power, and we recognise them as being stolen in the treaties we have signed.

By buying either the products or the raw material they are made of, we act as though the elite in power—no matter how they obtained that power, whether the population has any control over what they do with the products/materials or how they spend the money they gain—was entitled to *appropriate* them. But a government can *legitimately* appropriate nothing of a country, given that the only owner of a given territory (and therefore its substrates) that our treaties recognise is the people (p. 191). A government can be *authorised* by its people to act in such and such way. But in the absence of anything that counts as authorisation (p. 225), selling raw materials is selling stolen goods.

What the people's authorisation implies is a question in itself that Wenar discusses at length. I will say something on this in the next section. What I want to focus on first is the idea of the people as owners of the territories they occupy.

That 'of the people' is not an uncontroversial notion, as Wenar is quite aware (p. 214). For my part, I must confess that I am not happy at all to sit on the side of the old colonialists, greeting with scepticism the idea that the people must decide on

their own destiny (p. 197), or the side of the elites speaking ‘in the Weberian language of power’ (p. 211). Still, this is where I am. Who is the people is my problem.

At first sight, it can appear that a people, for Wenar, is what is constituted when a group of individuals creates an independent state, enjoying self-government (p. 198). In the beautiful passage dedicated to *America’s Declaration of Independence* (1775)—‘the shot heard “round the world”’ (p. 174)—Wenar clearly signals the relevance of independence for the constitution of a people, suggesting how, with that shot, America started ‘the biggest political transition in the twentieth century’; a transition that was ‘not only political but also conceptual and identity-altering’ (p. 180).

And he adds: ‘the question of “who is the people” was harder before the independence of the colonies’ (p. 198), but is easily solved after that. ‘People’ is anything but ‘the people of an independent country’, which, in turn, is anything but ‘all of its citizens’ (p. 198).

I am not sure how to interpret the connection between independence and the constitution of a people. It sounds strange to say that Egyptians did not exist before they became independent or that the Kurds are not a people (what they claim to be) because they do not have an independent state. I am sure that Wenar would deny both statements, but I do not see exactly how.

My guess is that Wenar is following two different approaches here. On one side, to see the creation of a state as being that which constitutes a people can count on a very strong tradition of political philosophy. The entire contractualist tradition, in fact, conceives of a people as the union of a group of individuals in a state.

What characterises contractualism, however, is the fact that before a state gets formed we live in a state of nature. This can be inhabited by individuals (Hobbes), or by little 'natural' groups (Rousseau); either way, never by one people. It can only be constituted by covenant. Nor is it by chance. Whether for different reasons (Hobbes differs from Kant, Locke and Rousseau), the contractualist theorists *dissolve* the very idea of a people as a previously given entity, in order to remove legitimacy from any antecedent source of authority based on tradition.

Can independence be a substitute for the state of nature?

Let us consider who the individuals and groups were who declared themselves the people of the United States. As is well known, they were English, French, Dutch and Spanish, who moved to the US to colonise that immense territory, conducting a devastating war against a previously existing society (viz. a previously existing people), until that society was almost destroyed. It was when they started their fight for independence that they declared themselves the people of the United States.

What I am trying to suggest with this example, is that once we put aside the abstract idea of the state of nature and look at peoples under an empirical light, what we find are never individuals giving rise to society out of nowhere. They have always been there. And if this is true, conquerors of a territory are nothing but invaders.

Wenar, on the other side, seems to be fully aware of this. Once they gain their independence, Wenar says, 'citizens become united into a single actor with its own unique biography—the wars and the dark times, the great reforms and the mistake—and so achieve an active mutual identity' (p. 185).

But I am not sure how we should take such an argument. If it is just an idealisation, then we can only attribute sense to it by

randomly picking a moment in the history of a territory and declaring it as *the* moment in which a people came into existence. A fiction, nonetheless.

If it is not an idealisation but instead aspires to be an empirical thesis, then more has to be said on the matter. To put it in a very undramatic way, many people in southern Italy still believe that the so-called ‘Italian Unification’ (1861!) was nothing but a war of conquest and that the north currently oppresses the south.

At the risk of appearing like an out-of-date nostalgic for the seventies, it seems to me that according to Wenar’s logic, the only owners of the entire territory of the United States are the Native Americans.

But actually, this is not a real answer either.

For if we start to look for a more substantive criterion, we would never find the real owner of a country. Any population currently occupying a territory has probably been an occupier before, subjugating or destroying some antecedent population who was quite possibly an occupier in turn. After all, the Cro-Magnon destroyed the Neanderthal to occupy their environment.

So, even if we did eventually succeed in establishing a criterion for identifying peoples, a further problem arises with their property rights.

True, as Wenar tells us, these are stated in many national constitutions and laws (pp. 194-195). In this sense they are legal rights, enjoying the same status (whatever that is) as my right not to be killed crossing the road. This, however, does not solve all the problems.

In considering a possible conflict between popular resource sovereignty and environmental questions, Wenar clarifies that ‘to

affirm popular resource sovereignty is not to affirm absolute sovereign rights' (p. 206).

As popular sovereignty finds a limit in human rights, popular resource sovereignty finds a limit in preserving the environment. But limiting rights is not to say that there are no rights (p. 207).

This is correct. But it also offers the possibility of seeing things in a different light. We could say, for instance, that it is not for a people to own pieces of the earth but for humanity to possess it as whole. I am not claiming that this is true. I just do not see why a humanity right should not be as reasonable as a peoples' right.

For all its vagueness, I prefer humanity over peoples, which takes me to my last point on peoples.

One of the problems Wenar deals with in defending popular sovereignty, is the ontological one. Peoples are groups, of course. But what exactly are groups?

In a sense, birds are a group. They are all the things that fall under the concept of bird, as it is defined by zoology. We can say that they are a natural kind, if we want.

Peoples are hardly a natural kind. There is no genetic difference between the French and New Zealanders, Congolese and Eskimos. Not being a natural kind, peoples are then a political or juridical kind, identified not by natural sciences but by social ones.

But this is not easy.

When peoples come into being, the question that arises is not how can *we* (the social scientist) classify *them*, but how would *they* classify *themselves*. It is a question of identity. Any formal, external,

criterion for classifying them would not suffice. It would not say what it is *for them* to be that people⁹.

This is the cause of the endless we/they debates we are facing all over the world. *They* have to respect *our* laws, not because the laws are *possibly* just, but because they are *ours*. They are part of our culture and identity and *they* threaten them.

In a sense, humanity too is a group. And I cannot claim that it is such a clear concept either. There has been endless debate on whether a foetus should be considered a human being or not. Bioethics never ceases to throw up new and challenging cases. But putting aside these important, yet here peripheral, cases, we can classify human beings independently of identity questions. This is why I prefer humanity rather than peoples.

IV

Authorising: Consent and Brainwashing. What makes the distinction?

My final section is devoted to questions of authorisation (p. 222ff.). Here my aim is not to criticise Wenar, but to push him into saying something more on the question.

As owners of their country's resources, people do not need to administer them directly and, usually, they do not. They authorise somebody else to do it by establishing a relation with representatives of their interests (p. 215).

⁹ Ch. Taylor, "Interpretation and the Sciences of Man", in *Philosophy and the Human Sciences*, Philosophical Papers 2, Cambridge University Press, 1985, pp. 15–57. Taylor's position seems to be particularly congenial to Wenar, given his idea of people as a single actor, with its unique biography, achieving mutual identity, op cit., p. 185.

The question of authorisation is a very important one for politics and political philosophy, beyond the management of a country's resources. While challenged by both philosophical schools and political movements asking for direct democracy (the Italian Five Stars Movement, to give an example), I agree with Wenar in considering it especially relevant, and not only on the matter of resources¹⁰.

One salient aspect of authorisation, however, is that once it takes place citizens need not be continuously involved in state administration. On the matter of resources, this means that citizens 'need not to be involved in, or even aware of, the management' of the resources they own (p. 223).

As a consequence, the people only implicitly authorise many of a government's acts. Governments do not consult them on each of their decisions. This is fine, according to Wenar.

Implicit consent can be consent, of course, but only after the precise conditions under which implicit consent counts as consent have been established (p. 227). The necessity of being particularly careful with this is obvious. Once implicit consent is recognised, we must expect governments of any kind to claim that their deeds and decisions have the implicit assent of the people: people could protest, after all, but they didn't (p. 227).

But as Wenar clarifies, by not protesting people are not tacitly assenting, unless they enjoy 'bare-bones civil liberties and basic political rights' (p. 228).

The oppressed people of Equatorial Guinea, for example, could not possibly have been authorizing Obiang to sell off their oil. The citizens

¹⁰ J. S. Fishkin, *When the People Speak. Deliberative Democracy and Public Consultation*, Oxford University Press, 2009.

could not find out what sales Obiang was doing or where the money was going, and they've been either unable to protest his sales or too fearful to try (p. 229).

For people's silence to count as consent, Wenar states: 1) there must be some system in place that will reliably alert citizens [...] of mismanagement of their resources; 2) consent has not to be extorted, either by force or by "brain-washing"; 3) discussion has to be possible among citizens on the government's decisions; 4) expression of dissent has to be possible "without risking severe costs" (p. 228).

I have nothing to say on Wenar's criteria for what qualifies as tacit consent. They seem to me perfectly right and intuitive. What I am interested in, rather, is how we should take them. To clarify what I have in mind, I turn to the difficult case of Saudi Arabia, which Wenar addresses (p. 232).

Saudi Arabia is a difficult case because, as we learn from Wenar, although in certain respects it 'certainly does not seem to meet minimal conditions for popular resources sovereignty' (p. 232), other aspects could make you wonder whether the Saudis just 'like things, more or less, as they are' (p. 233).

Saudi Arabia is 'quite explicitly' an absolute monarchy (p. 233). It is among the few countries that 'has never signed the treaties that would commit it to popular sovereignty' (p. 233). The country could be characterised in terms of 'the apparent devotion of the majority of Saudis to a very conservative interpretation of Islam, the segregation and inequality of sexes, and the radiation of public authority into areas of lives that in the West would be protected as private' (p. 233).

While the Saudis have created a secret police and informant network 'that the East German *Stasi* would have admired', they have waived 'taxes', subsidised 'food and housing', provided 'free

education and health care’ and created ‘many pointless government jobs for Saudis who would otherwise be unemployed’ (p. 234).

The reason why I am interested in Saudi Arabia does not relate to our being unable to say anything about the Saudi Arabians because we do not know or understand enough of their political situation¹¹. On this, I certainly agree with Wenar: ‘Saudi Arabia is not Mars’ (p. 232). Rather, it has to do with the very idea of consent (and the correlated ideas of freedom and oppression).

In contrast with the residents of Guinea, Saudi Arabians are not ‘too fearful’ to protest. They do not suffer physically. They are not poor. Nor do they seem to feel any special anxiety for their freedom. In addition, ‘many Saudis, especially in relatively progressive urban centres like Jeddah, would scoff at the idea that they had been brain-washed by the state’ (p. 235).

Yet, according to Wenar, despite appearances to the contrary, ‘Saudis citizens do not signal [with their silence] valid tacit approval of the regime’s management of the country’s resources’ (p. 235).

How should we take such a statement?

Let me start by observing that while Wenar is trying to clarify the notion of implicit consent, it is actually the notion of consent itself that is at stake. We take consent, and not only implicit consent, as a qualified notion.

¹¹ Wenar is here referring to M. Walzer, “The Moral Standing of States: A Response to Four Critics”, *Philosophy & Public Affairs*, 3, 1980, pp. 209–29. See also, M. Walzer, *Thick and Thin, Moral Argument at Home and Abroad*, University of Notre Dame Press, 1996.

The reason why we do not ask the consent of young people for their education is because we think they are not in a position to be able to evaluate what is the best for them. Wenar appropriation of the medical definition of consent for shaping his own criteria just reinforces this impression (p. 226). Whether this also causes endless problems in bioethics and elsewhere, for anything to count as consent people must be able to understand what they are consenting to, have sufficient information, be able to understand the consequence of their choices and have not been forced or manipulated: essentially, the four criteria Wenar gives for implicit consent. In the absence of these conditions, it is not just implicit consent but all consent that collapses. People saying nothing or people saying ‘I consent’ changes nothing.

The problem with taking consent as a qualified notion, however, is that it sounds as though whereas affirming your consent is the most important thing, it is me who establishes when you are consenting and when not. This is the source of many accusations directed at a consensualist model.

According to critics, what happens is that when we are displaced by values or institutional arrangements of societies that are different from our own, we do not understand; and instead of taking the difference seriously, we assume that their people cannot possibly accept them, constructing conditions for consent that, coincidentally, lead exactly to the outcome we feel more comfortable with.

To avoid such a trap, consensualists can easily be tempted to proceed in the following way. By assuming freedom as a property of human beings, a (transcendental) product of their reason, they see freedom as something individuals want and that social institutions can respect or violate. Once the yearning for freedom has been stated, societies that do not conform to it cannot possibly have consent. But this is not a very promising way to

resist the objection. It can make sense when people suffer under inhumane regimes, but it becomes more difficult in different circumstances. This is what makes Saudi Arabia a difficult case.

My suggestion is that we should do the opposite, endorsing the accusation of our critics. Contrary to what critics maintain is the problem with consent, it is not that we are struck by or do not understand how institutions and regimes different from our own can obtain consent. On the contrary, it is that we understand perfectly the why and the how of their consent.

People can consent for a huge number of reasons. There is nothing mysterious in this.

There are perfectly clear explanations for people genuinely consenting to a dictator: lack of an alternative being a quite appropriate one. There is nothing mysterious in people consenting to work for two dollars per hour, producing trousers that command big money in the marketplace.

As Wenar suggests, we do not just know that there is widespread hatred for Western people in non-Western countries (p 270); we know *why*. We know the causes that produced it, the mistakes we made and the manipulations by the other side.

We do not need to deny that there is anything real in many Middle Eastern young people consenting to the various mullahs pushing them into terrorism. There is, and we know (or can come to know) why.

What if this is the case?

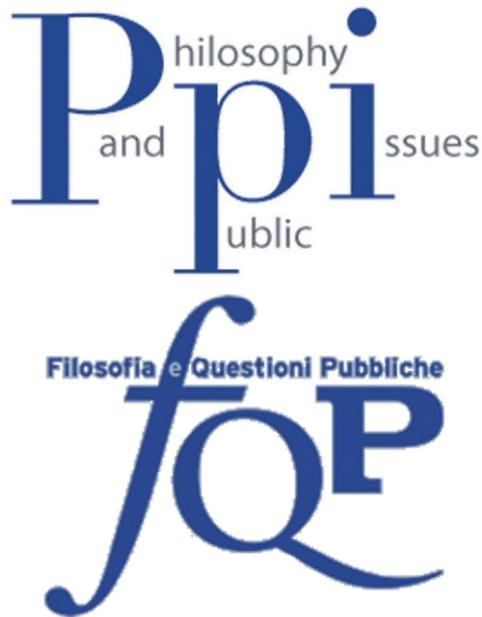
Luckily for me, I have almost run out of space, so I can only outline what I have in mind. I think that what is essential about a theory of justice (be it national or global) is that it is the very way in which our preferences and beliefs come to be formed in our social systems that must be the object of our judgment.

Institutions shape our life so deeply and from the very beginning, that starting from who we are now is not enough.

This certainly forces us toward more substantive theories of good, but this seems to me the only way.

University of Salerno

SYMPOSIUM
TYRANNY, DEMOCRACY, AND ECONOMY



CLEAN TRADE, ANTI-PATERNALISM
AND RESOURCES' ENTITLEMENT

BY
VALENTINA GENTILE

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Clean Trade, Anti-Paternalism and Resources' Entitlement

Valentina Gentile

In standard debates on global justice, the sovereignty of peoples and moral concerns about a fair distribution of natural resources at the global level seem to be mutually exclusive. Proponents of peoples' sovereignty generally insist on the significance of peoples' free control over their resources. They argue that a global distributive regime should be very limited insofar as people living within a specific territory have a legitimate claim to it and to their own resources.

Different versions of this argument have been articulated by statist scholars. For statism, a particular institutional setting – the liberal one – is the legitimate source of political authority. In general, the statist ideal of people's sovereignty over their resources is founded on two features: the acceptance of peoples' freedom to choose and support their institutional settings, and a commitment to anti-paternalism. One cannot tell free peoples what to do about their own resources within their own boundaries. Distributive concerns arise insofar as free institutions are not able to compensate for some structural conditions that are disadvantageous, arbitrary from the moral point of view (e.g. social lottery), and unjustly affect a proportion of the population.¹ From a statist point of view, although the distribution of natural resources across the world is a matter of luck, except in marginal

¹ John Rawls, *A Theory of Justice* (Cambridge MA: Harvard University Press 1971).

cases, well-functioning institutions are able to prevent that resource scarcity translating into poverty. There is therefore no need for a global distributive principle.² Another version of this argument insists on the problem of coercion. States' coercive actions, which should be justified on the basis of people's ideal consent to them, require principles of fair distribution to compensate for the inequalities they create; yet, because natural resources are distributed across the world by chance and their distribution does not depend on any global coercive power, any such global distributive principle would be seen a form of coercion without consent.³

In contrast, supporters of what we might call 'moral cosmopolitanism' argue that a global principle of equality should compensate for the unjust distribution of natural resources across the world.⁴ Proponents of this view generally consider the global distribution of resources as a matter of brute luck; some sort of compensation is morally required for those who live in unfortunate conditions.⁵ For some 'moral cosmopolitans', then, Western countries and international institutions owe a responsibility towards the global poor: the global market is in fact

² John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press 1999).

³ Thomas Nagel, "The problem of global justice," *Philosophy and Public Affairs* 33(2005), pp. 113–47.

⁴ Charles Beitz, "Cosmopolitanism and global justice," *Journal of Ethics* 9 (2005), pp 11–27; Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press 1979); Brian Barry, "Humanity and Justice in Global Perspective," in J. Pennock and J. Chapman (eds.), *Nomos XXIV: Ethics, Economics and the Law* (New York: New York University Press 1982), pp. 219–52; Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press 2002).

⁵ Charles Beitz, *Political Theory and International Relations*; Brian Barry, "Humanity and Justice in Global Perspective."

the product of historical injustices that have created a fundamental asymmetry between a wealthy West and the rest of the world.⁶ Different views of 'moral cosmopolitanism' insist, however, on an alleged *global ownership* of natural resources, which should transcend state boundaries. As Beitz suggests, all moral cosmopolitans share the idea 'that every human being has a global stature as the ultimate unit of moral concern.'⁷ In this view, domestic and global justice exist on a continuum: natural resources belong to humanity and global institutions should be responsible for their fair distribution.

Is it possible to reconcile traditional liberal commitments to both peoples' freedom and anti-paternalism, typical of a statist view, with our moral concerns regarding a global economic system that is deeply unjust? In his fascinating book, *Blood Oil*, Wenar argues that the solution is so close to us that we fail to recognise it. To counter most of the injustices that characterise the global market, especially those caused by allegedly unjust *resource ownership* and control, we should appeal to and defend the principle of peoples' sovereignty (or 'popular sovereignty', as Wenar puts it). This principle holds that 'it is the people, not power, that should control a country's natural assets.'⁸ Wenar's analysis primarily focuses on 'resource-cursed' countries in Africa, Asia and Latin America where 'resource-enriched regimes oppress their populations.'⁹ Responding to the situations there, he argues, necessitates redressing popular sovereignty at a global level. According to Wenar, it is possible to break the vicious cycle

⁶ Thomas Pogge, *World Poverty and Human Rights*.

⁷ Charles Beitz, "Cosmopolitanism and global justice," p. 17; Thomas Pogge, *World Poverty and Human Rights*, p. 169.

⁸ Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules That Run the World* (New York: Oxford University Press 2016), p. xliv.

⁹ *Ibid.*

of illicit power and burdened economies in these countries if liberal societies support their own values within their own boundaries. The Clean Trade scheme enables consumers, states and corporations to trade *globally* in accordance with a political principle which is widely supported by international law and by liberal thought – that is, the respect of peoples’ sovereignty.

In this paper, I examine whether Wenar succeeds in providing a theory able to accommodate the statist commitment to peoples’ sovereignty without dismissing the cosmopolitan concern regarding a just global market. Contextualising *Blood Oil* within the broader debate on global justice and resource ownership, I focus on some specific aspects of Wenar’s Clean Trade scheme and explain why it comes to quite radical conclusions. Yet, if these conclusions are taken seriously, Clean Trade seems too demanding from the point of view of a statist account of justice. For cosmopolitans, too, the lack of normative justification for any alleged national resource sovereignty might weaken this position, especially for those who might oppose arguments to justify different forms of resource ownership. I will therefore discuss two problems with Wenar’s theory. First, I will show that, in spite of its statist premises, Wenar’s radical conclusions hardly pass the test of anti-paternalism. Is the Clean Trade scheme able to accommodate the demand of pluralism emerging in the Society of Peoples? Second, I focus on an issue that is neglected in Wenar’s book and which refers directly to the normative basis of resources ownership. I argue that this is a crucial issue, especially in contexts where the traditional idea of national sovereignty is contested, which often occurs in resource-cursed societies.

I

Resource Ownership and the Global Clean Trade Scheme

Natural resources are distributed very unequally across the globe. Some countries are placed in territories with abundant

natural wealth (mineral, gas, oil, water, etc.), while others face a serious problem of resource scarcity and may even lack access to resources essential to human survival, such as clean water. Such an unfair distribution of resources is morally arbitrary: one should not be held responsible for being born in richly resourced Norway or poor and resource-scarce Malawi – this is obviously a matter of mere luck.¹⁰ To compensate for such injustices, a ‘resource distribution principle’¹¹ or forms of international taxation that extend the idea of *ownership* of natural resources to the global level seem to be needed.¹² Yet, the abundance of one or more natural resources is not always a guarantee of wealth and prosperity. Rawls famously argued that, apart from rare cases, it is the political culture of a society, rather than its resources, which makes the difference in terms of economic outcomes and development.¹³ This is clear if we compare a relatively resource-poor country, like Japan, with a resource-rich country, like Argentina: the economic performance of the former is greater than that of the latter regardless of the differences in resource distribution. In most cases, poverty is not in fact caused by scarcity of resources – in other words, it is not a matter of resource *ownership*; rather it is the product of several concurring elements including ‘the political culture, the political virtues and civil society of the country, its members’ probity and industriousness, their capacity for innovation, and much else.’¹⁴

There is, however, another way to look at the problem of resource ownership which circumvents the thorny empirical

¹⁰ Charles Beitz, “Cosmopolitanism and global justice;” Brian Barry, “Humanity and Justice in Global Perspective.”

¹¹ Charles Beitz, *Political Theory and International Relations*, p. 141.

¹² Brian Barry, “Humanity and Justice in Global Perspective.”

¹³ John Rawls, *The Law of Peoples*.

¹⁴ *Ibid.*, p. 108.

question of whether poverty is caused by an unequal distribution of resources among countries.¹⁵ One could argue that the reason for the weakness of some countries' economies – especially those in Central and West Africa – is rooted in certain unjust historical conditions of power (e.g. colonialism) that have been perpetuated by the global market, its institutions and rules. Thus, although an unequal distribution of resources may be unimportant from the point of view of justice, the issue of resources *ownership* and particularly the historical ways in which resources came under the control of certain groups in certain countries is still morally relevant from the point of view of justice.¹⁶

In *Blood Oil*, Wenar argues that a *just* account of resource *ownership*, which says that resources should belong to sovereign peoples, should be secured globally via a Clean Trade scheme.¹⁷ For Wenar, the problem of several burdened states in Africa (e.g. Equatorial Guinea) is in fact the huge quantities of certain resources they own: not only do their economies suffer from being structurally dependent on these certain resources' extraction and trade, but these activities are done under the strict control of authoritarian or violent regimes. In these contexts, low levels of economic performance are often related to institutional failure and increased likelihood of civil conflict. Economists and political scientists call this phenomenon the 'resource curse': it is the paradox that countries with an abundance of certain resources also show less propensity for economic development, democratic stability and institutional transparency.¹⁸ For Wenar, certain unjust power conditions, which characterise the global

¹⁵ Chris Armstrong, *Global Distributive Justice: An Introduction* (London: Routledge 2012), p. 144.

¹⁶ Thomas Pogge, *World Poverty and Human Rights*; Leif Wenar, *Blood Oil*.

¹⁷ Leif Wenar, *Blood Oil*.

¹⁸ *Ibid.*, p. xv.

market, affect the *ownership* of the resources at the local level in a specific way. Global trade rules and institutions presuppose an international legal system based on 'effectiveness', premised on the idea that 'whoever can seize it can sell it'. This principle 'puts consumers into business with some of the world's most violent and divisive men.'¹⁹ It is therefore necessary to break the vicious cycle that links consumers and corporations in the West in supporting the illicit power of criminals or dictators who have control over the resources in these countries. Wenar suggests that the well-known principle of *popular sovereignty* over natural resources should be redressed and the trade with these criminals should be prohibited via strict control over such trades with foreign countries and corporations.

Blood Oil is sophisticated, well-argued and pathbreaking. It combines a rich empirical enquiry with a deep and convincing philosophical reflection. In addition, by avoiding the traditional discussion of whether resource *ownership* is a matter of brute luck, the argument seems to overcome some of the limits of the standard debate between statist and moral cosmopolitans regarding resource ownership and distributive justice. Wenar's theory fits the desiderata of the statist account insofar as it seems to maintain a strong commitment to both peoples' freedom and anti-paternalism. In the introduction, Wenar clarifies that his proposal asks Westerners to 'enforce their own principles, within their own borders on their own soil.'²⁰ In this sense, the proposal seems to embrace the pluralist premises of a statist account, à la Rawls, and to respect the Law of Peoples; Wenar reminds us that 'it is not for us to tell the Saudis or the Nigerians how to run their own countries (these are matters for the Saudis or the Nigerians

¹⁹ Ibid., p. 76.

²⁰ Ibid., p. xxvii.

to decide).²¹ But Wenar's proposal is also meant to accommodate our moral concerns regarding global inequality: it suggests a strategy for redressing the historical injustices on which the global market rests.

The proposal outlined in *Blood Oil*, however, is quite radical: it does not call for any sort of taxation or compensation for the *unjust* global trade; rather, it calls for the cessation of *illegitimate* resource trades and suggests a significant change in the global trade structure.²² Wenar admits that several concerns might be raised by his view. He lists three main objections: its high costs, the 'first-mover fear' and the 'short-termism.'²³ In light of these objections, are there still good reasons for supporting the Clean Trade scheme? First, although reform might be very costly, Wenar reminds us that a Clean Trade system would provide compensations in terms of the increased trust of Western countries.²⁴ Thus, the long-term advantages will help in overcoming most of the short-term difficulties, including the 'first-mover fear'. What Wenar calls 'short-termism' is undeniably a major obstacle for his theory. He provides a series of arguments for supporting a long-term perspective. In line with his theory's anti-paternalist premises, Wenar is particularly concerned with securing good reasons for consumers and peoples in the West to invest in the Clean Trade agreement. The theory is, in fact, directed to consumers, states and corporations who share some moral premises regarding issues of basic justice and want their conduct to conform accordingly.

Yet, is this enough to guarantee that the Clean Trade scheme will solve the problems in resource-cursed societies? What is its

²¹ Ibid.

²² On this point, see also Chris Armstrong, *Global Distributive Justice*, p. 150

²³ Leif Wenar, *Blood Oil*, p. 268 ff.

²⁴ Ibid., p. 271.

actual impact on these societies? The next sections will address these questions. I will show that when we consider the point of view of (non-Western) resource-cursed societies, the theory might ultimately reveal itself to be inconsistent with its anti-paternalist and pluralist premises.

II

Anti-Paternalism and the Clean Trade Scheme: Between Globalism and Pluralism

It is far less clear what the impact of Wenar's proposal would be on the global poor and, especially, on resource-cursed societies. One could say that one important 'short-term' consequence of the Clean Trade scheme would be the exclusion from the global market of precisely those burdened societies who see their sovereign rights over their resources constantly violated by authoritarian and violent regimes.²⁵ For these societies, the 'short-term' consequences on living standards and poverty might make their condition of life worse than it was prior to the establishment of a Clean Trade framework.

Paradoxically, then, a proposal that is aimed at redressing the problems with peoples' sovereignty of resources has the effect of excluding precisely these resource-cursed peoples – at least in the short term. Would it be feasible to expect these peoples to prioritise a principle – popular sovereignty – over such basic needs as secure access to food and water? Wenar might respond that this should not be a problem since the *long-term* consequences will be the incentivisation of good governance, which would certainly improve their life conditions.²⁶ One could still object,

²⁵ Chris Armstrong, *Global Distributive Justice*, p. 150.

²⁶ Leif Wenar, *Blood Oil*, pp. 324-325.

however, that we are asking peoples to accept and endorse principles – popular sovereignty and property rights– that, albeit widely shared by the international society, might still be perceived by them as being imposed upon them from ‘outside’. This is an objection not only to the feasibility of the Clean Trade scheme but also to its desirability, from the point of view of a statist account of justice.

Wenar himself would certainly agree that peoples’ political problems are for them to solve.²⁷ He would be reluctant to ask these societies to share and endorse a principle of political justice that is imposed on them from the outside. Yet, he seems to want to convince us that long-term gains will prevail over short-term shortcomings if resource-cursed societies are able to embrace the principles supported by the Clean Trade scheme - those of popular sovereignty and individual property rights. These principles will enable them to become liberal-democratic regimes and full participants of the global Clean Trade framework. This seems to suggest that the long-term goal of the theory is for us in the West to trade (globally) only with liberal societies.

If my understanding of Wenar’s argument is correct, there appears to be a problem of consistency between the envisaged implementation of the Clean Trade scheme and its anti-paternalist premises. In my view, Wenar fails to recognise the form of pluralism that characterises the international Society of Peoples. Famously, in his theory Rawls proposes an account of institutional decency aimed at including non-liberal, non-democratic constitutional republics (which he calls ‘decent hierarchical societies’) in – what he calls - the Society of Peoples.²⁸ Rawls does not provide a clear definition of decency,

²⁷ *Ibid.*, p. 324.

²⁸ John Rawls, *The Law of Peoples*.

but suggests that it might be understood as a kind of weak reasonability.²⁹ Rawls's notion of 'decent peoples', however, has important implications for the idea of international toleration, for the kind of pluralism that characterises the international society will inevitably be reflected in a diversity of political forms, some of which may be non-liberal democracies but which still satisfy the conditions that justify their recognition as 'equal participating members in good standing of the Society of Peoples.'³⁰

The ideas of decency and decent political orders significantly influence Rawls's overall statist design and, especially, his minimal account of human rights and the contested idea of duty of assistance. In the ideal theory, Rawls is resistant to the idea that liberal peoples' foreign policy could be based on incentives aimed at forcing other people to become more liberal. He defends a strong principle of self-determination that enables decent peoples 'to decide their future for themselves.'³¹ In this vein, Rawls assumes that liberal and decent peoples should be committed to the protection of a very restricted group of what he calls 'urgent rights' that include 'freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide.'³² In the non-ideal part of the theory, then, Rawls clarifies how the Society of Peoples should react to special situations that occur in the international arena. He distinguishes two further kinds of societies: an 'outlaw state', which is either internally repressive (violating the human rights of its citizens) or externally aggressive, and a 'burdened society', which is characterized by what Rawls calls 'unfavourable

²⁹ *Ibid.*, p. 67.

³⁰ *Ibid.*, p. 59.

³¹ *Ibid.*, p. 85.

³² *Ibid.*, p. 79.

conditions.³³ Liberal peoples are not asked to tolerate the former, as they have a right to self-defence, but they ought not to intervene in the internal affairs of the latter. In this specific case, Rawls envisages a special duty of assistance which is aimed at supporting these societies: ‘peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.’³⁴ Although the extent of this duty is debatable, Rawls suggests that it should be limited to the goal of developing ‘decent’ institutions that protect the basic human rights of its members.

Wenar doesn’t expressly relate his Clean Trade to Rawls’s duty of assistance, but it is possible to recognise important similarities between the two theories, especially with regard to their commitment to anti-paternalism. Although it is not clear whether ‘resource cursed societies’ would fall under the Rawls’s category of ‘burdened societies’ or ‘outlaw states’, my impression is that they could be both. Wenar distinguishes between failing states ‘where public accountability is absent’ from those societies where institutional weakness prevents them from becoming full liberal societies.³⁵ He therefore argues that by adopting the policies envisaged by the Clean Trade western societies ‘will disengage commercially from resource-exporting countries where public accountability is absent and will support public accountability in countries where it is weak.’ He adds that this will not create a problem for political legitimacy since a Clean Trade scheme will not be pursued by military intervention or via a direct action in these countries; it should rather be based on a soft-policy based on incentives that will enable these peoples to take democratic

³³ Ibid., p. 105ff.

³⁴ Ibid., p. 37.

³⁵ Leif Wenar, *Blood Oil*, p. 281.

control of their resources.³⁶ Yet, the Clean Trade scheme is far more demanding than Rawls's duty of assistance. It asks not only that these societies develop institutions that support basic human rights and peace – say, decent institutions. They ought also to show a strong commitment to the liberal principles of popular sovereignty and property rights.

Consider for example the case of Venezuela, a constitutional republic committed to basic human rights and to the principle of popular sovereignty of its resources, which is a pillar of *chavismo*. In addition, this regime is committed to a certain degree of political pluralism. In the presidential elections of 2013 following the death of Hugo Chávez, Nicolás Maduro defeated his more moderate opponent, Henrique Capriles, by a slim margin (only 1.5 per cent). This result was deeply contested by the opposition and threw into doubt the legitimacy of the whole democratic process (McCarthy and McCoy, 2013).³⁷ Contrast this with President Chávez's openness to political pluralism and the system of cooperative relationships that he built with his moderate opponents between 2006 and 2012.³⁸ This attitude strengthened Chávez's political legitimacy and popular support³⁹ – yet his

³⁶ *Ibid.*, p. 282.

³⁷ Michael McCarthy and Jennifer McCoy “The limits of legacy: the post-Chávez challenge and electoral legitimacy,” *Americas Quarterly*, Summer 2013, available at <http://www.americasquarterly.org/the-limits-of-legacy-post-chavez-challenge> (accessed 29 October 2017).

³⁸ According to McCarty and McCoy (*ibid.*), ‘From 2006 to 2012, the government and the opposition established a working relationship that effectively bolstered the electoral system’s legitimacy, as demonstrated by public opinion polls and record-high citizen participation rates.’

³⁹ Jones Owen, ‘Hugo Chavez proves you can lead a progressive, popular government that says no to neo-liberalism,’ *Independent*, 8 October 2012, available at <http://www.independent.co.uk/voices/comment/hugo-chavez->

political regime relied on a robust refusal of the liberal principle of property rights: in line with its socialist premises, *chavismo* is based on the idea that national resources belong to the population and the government has the right to revoke the ownership of private firms or individuals in the name of the Venezuelan people. The refusal of the liberal principle of property rights is perhaps the most problematic aspect of *chavismo* from a liberal-democratic perspective. But should liberal peoples thus support a foreign policy aimed at incentivising Venezuelan people to become more liberal and to accept and support a political liberal regime committed to liberal property rights? My impression is that Venezuela, at least under Chávez, falls within the category of a decent society and so liberal peoples ought to tolerate this regime in the Society of Peoples. Not so in Wenar's eyes: in his view, Venezuela represents one specific case of resource-cursed society where public accountability is still weak. He argues that 'citizens are at least partly free – they have some, but not enough, power over their natural assets.'⁴⁰ In his view, the consequence of adopting the Clean Trade scheme would be the transition of Venezuela from a partial to a full liberal democratic regime, which is committed to the protection of individual property rights.

III

Resource Pwnership and Popular Sovereignty: What Has Been Left Out?

A further issue with Wenar's theory refers directly to the normative basis of *resource ownership*. More specifically, it is not clear on what grounds Wenar justifies the very principle of

proves-you-can-lead-a-progressive-popular-government-that-says-no-to-neo-liberalism-8202738.html (accessed 17 October 2017).

⁴⁰ Leif Wenar, *Blood Oil*, p. 321.

popular sovereignty of resources. In line with modern statist tradition, Wenar seems to take for granted that states should own their natural resources by virtue of their jurisdiction over a specific territory.⁴¹ In this respect, he still relies on the standard view, widely supported by international norms and covenants,⁴² according to which the modern state can properly work only if it wields control over its territory. However, as Wenar puts it, this control should be based not on the principle of 'effectiveness' but on the democratic principle of popular sovereignty. But why should a specific group, say a national population, own the rights over a territory's wealth? *Blood Oil* leaves this question unanswered.

Yet, the issue of who is entitled to the control over and/or benefit from natural resources is very controversial, and the impetus for significant political conflicts in several countries. We are constantly confronted with situations in which the principle of popular sovereignty is opposed to the claims of other groups, such as indigenous peoples or national and ethnic minorities. Consider, for example, the case of Brazil. In this country, a conflict arises between the claims of the urban poor who argue that their poverty should be addressed through the exploitation of the resources of the Amazon, and the claims of Amazonian indigenous tribes who want to maintain control over the resources of their region.⁴³ This kind of problem might become

⁴¹A.J. Simmons, "On the Territorial Rights of States," *Philosophical Issues: Social, Political and Legal Philosophy*, 11 (2001), pp. 300–326.

⁴² See for instance the 1933 Montevideo Convention on the Rights and Duties of States (art. 1), according to which states are defined 'as entities with fixed territories (and permanent populations) under government control and with the capacity to enter into relations with other states'.

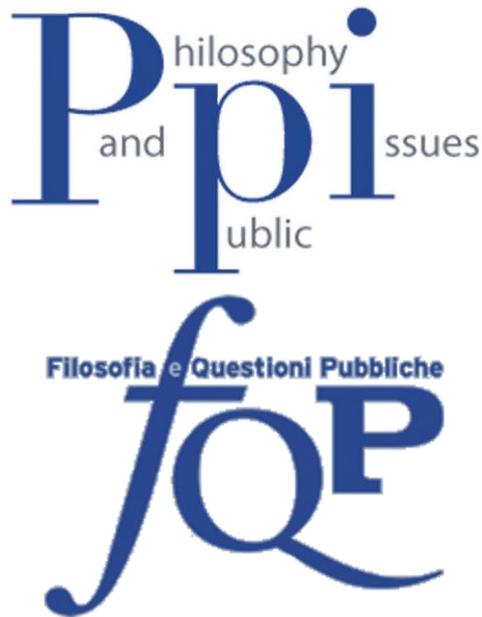
⁴³ On this case see also Margaret Moore, "Natural resources, territorial rights and global distributive justice," *Political Theory* 40(2012), pp. 84–107.

even more pressing in resource-cursed societies where competing claims for the control of territory and resources among different ethnic groups are very often at the root of civil strife and violence. An appeal to the principle of popular sovereignty seems unlikely to be of much help in adjudicating the dispute between these groups. We would need a normative theory to justify why a certain group has a sovereign right over a territory and its resources.

In conclusion, while we saw above that the Clean Trade scheme seems to ask ‘too much’ from the point of view of an anti-paternalist account of justice, here it seems that the theory is leaving out ‘too much’ in terms of the normative basis of national resource ownership. Wenar may respond to this that, again, it is not for ‘us’ to adjudicate these sorts of disputes; we should leave it to the Brazilians to decide. Yet, my impression is that by implementing the Clean Trade rules with the Brazilian government, we would in fact be presupposing a defence of a certain idea of national resource ownership that is not adequately justified by the theory.

Luis University

SYMPOSIUM
TYRANNY, DEMOCRACY, AND ECONOMY



A REPLY TO COMMENTS

BY
LEIF WENAR

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A Reply to Comments

Leif Wenar

I am grateful to the four commentators for their thoughtful and challenging essays. In these responses, I will begin with issues of principle and move toward policy, leaving reflections on engaged political philosophy for the end.

Ingrid Salvatore is exactly right that governing globalization should start with cleaning up at home—in the countries where most of us who read this journal live. It is our laws and policies that drive the resource curse abroad, by favoring the powerful over the people. Let me choose just one of hundreds of examples to illustrate what is at stake, which concerns five mining deals between an Anglo-Swiss corporation and the government of the Democratic Republic of the Congo (DRC). According to Kofi Annan’s Africa Progress Panel, over two years

the DRC lost at least US\$1.36 billion in revenues from the underpricing of mining assets that were sold to offshore companies. Total losses from the five deals reviewed were equivalent to almost double the combined annual budget for health and education in 2012. This is in a country that ranks lowest on the UN’s Human Development Index, with some of the world’s worst malnutrition, its sixth highest child mortality rate, and over 7 million children out of school...

Across the five deals, assets were sold on average at one-sixth of their estimated commercial market value. Assets valued in total at US\$1.63 billion were sold to offshore companies for US\$275 million. The beneficial ownership structure of the companies concerned is unknown. Offshore companies were able to secure very high profits from the onward sale of concession rights. The average rate of return

across the five deals examined was 512 per cent, rising to 980 per cent in one deal.

What we see is officials of a very poor country selling off the country's minerals for a small fraction of their value, through secret structures to a corporation which then makes massive profits selling those minerals on. The Congolese officials (and shadowy intermediaries to the deals) appear to have substantially increased their personal wealth through these deals. Were it not for determined investigative work by the NGO Global Witness, and the leak of the Paradise Papers, the details of this corporation's business in the Congo would likely still be hidden.¹

This corporation, as all of our corporations, is entirely a creature of laws we make. Our laws create these corporations, sustain them, and define the rules they must follow when doing business abroad. More, our laws define what will count as corrupt dealings abroad, and (just as important) our own officials decide how vigorously to enforce the anti-corruption laws on our books. Still more, our laws define the rules for banking secrecy, tax havens and corporate anonymity that allow these corporations to drain assets out of poor countries, aided by a pinstripe army of bankers, lawyers and accountants that help to bring the assets back legally into our own countries.

As one walks through a city like London or New York, one frequently passes luxury apartments and stately houses bought with assets stripped from resource-rich countries. These dwelling-places are mostly empty; their purpose is only incidentally to be

¹ For the continuing story of Glencore, Dan Gertler, and mineral contracts in the DRC see the Global Witness website, <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/congo-secret-sales/>.

places to live. Rather, these are essentially safe deposit boxes, to store ill-gotten gains and ensure that they will now be secured by the rule of law of a rich country. These are particularly visible manifestations of the unjust transfer of wealth from poorer countries to ours, facilitated by our own laws, policies, officials and professionals.

Natural resources like oil, metals and gems can bring riches. Unless those who exploit them are held to account, these resources can fuel corruption, conflict and oppression. The most reliable source of accountability over resources in our world is the most obvious one—the people of the country where the resources are located. Greater public accountability has been the shared goal of all of the reforms around natural resources in the past two decades, and countries with greater public accountability have been less resource-cursed. An empowered citizenry is the best check on the power of resources, and what our countries can do to empower those citizens is to affirm the rights of all peoples in our laws public statements.

The resource curse is bad for nearly everyone in the world, except those who make a profit from it. Corruption, conflict, oppression, regional instability, refugee crises, energy price volatility, the spread of extremism around the world—if greater public accountability over resources can help to alleviate all of these problems, would anyone still doubt its value? Valentina Gentile does, because she does not yet see a ‘normative theory’ in *Blood Oil* that grounds all peoples’ rights to their resources. Popular resource sovereignty might do so much good. And yet, Gentile wonders, what could be its ‘normative justification’?

Blood Oil is explicitly based in consequentialist theory. The principle of Popular Resource Sovereignty (PRS) is the principle for control over resources whose realization will, among the available options, make the world a better place—more peaceful,

more stable, and more just. The lives of millions of real people who exist right now will improve, and humanity will move a step closer to its perfect state of the free unity. This is the same form of argument, consequentialist, that Bentham made for the abolition of the slave trade, that Mill made for the liberation of women, and that Sidgwick made for the obligation to keep one's promises. Toward the end of this essay I speculate why some academics today no longer recognize this traditional form of argument as philosophy at all.

A welcome opportunity to illustrate consequentialist political philosophy works is opened by Salvatore, who queries the nature of peoples within the principle of PRS. Salvatore wonders, after all, *what is* a people? She searches for answers through history back to Neanderthal times, through the ontology of natural kinds, to the self-identifications of individuals today. She finds many different conceptions of 'a people,' none of them very plausible for ascribing control over resources. She expresses puzzlement about the nature of peoples, and falls back on cosmopolitanism. Yet the consequentialist political philosopher looks for the answer to the question of the nature of peoples in one domain that Salvatore overlooks: the domain of politics.

The questions of politics are about power, and the answers to its questions must be addressed to the agent who is meant to act on them. The question of who should have power over the world's resources can only be addressed to humanity as a whole, and humanity—even as represented by the 'international community' of state officials—is an agent with quite limited capabilities. This agent is not able to reach conclusions about which 'peoples' should control resources by, say, surveying history from Neanderthal times. The only answer about the nature of peoples fit for use today is that it is the *citizens* of independent countries who should be sovereign over their land.

This is the answer that humanity has spent centuries developing—intellectually, institutionally, and affectively—and it is an answer it now grasps quite well. Why would a philosopher want to derange the world’s politics by insisting on a different approach (say, one that tracks ‘historically just claims’) which is beyond humanity’s capacities to work through? Like each of us, humanity needs ideas that it can use to live better, starting today.²

Perhaps this might appear too pragmatic. It might seem that a philosopher must grasp the true essence of a thing before allowing it into her political theory. Until we know what a people *really* is, we cannot ascribe any power to peoples. Yet note that such essentialist stubbornness would delegitimize the entire international system as well. For there is just as much ambiguity in the concept of ‘a state’ as in the concept of ‘a people.’ If we demur from any appeal to how ‘state’ is understood in actual practice, we would then likely conclude that *states* can have no authority, at least until their ontology is resolved. (‘Fine with me,’ a cosmopolitan may be tempted to say—and yet, then, what *really* is a person?)

The principle of PRS says that the citizens of a country are sovereign over its natural resources, and that these resources start out as the people’s property. The book recommends that all countries use this principle, instead of effectiveness, as the basis of their own laws, to determine from whom it will be legal to buy resources. Salvatore queries the application of this principle to one country that many readers may be especially interested in.

² This is argued in *Blood Oil*, pp. 197-200. The book here also affirms that subnational and cross-national groups like the Navajo and the Kurds are peoples, who hold rights against national peoples according to international norms that should be further strengthened.

Salvatore is especially interested in Saudi Arabia, whose regime is marked out in *Blood Oil* as a regime that other countries should not be buying oil from, at least not under current conditions. Salvatore's position on Saudi Arabia is rather this: the problem there is that citizens *do* consent to what the regime is doing—the real problem is in the formation of their preferences and beliefs, which lead them to give that consent.

Salvatore and I agree that, in the long run, how social systems form identities is crucial.³ One point where we may disagree is about conditions in Saudi Arabia. 'Saudi Arabians are not 'too fearful' to protest,' she writes, 'Nor do they seem to feel any special anxiety for their freedom.' I wonder how she can be so confident.

In August 2017, ten Nobel Peace Laureates, including Archbishop Desmond Tutu, Shirin Ebadi, and Lech Walesa, appealed to the Saudi king and crown prince to stay the execution of 14 protesters who have been sentenced to death, after what the Laureates say were unjust mass trials.⁴ One juvenile defendant's crime was to set up a social media page called 'The Liberals' and invite people to join in demonstrations. (This defendant claims that his confessions to further charges involving in violence were extracted under torture.) The sentence passed down on this young protester is that he will be beheaded, and that his body then be publicly displayed in a crucified position. Does this look like a regime trying to frighten potential protesters? If Salvatore is correct that most Saudis already feel no desire to protest, then such sentences seem literally to be overkill.

³ See *Blood Oil*, pp. 353-55.

⁴ <http://bit.ly/2Br2Fhc>

The Laureates' letter is only one report of hundreds, stretching back over decades, from reliable observers, saying that Saudis have faced serious consequences when they have tried to resist the regime. Indeed, while he was consolidating his power in 2017, Mohammad bin Salman had his political opponents even within the royal family and business elite imprisoned (and perhaps tortured).⁵ And the Saudi regime has been deploying powerful surveillance and decryption software (sold to it by a British company) to monitor electronic communications within the country.⁶ Salvatore could tell us more about why she is so confident that citizens are not too fearful to protest in a country such as this one.

The argument of *Blood Oil* is that we need not speculate on whether the average Saudi actually fears or loves the regime. We don't have to reach the question of how many Saudi citizens endorse how the regime is managing their resources—for example, whether they approve of Mohammad bin Salman spending more than a billion dollars of the country's oil revenues on luxuries for himself and a friend, while imposing austerity cuts on the population.⁷ These kinds of facts may be hard for

⁵ Middle East Eye, 'Exclusive: Senior Saudi Figures Tortured and Beaten in Purge,' November 9, 2017. <http://bit.ly/2BqUd1w>

⁶ The Guardian, 'BAE 'Secretly Sold Mass Surveillance Technology to Repressive Regimes',' June 15, 2017. <http://bit.ly/2B1DmkY>

⁷ On one day in 2015, Mohammad bin Salman spent \$550 million in a one-day impulse purchase of a super-yacht for himself. In 2017, he used intermediaries to buy a da Vinci painting for \$450 million—apparently as a gift for his autocratic mentor in the Emirates. To give a sense of the scale of personal spending here, with this money the prince could instead have bought 5000 Lamborghinis, keeping 2700 for himself and giving 2300 to his friend. See New York Times, 'Rise of Saudi Prince Shatters Decades of Royal Tradition,' October 15, 2016, <http://nyti.ms/2BqS4TG>; Wall Street Journal, 'Da Vinci's 'Salvator Mundi' is Likely a Gift From Saudi Arabia to the U.A.E.,' December

outsiders to glean, especially in a country where the regime allows no significant polling of ordinary people.

What outsiders can say with confidence is that Saudis are not in conditions to give valid consent to how the regime is managing their resources. This is clear from facts like those above and described in *Blood Oil*. It is very difficult for an average citizen to discover what the Saudi regime is doing with the oil money, because it is one of the most opaque states in the world. Citizens who do try to discuss and protest the regime's decisions would reasonably fear swift and dire consequences. Saudis cannot be giving valid consent to what the regime is doing, because they cannot rationally say 'no' to it.

Now Salvatore appears to want to give up on the possibility of valid consent as a standard of judgment, and instead turn our moral attention to 'the very way in which our preferences and beliefs come to be formed in our social systems.' One concern motivating her to make this switch appears to be that outsiders may 'rig' the conditions needed for valid consent, so that they can come to the conclusions about foreigners that they wanted to reach anyway. If this is her concern, then we may be unmoved. After all, the basic conditions for valid consent (adequate information, independent judgment, opportunity to deliberate, possible dissent) are not controversial, even cross-culturally. And if outsiders 'rigging' their judgments to get the results they want is the problem, how much more is it a problem when they judge what are good conditions for preference- and belief-formation in foreign countries?

8, 2017, <http://on.wsj.com/2BsGw2f>. The prince also appears recently to have bought the most expensive residence in the world for \$300 million. New York Times, 'World's Most Expensive Home? Another Bauble for a Saudi Prince,' December 16, 2017, <http://nyti.ms/2pqidwK>.

In the end, I wonder whether Salvatore will want to give up on valid consent as a standard of judgment that is useful in law, even regarding people from foreign lands with different customs. To test this, we can imagine a trial in Italy of a man who comes from a distant land. This man has been arrested in Rome, and charged with being the leader of a human trafficking gang. The court hears that this man has often beaten and perhaps even killed women who he has brought into the country in years past. He has taken the passports and money of the foreign women who now work in his Italian sweatshop. He has threatened to turn these women over to the police if they try to escape. And he has threatened their families back home should they make trouble for him or the gang.

As a legal matter, what verdict would Salvatore recommend? What if the women stayed silent when asked about their situation? Or what if some women said in court that they weren't scared, and endorsed what the accused had done for them? Should the law then require the court to dismiss the charge of forced labor, perhaps allowing the judge to lament the conditions under which foreigners form their preferences and beliefs?

I put this as a question to Salvatore about Italian law, because Italian law must also decide tomorrow whether it will be legal for Italians to buy Saudi oil from the Saudi regime. My view is that Italian law should not give up on a standard of possible valid consent—not only regarding labor rights, but regarding the principle that the valid consent of property owners is needed before it is legal to buy their property.

The principle of PRS says that the natural resources of a country are the people's property—they start out in the people's hands. No one should be able to sell off those resources beyond the possible authorization of citizens. Yet, as *Blood Oil* explains, so long as officials are accountable to those citizens, they can

rightly pass laws saying that the resources will be managed by a state-owned company. Or that the resources will be privatized. Or that they will be left in the ground.

So Gentile misconstrues PRS when she writes that it requires ‘liberal property rights,’ by which she means ‘individual property rights.’ PRS only requires that resources start out as the property of the people, and that further decisions about their property be accountable to the people. Gentile voices a more common concern, however, when she worries that in changing our laws to respect PRS we might be perceived as imposing this principle on other peoples ‘from outside.’ She draws on Rawls’s work to worry that in respecting this principle we would be, in effect, forcing foreign peoples to be more liberal.

Many in the West have instant negative reactions to the idea of forcing democracy on foreign countries, and rightly so. Recent military interventions for this end—especially by the United States and United Kingdom—have been immoral and costly failures. Yet PRS is not a principle that the West has tried to force on developing countries. In fact, if anything, here history shows the opposite dynamic.

PRS is a principle that countries in the global South have insisted on, against opposition from the Western powers. These countries pressed this principle to protect their self-determination against the rapacious Western companies that were intent on plundering their resources. ‘The oil is ours!’ was the famous slogan of Brazil’s resistance to the exploitation of Western oil companies, and as Chile argued when it introduced the pivotal resolution in the United Nations, ‘Self-determination would be an illusion in a country whose natural resources were controlled by another State, and it would be farcical to give a country political

freedom while leaving ownership of its resources in foreign hands.⁸

PRS is a principle of the global South; we in the West should make it our principle too. And it is a pleasure to report that the global South is again taking the lead for PRS. In November 2017, Brazil became the first country in the world to introduce Clean Trade legislation. This Clean Trade bill would require Brazil to import no more oil from states where the minimal conditions for PRS are not met, and would require Brazil's national oil company to sign no new contracts for oil production with regimes in these states.⁹ Brazil, the fifth largest country in the world, a leader of the global South—if Brazil can take a stand for the rights of all peoples, why can't Norway? Why can't the United Kingdom? Why can't the United States?

Gillian Brock is rightly curious about the practical implementation of Clean Trade, and especially of the Clean Hands Trusts that are meant to enforce the property rights of all peoples to their natural resources. Brock's concern is that the Clean Hands Trusts would become overly complex, requiring an implementing country to keep track of and act on too many global transactions. If the US sets up a Clean Hands Trust after China buys \$3 billion of oil from the autocrat of Equatorial Guinea, say, won't the US then have to track not only direct Chinese imports but also imports from countries to which China might have sold 'tainted' goods?

For technical reasons, Brock's specific concerns may be moot; for example, all the money needed to fill a Clean Hands Trust

⁸ See Nico Schrivjer, *Sovereignty over Natural Resources* (Cambridge: Cambridge University Press, 1997), p. 52.

⁹ Brazil, Federal Senate Bill Number 460.

could be collected from US-China direct trade. The more significant point here is about how political actors plan their strategy to bring about political change. Strategy is a defining feature of all successful campaigns—even of the most ‘principled’ campaigns in history.

As readers of *Blood Oil* know, I find the British campaign to abolish the slave trade particularly inspiring. Most of those who led and joined this campaign were motivated by their Christian faith and the horrors of their country’s ungodly trade in human beings. Cotton, tobacco, sugar—all around them in their everyday lives, these women and men saw goods imported from the slave colonies, grown and harvested with misery and cruelty. Still, the campaigners against the slave trade did not boycott slave-grown cotton, or slave-grown tobacco. Nor did they launch a campaign to stop the building of slave ships.

The campaigners only launched a public boycott of a single commodity: slave sugar. Why? Because a boycott of all slave-grown goods would have been ‘too big an ask’ for Britain at the time. And the campaigners chose sugar because it was enjoyed by nearly everyone—while its sweetness could be poignantly contrasted to the blood and suffering involved in its production. In short, the campaigners focused on a campaign that they (correctly) thought could succeed in moving public opinion and so the political consensus. Wise strategy is like this—it is acting in ways most likely to bring about principled change.

Today, most people already support the idea that ‘a country belongs to its people.’ So the task is to show people that implementing this principle will produce real benefits at reasonable costs. A Clean Trade bill like the one introduced in Brazil is the first priority—it announces that a country will be getting out of business with bad actors abroad while it expresses support for the rights of peoples everywhere. If Clean Hands

Trusts, or even the prospect of them, will be useful for persuading China to join, then these trusts may also be deployed. The Public Accountability Spectrum is also available for setting a national posture toward resource exporters that are above the line of minimal accountability.¹⁰

The ultimate goal of the British reformers was not that Britons stopped using slave-grown sugar, or slave-grown cotton or tobacco. Their ultimate goal was the end of slavery. Clean Trade offers its array of policies, toward the goal of ending the suffering, injustice and divisions that flow from trade in natural resources. Both are principled campaigns to reshape political reality, and in the end it is the reality that matters.

Now Brock rightly says that if we are worried about our complicity in injustice abroad, PRS cannot be our only concern. As she says, exploitation steals labor from workers, corporate tax avoidance steals revenues from government, and all within a historical context where the evils of slavery, conquest and colonialism remain largely unrectified. ‘If we are really talking about clean trade,’ as she pithily puts it, ‘it seems that we should also be addressing other sources of grime.’

Brock and I agree completely that we should be addressing all of these issues, and more. The injustices around us are so sanguinary that we will never be able to pronounce ourselves ‘clean,’ but we may be able to scrape off some layers of the moral taint that accretes as we live in this wicked world. Brock’s own illuminating work on tax justice, on institutional corruption, on brain drain, on global health and more shows where progress might be made, and I cannot believe that she would say we

¹⁰ *Blood Oil*, *.

should not push for progress on any of these until we can succeed in all of them.

Clean Trade offers a unique opportunity among all of our options. The principle of effectiveness for resources that nations now use drives major dysfunctions worldwide: oppression, war, instability, corruption, terrorism and more. No one defends effectiveness as a moral principle, while most find PRS obviously right. Moreover, PRS is already proven to work—this is not just some philosopher’s fancy. And reforms to increase PRS work on the causes of injustice and instability, not just (as with policies on say, brain drain) on the effects. These reforms go to the root of many problems—and progress on problems like civil wars and terrorism will free up the international agenda, making other global problems easier to solve. These reforms are fundamental, far-reaching, and feasible right now.

The only campaign with the same kind of potential to benefit humanity is the one that Brock highlights, which is the campaign on climate change. Climate change is a massive problem, and (as with many other issues) effectiveness for resources is likely making the problem worse and progress harder. For example, when one surveys the countries that today least regulate climate-damaging practices like gas flaring, one finds that these are countries where the governments are less accountable to their people.¹¹ And as Michael Ross and Eric Voeten have shown, the more oil a country exports, the less likely it is to join

¹¹ Ed Crooks, ‘Gas Wasted By Oil Industry Flaring On The Rise,’ *Financial Times* December 13, 2016 (flared gas per barrel list).

intergovernmental organizations such as those that coordinate action on climate.¹²

So progress on ending effectiveness will likely help progress on climate change. And yet, Brock asks, should we instead directly support policies that promote the development and use of renewable energies? Given a choice between Clean Trade and climate, isn't the latter more urgent? The answer is that both are urgent, and these campaigns can support each other. I will only say a few words on this here, as I will address these synergies more fully elsewhere.

In speaking about climate, it's crucial to get a sense of today's energy realities and trajectory. Today humanity still satisfies a full 85% of its energy consumption with fossil fuels. (Oil is 33%, coal is 28%, gas is 24%). In spite of all the press they get, all the renewables together today provide a mere 3%.¹³ The world is built around burning fossils in a hundred different ways, and rebuilding this structure will be enormously costly.

More, the mainstream projections are predicting what will seem to most a painfully slow energy transition. To take one mainstream projection as an example, China is predicted to be a global leader in renewables but also to increase its oil demand by 30-100%, even between 2015 and 2025. The poor Asian countries, like China and India, will account for more than half of the world's energy consumption growth through 2040. And though renewables grow faster than any other source (2.3% a

¹² Michael Ross and Eric Voeten, 'Oil And International Cooperation,' *International Studies Quarterly* (2015), pp. 1-13 at 10.

¹³ BP Statistical Review of World Energy, 2017, p. 7.

year), fossils will still account for 77% of global energy use in 2040.¹⁴ At this rate, ‘fossil free’ is not even on the horizon.

Into this grim situation, Clean Trade offers a high-impact, market-based argument that over half the world’s oil reserves cannot be sold right now and so must be left in the ground. It also allows environmentalists to add national security and global stability to their case for not buying this oil. As discussed in the ‘Green Trade’ section of *Blood Oil*, Clean Trade sets definite targets for emissions reductions that will also stimulate such investment.

So the transition from oil can be sped up with an ‘Autocrats to Alternatives’ plan that declares blood oil unsellable. The campaign for this plan cannot be hostage to a single election or a fluctuation in the price of oil. As with all such efforts, if the analysis is correct and the solutions are the right ones, then sustained campaigning will find its moment of opportunity and the changes in policies can come quickly. Prohibiting trade in blood oil could be the fastest way for the world to make progress on climate.

Turning to Pietro Maffettone, all authors should be so fortunate to have an interlocutor as sympathetic and constructive as. His splendid essay is a meditation on the nature of political philosophy, and my response will build on his reflections on how philosophy should engage with the world.

As Maffettone describes ‘engaged’ political philosophy, its main task, ‘is not simply to search for truth but rather to attempt to contribute to the practical advancement of the moral ideals

¹⁴ Deepa D. Datta and Robert J. Vigfusson, ‘Forecasting China’s Role in World Oil Demand,’ Federal Reserve Bank of San Francisco Economic Letter 2017-24, p. 1.

that constitute the core of one's philosophical visions.' The purpose of engaged political philosophy is, as he says, 'to shape political reality.' An engaged political philosopher will also of course value work that is meant only for specialists within the academy. She will likely produce such work herself. Yet with her engaged work she will aim directly at improving the political life of her community, her country, or the world.

Maffettone says that an engaged political philosopher's most important addressees will be her fellow citizens, and I think this is possibly but not necessarily so. Sometimes a philosopher will aim to engage with the public, yet in other contexts she can more effectively shape political reality by engaging with elites. As Maffettone notes, for instance, Machiavelli, 'worked as a high-level politician and addressed some of his intellectual efforts to a specific set of political leaders.' What will matter to the engaged philosopher is change, so her audience will be the most potent set of change-makers that she can reach.

The engaged political philosopher is a familiar figure from the history of our discipline. Who is on the other side? Call a 'disengaged' political philosopher someone who denies that engaged work should be done—whose motto is 'truth for truth's sake,' and who therefore thinks that today academic philosophers should write only for one another. Let me say from the outset that I believe that all academic philosophers should engage with specialized academic research, and that we must train our students rigorously in the scholarly traditions that make truth the highest priority. Yet to be disengaged is to go further, and to say that philosophers should not engage with the world at all. How many academics would say that?

It is true that we have recently been through a rather unusual period in the history of political philosophy, when disengagement came close to being an orthodoxy. When I was in graduate

school, for instance, the received view on training graduate students was that while philosophers of physics might learn some physics, and philosophers of language could learn some linguistics, political philosophers should definitely not study politics, neither its institutions nor its history. Somehow, political philosophy was not about politics. All of us understood that, to be taken seriously as a ‘real’ moral and political philosopher, our arguments should not become entangled in what one of my teachers dismissed as ‘facts about the world.’ (We were all shocked when several prominent figures appeared as authors of ‘The Philosopher’s Brief’ on assisted suicide in *The New York Review of Books*—until we were told that Ronald Dworkin had strong-armed them into signing on as a personal favor.¹⁵)

During this period there were also theorists who were critical of disengaged philosophy. A group who came to be called ‘realists’ were interested in

developing a more practical political theory whose closer proximity to the real world of politics, through a greater appreciation of feasibility constraints or sensitivity to the conditions of political possibility, makes it better suited as a guide to action for political agents as they actually are. From [their] perspective, the key failing of much contemporary political philosophy has been to abstract or idealise away too far from the real world, creating an unbridgeable gap between theory and practice.¹⁶

¹⁵ Ronald Dworkin et. al, ‘Assisted Suicide: The Philosophers’ Brief,’ *New York Review of Books*, March 27, 1997.

¹⁶ Edward Hall and Matt Sleat, ‘Ethics, Morality, and the Case for a Realist Political Theory,’ *Critical Review of International Social and Political Philosophy* 20:3, 278-295 at 279. Hall and Sleat emphasize a different motivation for realists in this article.

What was peculiar was how little about ‘practice’ these so-called realists then had to say. When theorists like Bernard Williams and Raymond Geuss wrote about politics, they ended up being almost exclusively critical of other philosophers, and it is hard to know exactly why this was. It might be that such theorists were simply not equipped to engage in politics. Having an excellent interpretation of Sophocles, or an original line on Nietzsche, does not prepare one to discuss the real workings of power in our day, and this could be the reason that these men only generated vague and procedural positive positions (such as a valorization of ‘truthfulness’ in politics). However this might be, what this period left us with were mostly critiques of disengaged theory that were as abstract as their targets. One might have thought that the priority of those who find realism compelling would be to get on with realizing it.

So we have been through an unusually disengaged period in political philosophy. Yet perhaps the situation has now changed? Thinking of Onora O’Neill or Elizabeth Anderson or Debra Satz or Tommie Shelby, say, one sees philosophers who have published work that is clearly intended to shape political reality. Would anyone now dismiss this work as ‘more like sophisticated political activism than ‘real’ philosophy’ (as Maffettone puts it)? How many in the field still believe that ‘philosophy requires well-policed boundaries methodologically speaking—that the discipline cannot accept more than one means of approaching its goal and developing its tools’? I leave this as a question for the reader’s own reflection.

If there are still very many disengaged philosophers in the academy, we might be curious as to how they now see our field. Determined to police the borders of ‘real’ philosophy, what territory do they take themselves to be patrolling? What historical tradition do they see themselves as working within? If these

disengaged theorists think of themselves as the ‘real’ philosophers, what are their canonical texts? Who would they take history’s most distinguished ‘real’ political philosophers to be?

For the engaged political philosopher, the question of the canon is easy—it just is the familiar canon of Western political philosophy. The last time I was teaching ‘Modern Political Theory’ at Princeton, I asked the students to think about the lives of the philosophers who had authored the texts they were studying. Thomas Hobbes fled his country in fear of his life, partly because of the political philosophy he was writing. The same was very much true of John Locke. Jean-Jacques Rousseau’s *Social Contract* and *Emile* were both banned in France and Geneva, and after Rousseau escaped arrest in France his house was stoned by a mob in Motiers. The authorities hounded Karl Marx from Germany to Paris and from Paris to London, and in London they still tailed him with undercover police because he was leading an international revolutionary movement. John Stuart Mill was of course a Member of Parliament, and his essays (on women, on liberty, on the death penalty and more) contributed much, as he intended, to shaping the politics of his time and of our own.

As Maffettone says, ‘Exiled, imprisoned, tortured, publicly vilified for their ideas, their lives often threatened and sometimes taken, over the centuries the intellectual giants in the field saw their disputes about the nature of political society as anything but strictly theoretical or limited to narrow technical circles.’ To any of these canonical philosophers, the idea that political philosophy should be disengaged—that it should never try to ‘shape political

reality’—would have been uproarious.¹⁷ When we teach our students this canon, we are teaching them nothing but engaged political philosophy.

Who would disengaged philosophers put in their canon? Who would they see as the leaders of their tradition? It would be uncharitable to foist, say, Epicurus on them (‘I never desired to please the rabble. What pleased them, I did not learn; and what I knew was far removed from their understanding.’¹⁸) Who then?

One’s first thought is that it would be the Scholastics, since they did primarily speak to each other. And Thomas Aquinas is not a bad candidate for a distinguished disengaged forebear. When Aquinas gave a ‘public’ lecture, for instance, this meant that not only his own students but also members of other colleges were allowed into the audience.¹⁹ Yet it would not be fair to call schoolmen like Marsilius and William of Ockham disengaged, as they prosecuted quite significant disputes with the Pope over the limits of his temporal authority. A better candidate for a disengaged forebear might be Duns Scotus, ‘The Subtle Doctor,’ who wrote primarily in metaphysics and epistemology, and whose contemporary counterpart I will mention presently.

If Maffettone were correct that the academy today is full of disengaged political philosophers, policing the territory of ‘real’ philosophy, wouldn’t we see men like Aquinas and Scotus taught as the masters of politics? While Hobbes, Locke, Rousseau, Marx

¹⁷ This is even true of John Stuart Mill, who I am reliably informed actually did have a sense of humor. (Personal communication, Jonathan Riley, December 2017.)

¹⁸ Epicurus, *The Essential Epicurus*, trans. Eugene O’Connor (Buffalo: Prometheus, 1993), p. 96.

¹⁹ Jean-Pierre Torrell, *Saint Thomas Aquinas: The Person and His Work*, vol. 1 (Washington, DC: Catholic University of America Press, 2005), pp. 59-62.

and Mill would be expelled from the curriculum as mere activists? That this is not the situation today makes me wonder whether Maffettone is correctly interpreting the state of affairs.

Yet perhaps I am missing the most obvious disengaged political philosopher of our times, whose work should still be taught after Hobbes and company expunged from the syllabi? I think not. It is true that John Rawls's work has mostly been of interest to those within the academy. Yet Rawls does not appear to have seen his own work as entirely disengaged.²⁰ His arguments across his three major books rest on empirical generalizations across economics, psychology and history in ways that disengaged political philosophers will tend to disfavor (I will say more about this later). And Rawls is quite explicit that that the role of political philosophy in society should be 'political' in ways that disengaged philosophers will recoil from.

When Rawls discusses the roles of political philosophy, he never mentions 'finding the truth.' Rather, he says, the first role of political philosophy is to find bases of agreement within divided societies such as ours, so that citizens can solve the problem of order. By finding such bases of agreement, he says, the political philosopher can help citizens to cooperate on a basis of mutual respect. Rawls's thesis that political philosophy should help, first and foremost, to solve the problem of order is about as far from a 'truth for truth's sake' position as one can get.²¹

²⁰ For instance, one of Rawls's arguments from the original position cannot go through unless books like his *Justice as Fairness* are known in the public culture. John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001), p. 121, ft. 42.

²¹ Indeed Rawls's 'first role' looks more like an answer to Bernard Williams's 'first political question.' Bernard Williams, *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, ed. G. Hawthorn. (Princeton: Princeton University Press, 2005), p. 3.

Moreover, none of the other roles that Rawls describes for political philosophy (orientation, reconciliation, and probing ‘the limits of practicable political possibility’) are disengaged either. So if John Rawls were to be allowed into the disengaged canon, it could only be with the warning that he is a dangerous subversive.²²

Let us set aside for the moment the question of who might make it into the disengaged canon, and turn to engaged philosophy. Maffettone says that, ‘Engaged philosophical work, some will inevitably complain, is not really philosophy because the training and expertise that it requires are not the kind that most practicing philosophers believe to be central to the social practices of doing philosophy and becoming a philosopher.’ Now I believe that the social practices that Maffettone is speaking of here are not those of becoming a philosopher, but rather those of becoming a member of the academy. So let us begin with looking at the life of an engaged political philosopher, who follows in the footsteps of the familiar canonical figures in the tradition.

Like her distinguished forebears, the engaged philosopher is a committed intellectual, who reads widely, who talks to everyone who knows, and who strains every synapse to shape political reality through her philosophical work. This engaged philosopher is of course obsessed with finding the truth: both the truth about what is right and about how best to achieve it. Yet there is an idea besides ‘truth’ that is nearly as important to her, which her own values force upon her. This is idea of responsibility—of being a responsible political actor.

The engaged political philosopher knows that she is asking for a great deal in trying to shape political reality. She is calling for

²² Rawls, *Justice as Fairness*, pp. 1-4.

changes in deep structures of human affairs. She knows that the realization of her plans will entail serious costs—that at least the plans and dreams, and also possibly the lives, of real people will be sacrificed in the transition to a different and better world. To be responsible, she must continually check whether these great costs can be reduced or ameliorated. She must ask herself many times over whether the gains she hopes to see are really worth what will be lost. And the burdens of responsible action force her to return, again and again, to ask whether she really does believe, down to the soles of her feet, in her philosophical vision. Only conviction can assure a responsible philosopher that she has a right to ask reality to change its shape.

The burdens of responsible political action are heavy. Perhaps the best way to feel them is to imagine that there has been some disaster in the capital of your country, and you are now in charge. What reforms would you put in place in your first year in office, when all of your fellow citizens—and indeed all the world—will be holding you accountable for the outcomes? What laws or policies would you believe in enough to disturb the status quo? This thought-experiment is useful because it brings out how the lives of people one knows—and perhaps even one's own life—might be damaged in the realization of one's ideas.²³

²³ The reforms that I propose in my own work, such as Clean Trade Acts, will likely have quite significant costs in terms of livelihoods and even lives. Political transitions—even ones to freer and more equal societies—are almost always turbulent, as (for example) the post-colonial histories of the United States or India show. And as always the poorest, who are the most vulnerable, suffer the most in such transitions. I still endorse my proposals, because I believe that the consequences of continuing the status quo are even more grave overall. But this is the part of my own work where the burdens of responsibility weigh extremely heavy. Perhaps I might add that the best question I've ever gotten after presenting this work is whether I would still

Although the burdens are heavy, the rewards of doing engaged political philosophy are great. The first impression that an academy-only philosopher may have when she thinks of effecting real political change is that this activity is so interesting because it is so challenging. The number and variety of actors in play is quite large, and to win an argument she will need to be able to defend her position from a much wider range of objections than she has been used to. Many academic philosophers say that they are ‘value pluralists,’ but it is another matter—and highly stimulating—to enter an intellectual competition with real stakes against smart and determined people whose world-views are quite different than one’s own. This ‘game’ of real politics is more complex, and as Rawls says in explaining his Aristotelian principle, we should rationally prefer it as we prefer chess to checkers.²⁴

Disengaged philosophy, of the type that I was trained in, often seems too simple. It is not hard to find some single value or principle, and produce an argument that the world would improve by conforming better to it. (One familiar pattern of such argument is this: ‘Here is inequality/need, there are surplus resources, so resources should be rearranged.’) Sometimes those making such arguments begin with the qualification that they don’t believe their single value (like autonomy or luck-insensitive equality) to be the only value, and so their conclusions are only provisional. But the weighing with other values or principles never comes, and the means and costs of implementation are not

favor these reforms if one of the lives that had to be sacrificed in the transition was my own. (My answer was, ‘Of course yes.’)

²⁴ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 426.

discussed. How important then is that single value or principle, really? How would one know?

The main reason to do engaged political philosophy is to try to make the world better—and a significant side benefit is that it can also make one a better philosopher. Needing to convince many experts requires one to understand much more about how the world really works: about institutional strengths and vulnerabilities, the motivations of relevant actors, the rigidity of current feasibility constraints, the history that led to where we are, and much more. Understanding the world in these ways is quite helpful for separating what are truly objective values and what are merely the ideological fumes from some long-passed campaign bus. Thinking through political interventions forces one to choose among values in consequential situations, and so to understand the weight and the place of each of them.

Engaged philosophy also requires a much better sense of the nature of most political action, where powerful actors are making rapid decisions with quite imperfect information, always while surrounded by opponents and by allies of varying degrees of trustworthiness. And being engaged therefore makes one a much better reader of the other engaged philosophers. With some experience of trying to shape political reality, one understands why Locke, say, made the moves he did in his philosophical writings, given how he was trying to shape his political reality with his words.

Finally, doing engaged work can be quite a fruitful method for philosophical discovery. It is one thing to learn the two lines of reply to each of the five main objections to the three major positions in the literature. It is another thing to take responsibility for real political engagement. Engagement makes it urgent to discover what is really and ultimately right. This urgency can inspire new theorizing, as one burns through what one has

learned to discover what one truly believes. (In my own case, this is a certain form of Kantian consequentialism.)

The crucial struggle for all political philosophers, which Maffettone rightly brings into focus, is objectivity. This is a challenge for academic philosophers, for reasons I'll address first. Yet, as we will see afterwards, doing engaged philosophy can also compromise philosophical objectivity, just in different ways.

The risks of a culture of academy-only political philosophy should be clear (though they may be of the 'difficult to get a man to understand something, when his salary depends upon his not understanding it' variety). One of the daily challenges of academics is to stay focused on the truth about justice and the human condition, without being distracted by fashionable posturing or falling into a gravity well of received wisdom. As we all know, this is extraordinarily difficult. The philosophers that we admire were all fiercely independent thinkers, which is why they saw so much that others never could. We all aim at their independence of mind, and doing disengaged philosophy can endanger our efforts to reach a more objective perspective from which we can see the truth.

One source of risk is that universities are institutions, and they are institutions whose character tends to pressure against independent thinking about politics. The training that leads to an academic job is highly structured, and nearly all philosophy departments have exactly the same institutional form. So we academic philosophers find ourselves speaking mostly with people who have quite similar life experiences, living standards, daily routines, and relationships with other parts of society (government, media, etc.). For philosophers working on the Frege-Geach problem, this might not matter much. But for philosophers trying to understand justice and the human

condition, daily reinforcement of such a narrow perspective may not conduce to our seeing the whole truth.

A second kind of risk comes from what Maffettone calls, ‘the sociology of the profession.’ We academic philosophers are of course no more resistant to sociological forces than anyone else, and these forces may push us to see ourselves more as academics than as philosophers. Hierarchies of esteem within associations are quite compelling to creatures like us. The need continually to define standards and rank members is especially strong within associations with few outward-facing metrics of success (like ‘units sold’ or ‘hours billed’). The American philosophy profession is particularly status-focused, and one half-believes the story of the American professor who rushed back from lecturing on Rousseau’s *Discourse on Inequality* to check the latest *Philosophical Gourmet Report*. Yet any association where recognition, pay and job security correlate to position in a group-defined hierarchy will have tendencies toward signal-sending and bandwagoning and group-think. In political philosophy, these tendencies can shift our thinking away from independence and objectivity.

The third and greatest risk of a culture of academy-only political philosophy arises from a source often discussed, which is the ever-increasing articulation of specialisms within universities. To set up this point, I would like to recall something that is vivid whenever we teach the canon of political philosophy as it is usually understood. This is that the arguments of our greatest political philosophers quite often rest on bold empirical generalizations.

Think, for example, of Hobbes saying that religious pluralism risks civil war—while Locke says that it is religious persecution that does. This difference in their empirical premises ends up making a significant difference in their conclusions about religious toleration. Or think of the dispute between Hobbes and

Locke over whether holding the powers of office will ennoble a monarch, or rather corrupt him—and how deeply this difference on empirical facts affects their views on sovereignty.

Consider the democratic peace thesis, now one of the most robust results in International Relations, which originated in speculation by Kant that far outran any method in his day to test it empirically. Or think of Rawls's argument for his just savings principle, which is grounded on the thesis that, 'What men want is meaningful work in free association with others'—and not wealth.²⁵ Or think of Rawls saying that the main ideas that motivated *The Law of Peoples* are that the great evils of human history follow from injustice within nations—and that when domestic justice is achieved, the great evils will disappear.²⁶ Most of the lasting work in political philosophy rests on ambitious empirical judgments such as these.

Yet institutional specialization now pressures academic philosophers away from making ambitious empirical judgments. Such judgments, it is sometimes thought, can only be made by the academics working in the social science departments. Unlike Rawls, some working within the philosophy departments now do not believe themselves to be competent to frame new generalizations about, say, psychology or political economy. Some academic philosophers do not even believe themselves to be competent consumers of social-scientific research. A division of labor is palpable in which 'real' political philosophers do only

²⁵ Rawls, *Theory of Justice*, p. 290. The quoted text continues, '... these associations regulating their relations to one another within a framework of just basic institutions.'

²⁶ John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), pp. 6-7. Rawls expressed the idea in the second conjunct in terms of 'just (or at least decent)' social policies and institutions.

abstract normative work, while social scientists are in charge of descriptive statements about the social world.

This institutional division of labor is pressuring academics away from the argumentative style of the canonical philosophers. The pressure within the new division of labor is toward more formal arguments, toward fictional examples, and toward thought experiments. Perhaps these institutional developments were behind my teacher's dismissal of 'facts about the world'—but, again, this is a dismissal that would have mystified most of the philosophers who wrote the major works of our discipline.

I also believe that the institutionally-driven prohibition on making or evaluating causal claims—like the causal claims in the examples from Hobbes, Locke, Kant and Rawls above—has had a further intellectual impact on philosophers within the academy. It has pushed them ever-further toward non-consequentialist theory. Indeed, I believe that some theorists are becoming incapable of seeing consequentialist theorizing as part of the discipline at all. If what happens in academic departments defines 'philosophy,' and those working in these departments are not allowed to make significant causal claims, then philosophical justifications cannot rest on such claims—or so the reasoning seems to go. I noted above that Gentile could not see a 'normative theory' in an explicitly consequentialist book like *Blood Oil*. Elsewhere I have noted that theorists like Anna Stilz and Chris Armstrong have only been able to see 'pragmatic' and not 'philosophical' justifications in the book.²⁷ These are all fine theorists, but during these moments I hear the only institution, not the tradition, speaking through them.

²⁷ See Leif Wenar, Michael Blake, Christopher Kutz, Aaron James, Nazrin Mehdievya, and Anna Stilz, *Beyond Blood Oil*, ed. Laurie Shrage and Naomi Zack (Lanham, MD: Rowman & Littlefield, 2018).

Above I suggested that the ‘disengaged canon’ should center on scholars like Aquinas, while excommunicating Hobbes, Locke, Rousseau, Marx and Mill. I would now suggest that as their foundational modern figure, disengaged philosophers should canonize an academic who, like Duns Scotus, saw himself as working primarily in what today’s academic philosophers call the ‘core’ areas.²⁸ The canonical modern disengaged political philosopher is Robert Nozick. In his Preface to *Anarchy, State, and Utopia*, Nozick declared his method:

I write in the mode of much contemporary philosophical work: there are elaborate arguments, claims rebutted by unlikely counterexamples, surprising theses, puzzles, abstract structural conditions, challenges to find another theory which fits a specified range of cases, startling conclusions, and so on. Though this makes for intellectual interest and excitement (I hope), some may feel that the truth about ethics and political philosophy is too serious and important to be obtained by such ‘flashy’ tools. Nevertheless, it may be that correctness in ethics is not found in what we naturally think.²⁹

Nozick’s ‘flashy’ tools are familiar to philosophers trained in the ‘core’ areas. And although Nozick himself knew quite a lot about empirical research relevant to politics, these tools are perfectly suited for those who do not. Political philosophers can use these tools without understanding how the political world works. This Nozickean formal methodology became widespread within the profession, as the center of gravity of ‘what we

²⁸ Scotus sketched an early social contract theory, but he did so almost as an aside in an excursus on restitution. See *John Duns Scotus’ Political and Economic Philosophy*, ed. Allan Bernard Wolter (St. Bonaventure, NY: Franciscan Institute, 2001), p. 1.

²⁹ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic, 1974), pp. 14-15.

naturally think' shifted about how to find correctness in the field.³⁰

Nozick's 'flashy' tools may indeed be useful for finding the truth in political philosophy. Yet it looks like it was a pressure from an institution (specialization) that has pushed academics into thinking that *only* such tools should be used. It looks like the institution that first just hosted political philosophers then redefined how its guests believed they should do their work. Universities redefined academics' method—away from relying on empirical and especially causal premises, toward only arguing over abstract, probably non-consequentialist principles (that social scientific or low-status philosophical work could then perhaps 'apply' to the real world). And the new, university-based method then redefined political philosophers' aims—away from engaging with the world, toward engaging only with one another, thereby making them more like those in the more politically inert sub-fields like metaphysics and epistemology.³¹

The risks to objective inquiry is evident here. If we allow ourselves only a small set of tools, we are in danger of losing contact with much of our tradition, which is, like vocal music or tragic drama, one of the oldest and richest traditions in all human activity. If we bequeath our students only this set of tools, then only a small set of problems will seem salient to them. And if the

³⁰ See Jonathan Wolff, 'Analytic Political Philosophy,' (typescript, 2010), p. 20, which identifies Judith Jarvis Thomson's 'A Defense of Abortion,' as another influential text in this tradition.

³¹ To continue the thought that Rawls should be regarded by disengaged philosophers as a dangerous subversive, it might be remembered that he presented 'The Independence of Moral Theory' as his Presidential Address to the American Philosophical Association (*Proceedings and Addresses of the American Philosophical Association* 48 (1974 - 1975), pp. 5-22).

academic institutions that have recently been hosting political philosophers themselves begin to fail, as they may well in the next generation, then academic philosophers may not even have each other to talk to. The practice of political philosophy, as it has been done for centuries, may be lost.

This disengaged period really is an outlier in the history of political philosophy. Rarely if ever have political philosophers been working within such a highly articulated institutional divisions of labor. It appears that the institutions during this period pressured against the use of traditional methods and against considering familiar theoretical positions, while generating temptations toward signal-sending and intellectual conformity. These are all forces that work against robust, independent inquiry, and it is a tribute to philosophers like O'Neill, Anderson, Satz and Shelby to have resisted them.

Yet it must be acknowledged that doing engaged political philosophy also carries risks to objective inquiry, and risks that are at least as serious. As Maffettone presents this risk, 'being engaged might make intellectual work, and philosophical work in particular, less objective. Concentrating on affecting progress in the real world might detract from the required candour and dispassionate attitude that many philosophers have seen as central to their attempts at discovering truth.'

This seems to me to be undeniable. I want to illustrate this point with Hobbes, so let me begin with Hobbes's view of the goal of philosophy.

For Hobbes, the goal of philosophy is not to discover the truth, but to promote human benefit. As Hoekstra describes Hobbes's view,

So what is the end of philosophy, if not the delight in solving problems, the discovery of truth, or the imparting of knowledge?

Hobbes has a ready answer: ‘The End or Scope of Philosophy, is, that we may make use to our benefit of effects formerly seen; or that by application of Bodies to one another; we may produce the like effects of those we conceive in our minde... for the commodity of humane life.’ Hobbes repeats Bacon’s formula that ‘knowledge is power,’ and... defines philosophy as ‘the Knowledge acquired by Reasoning... to the end to bee able to produce, as far as matter, and humane force permit, such Effects, as humane life requireth.’ The end of philosophy - to produce what humans require - is integral to the very definition of philosophy.³²

For Hobbes, “Practical philosophy’ is a pleonasm... Benefit is ‘the scope at which all Speculation should aime,’ and even the most sophisticated theoretical constructions should be judged according to the improvements they bring about.’³³

For Hobbes, it is disengaged work that cannot be ‘real’ philosophy—in fact, there can be no such thing as disengaged philosophy. It simply cannot exist.³⁴ Hobbes, of all the thinkers in the traditional canon, must be the one that disengaged philosophers repudiate most completely, as he explicitly defined philosophy as the shaping of political reality. John Rawls was fond of saying that *Leviathan* is the greatest work of political philosophy in English, but this should only make disengaged philosophers all the more suspicious of Rawls. The disengaged will likely feel more sympathy with the schoolmen who burnt *Leviathan* in the Bodleian Quad in 1683.

³² Kinch Hoekstra, ‘The End of Philosophy (The Case of Hobbes),’ *Proceedings of the Aristotelian Society* 106 (2006), pp. 25-62 at p. 28.

³³ Hoekstra, ‘The End of Philosophy,’ pp. 32, 33.

³⁴ I suspect that other great figures in our tradition, like Rousseau and Marx, would agree with Hobbes on this point.

Yet the risk to objectivity is also visible in Hobbes's work. If, as Hobbes believes, doing philosophy is about increasing 'the commodity of humane life,' then

The end of benefit to humanity may require profession as well as silence, even if one thinks the profession false. Hobbes proposes an interpretation of Aristotle according to which 'he knew to be false Philosophy' his claims about entities and essences, but nonetheless disseminated them for reasons of self-preservation or conformity to the civic religion. Hobbes sometimes says that he, too, endorses a position because of 'reverence due to the Laws.'³⁵

Here disengaged philosophers are quite right to object that engaged philosophy seems 'more like sophisticated political activism than 'real' philosophy.' Silence, rhetoric, spin, even falsehoods—as the example of Hobbes shows, engaged work must in principle be open to all of them, if these are the best means to the desired political end. (As David Estlund once put the point in conversation, 'Why not bad arguments?') And engaged consequentialist philosophy will fall under even greater suspicion on this score. This is a very serious concern. It might seem that an engaged philosopher must give up on truth as the touchstone for everything she says.

Let me offer my own view, as a consequentialist who sometimes aims at shaping political reality with his philosophical work. My consequentialism has the free unity of ends as its ideal—ultimately, all of our actions are to be judged on how much they conduce to the unity of humanity. As readers of my

³⁵ Hoekstra, 'The End of Philosophy,' p. 45. Hoekstra's interpretation of Hobbes is more controversial here.

work know, within this project I am less interested in choices within improbable circumstances, or in the fine details of our current rules of conduct. The firmest foundation of unity in our daily lives is our social roles. Nothing motivates action on unified ends more than our roles, and ‘role consequentialism’ is a large part of my overall view.

To see the importance of roles, consider what your day is like today. When you consider why you are doing what doing now, what you will do next, and what you will do after that, the explanation will very likely center on your social roles. You are a scholar, a teacher, a wife, a mother, a daughter, a sister, a voter, a department chair, a friend. Most of the dramas in our lives concern whether roles have been performed and how they have been prioritized—and so do most stories in the news. Most moral progress has come through the elimination (slaveowner), revision (boss) and introduction (citizen) of roles. Today’s amazing flourishing of seven billion higher primates, humans, is inconceivable without the role-based motivation and coordination of their actions.³⁶

My view is that the role of the scholar in our world is exceptionally important. Like many of the most consequential roles, this one is ancient: we have the Schoolmen to thank for forging its standards of precision, accuracy and rigor, and the early scientists to thank for reinforcing its norms of dispassionate, world-guided inquiry. And the home of scholarship is still in the schools. We academics are the inheritors of a remarkable set of normative standards that define who we are. We are seekers of truth.

³⁶ See *Ethics* article.

The reason that the role of the scholar is so important today is that, to put it simply, everyone else lies. Academics and journalists are the only people today whose job is to tell the truth about the whole world—and sometimes we wonder about the journalists. When one does engaged philosophy, one constantly witnesses attempts at gross deception—by politicians, by business people, by civil servants, even by leaders of civil society. The part that academics play in human affairs is small, but extremely consequential. Humanity very much needs individuals whose job it is to tell the truth about everything, and we must do everything we can to ensure that this role is passed on intact to future generations. For consequentialist reasons, we academics must, foremost and always, strive always to get it right.

To conclude, as academic philosophers, we find ourselves in a difficult position today—torn, as it were, between the noun and the adjective. As philosophers, we find that the institution that currently hosts us is pressuring us to give up major works and methods of our tradition—and that it tends to foster in us a narrowness and conformism inimical to our intellectual independence. Yet as academics, we feel very deeply the importance of preserving our precious traditions of truth-telling, especially in an age of spin and false news. Should we then engage with, or disengage from, political reality?

My suggestion is that we can do both. A disengaged bonfire of the traditional canon of political philosophy should be foresworn, and indeed we political philosophers should keep reminding our academic colleagues in the ‘core’ areas that the greatest work in our tradition has been engaged.

However, we academic philosophers should train our students to be scholars first. The norms of precision, accuracy, rigor, and above all ‘getting it right’ are too valuable to lose—and, once lost, they would unlikely be recreated today, at least in the humanities.

Indeed we philosophers should likely be more demanding than we are on our students' scholarship, given the countervailing pressures of our times (including, as Maffettone notes, those from academic administrators). 'More Duns Scotus, less global justice' seems a good rule for training the next generation of scholars—so long as philosophy students are also permitted to study the methods of social science, like statistics, as well as political institutions and history.

As philosophers within the academy, it seems right that everyone should do academic-only work, while only some work will aim for broader audiences. And one task that non-consequentialists might valuably take on is to make sure their consequentialist colleagues stay on the straight and narrow scholarly road, by respecting the absolute priority of the practices of truth and candor.

Still, anyone tempted to praise a disengaged culture within philosophy departments might reflect on their place in history and in the world. The disengaged position appears to be the product of institutional norms and forces that can endanger a political philosopher's objectivity and independence. At least one of our greatest political philosophers, and likely others, would deny that disengaged philosophy is even possible. And a survey across the centuries (instead of across the profession today) will find that most of the work with last value in our tradition has aimed at shaping political reality. Academics who are aggressively disengaged might well be real scholars. What they would need to show is why they should be regarded as doing real political philosophy.

As academic philosophers, we also face a problem of order. Perhaps then our common aim should be to blend our noun and our adjective as felicitously as we are able. For both the more engaged and the more disengaged among us, our aim should

be—to quote a philosopher with friends in both camps—to foster cooperation on a basis of mutual respect.

King's University

If Data Is The New Oil, When Is The Extraction of Value From Data Unjust?

Michele Loi and Paul-Olivier Dehaye

Data, it has been suggested, is the oil of the new economy.¹ In spite of the way the internet has changed people’s lives, surprisingly little work has been done to link some of the normative issues explored in fields of inquiry such as “computer ethics”² or “information ethics”³ with debates in a certain stream of political philosophy, which can perhaps be characterized as “analytical philosophy in the (post) Rawlsian tradition” – the sort of philosophy that is predominantly taught by most members of philosophy departments in the USA and UK. The present contribution attempts to build this link. We start with a question in the province of computer or information ethics, namely “when is the extraction of value from data unjust?”, and provide an answer

¹ Perhaps the earliest occurrence of this claim dates back to 2007, in Michael Palmer, “Data Is the New Oil,” *ANA Marketing Maestros*, November 3, 2006, http://ana.blogs.com/maestros/2006/11/data_is_the_new.html. The claim or some variation of it has been repeated countless times since, for instance see: “The World’s Most Valuable Resource Is No Longer Oil, but Data,” *The Economist*, May 6, 2017, <http://www.economist.com/news/leaders/21721656-data-economy-demands-new-approach-antitrust-rules-worlds-most-valuable-resource>.

² James H. Moor, “What Is Computer Ethics?,” *Metaphilosophy* 16, no. 4 (October 1, 1985): 266–75.

³ Luciano Floridi, *The Ethics of Information* (Oxford: Oxford University Press, 2013).

which relies on concepts from Rawls's theory.

Although the argument here is driven by an analysis of two case studies (freedom of speech on digital platforms and the economics of big data) and for that reason may be classified as a paper in "applied philosophy" (whatever that means), we cannot avoid spending some words of the more "meta-theoretical" question of what type of concepts of political philosophy need to be invoked, in order to identify the normative facts at stake. In other words, we cannot simply take Rawls's two famous principles of justice and apply them to information and communication technology (ICT). Prior to doing that, it is absolutely essential to explain how the basic concepts of a Rawlsian theory of justice might apply to the social and technological domain in question. To do so, we must spend some words on the fundamental concepts of the Rawlsian analysis of social justice. Thus, a significant part of this paper is devoted to tackling questions of a more methodological, than practical, nature.

The paper consists of three sections: section 1, in which we explain why a certain entity enabled/constituted by a certain deployment of ICT infrastructure, namely the "dominant internet platform", is a subject of social justice in the Rawlsian sense; and section 2, in which we present Rawls's principles of justice as criteria to evaluate internet platforms, regarded as institutions, just or unjust. Finally, in section 3, we consider two case studies (communication over YouTube and Facebook and the economic exploitation of data by Google search) and analyze them from the point of view of Rawls's First and Second Principles of Justice.

I

Data is the new oil and the institution governing its extraction and transformation is the digital platform

The lead question in this paper is “when is the extraction of value from data just”? First of all let us consider the presupposition implicit in this claim: that data are analogous to raw material resources, which only acquire direct value in use, after they are extracted and processed in specific ways. Oil, for example, must be converted into plastic, chemicals, etc. Data, by analogy, must be “broken down” and “analyzed” to generate “insight”. Insights that may be gleaned from data span across a wide variety of different area. In the business sphere, where the analysis of “big data” found one of the first realms of application,⁴ data have been collected and analyzed for the sake of improving services and their delivery, or of personalized marketing. The infamous case of Target, which figured out a teen was pregnant from her shopping pattern, and alarmed her oblivious parents by sending personalized advertisement to her

⁴ The concept of “big data” refers to data that are produced in very large quantities (*e.g.* not from a sample of the population of interest, but from the entire population) and are recorded in very short intervals, if not continuously. Finally, big data are often heterogeneous data, *e.g.* GPS data together with heart beat data. The main technological enabler of big data have been cloud services. The question “how big must be big data in order to count as big data?” does not have a clear answer. It is neither the sheer size of the data, nor whether or not they overcome the possibilities of analysis given at a specific technological stage, that defines this. Rather, what (most) people seem to have in mind when they talk about big data is a certain domain of applications, that only become possible when you are dealing with vast amount of data produced steadily, such as the identification of significant patterns, which may not be detectable with a lower quantity of data. See Luciano Floridi, “Big Data and Their Epistemological Challenge,” *Philosophy & Technology* 25, no. 4 (December 1, 2012): 435–37.

home, testifies the power, as well as the risks, of such methods.⁵ Other insights that can be gleaned from data concern mobility patterns (from GPS devices and cell phone data), health and wellness (from fitness devices of all kinds, including wearable health monitors), and epidemiology, such as detecting the early emergence of a disease, or monitoring the spatio-temporal evolution of anti-vaccination sentiment.⁶

Indeed, the centrality of *insight*, considered as the main value that technology adds to data, was already stated clearly in the first occurrence of the oil analogy on the web⁷. This analogy – with insight as the intermediate product by virtue of which data acquire value – still appears defensible. Data has no value except insofar as it is organized, or represented (e.g. visualized), or analyzed, in such a way as to lead to insight. It is in this vein that we must read this observation by internet (legal) scholar Lawrence Lessig, against the simple-minded accusation that

⁵ Kashmir Hill, “How Target Figured Out A Teen Girl Was Pregnant Before Her Father Did - Forbes,” *Forbes*, February 16, 2012, <http://www.forbes.com/sites/kashmirhill/2012/02/16/how-target-figured-out-a-teen-girl-was-pregnant-before-her-father-did/>.

⁶ Although Google Flu, the Google algorithm to predict the spread of flu epidemics based on Google searches, was eventually revealed to be flawed, similar methods have been used leading to better results. See David Lazer et al., “The Parable of Google Flu: Traps in Big Data Analysis,” *Science* 343, no. 6176 (March 14, 2014): 1203–5, doi:10.1126/science.1248506; David J. McIver and John S. Brownstein, “Wikipedia Usage Estimates Prevalence of Influenza-like Illness in the United States in near Real-Time,” *PLoS Comput Biol* 10, no. 4 (2014): e1003581; Marcel Salathé and Shashank Khandelwal, “Assessing Vaccination Sentiments with Online Social Media: Implications for Infectious Disease Dynamics and Control,” *PLoS Comput Biol* 7, no. 10 (2011): e1002199.

⁷ Michael Palmer, “Data Is the New Oil.”

Google is simply a *parasite* deriving value from the data of its users:⁸

In the same sense you could say that all of the value in the *Mona Lisa* comes from the paint, that Leonardo da Vinci was just a ‘parasite’ upon the hard work of the paint makers. That statement is true in the sense that but for the paint, there would be no *Mona Lisa*. But it is false if it suggests that da Vinci wasn’t responsible for the great value the *Mona Lisa* is.⁹

The *Mona Lisa* analogy draws attention to the fact that, just as there are *agents* who are responsible for the extraction of oil and its transformation into more commonly usable resources, there are also *agents* involved in the generation of insights (the “intermediate” product with economic value) from data (the raw resource). But does it follow that the companies doing the “hard work” of organizing and analyzing the data, justly extract all the economic value from the data that they can, given current laws?

In his recent book *Blood Oil*¹⁰, Leif Wenar has argued that, in order to ethically evaluate the choices and attitudes concerning the global supply chain of all kinds of goods and products, we must direct our attention to the institutions (e.g. property and exchange) that enable the extraction and use of raw resources and their *normative* justification. By analogy, we argue that in order to assess the *justice* of the extraction of value from data – e.g. in order to implicitly morally condemn Google by describing it as a “parasite” – we should direct our attention to the institutions

⁸ Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press, 2015), 86.

⁹ Lawrence Lessig, ed., *Remix Making Art and Commerce Thrive in the Hybrid Economy* (New York: Penguin Books, 2012), 128.

¹⁰ Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules That Run the World* (Oxford University Press, 2015).

enabling the economic agents who derive value from data to do so, and to do it so efficiently.

What are institutions? The political philosopher John Rawls introduced the concept of the “basic structure” of society, referring to “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation”¹¹. Rawls provides several examples of institutions that belong to the basic structure of society, such as familiar forms of taxation¹² (income or value added taxes, which are typically known in advance by each individual involved in exchanges). Other institutions of the basic structure are family law (concerning marriage and its dissolution, including obligations to provide for the offspring)¹³, rules concerning the public funding of elections and restrictions to campaign contributions¹⁴, private property and its inheritance¹⁵, the legal principles regulating freedom of the press and access to the media, including for political organizations¹⁶; by analogy we may add laws concerning libel, entrepreneurship (such as corporate and bankruptcy law) and intellectual property rights.

The basic structure is, argues Rawls, the primary subject of social justice because it is the only system of norms that can achieve *background justice*. Background justice is a stable, self-sustaining system with sufficiently predictable outcomes to ground a reasonable moral evaluation. A system of rules must be

¹¹ John Rawls, *A Theory of Justice*, 2nd ed. (Cambridge, MA: Harvard University Press, 1999), 6.

¹² John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), 51.

¹³ *Ibid.*, 162–63.

¹⁴ *Ibid.*, 149.

¹⁵ *Ibid.*, 114–15.

¹⁶ *Ibid.*, 111–14, 149–50.

self-sustaining in the sense that it must have a definite tendency to generate certain goods and avoid producing certain ills, that is not undermined by the cumulative effects of the individual actions enabled by it. For example, the rules of football have a definite tendency to produce certain goods (enjoyment for the viewers, athletic prowess and dexterity for the players, team spirit) that is not undermined by the individual actions of football players in the field. Football can only achieve this result thanks to “safeguard rules” (e.g. about fouls and their punishment) that limit the anti-social tendencies otherwise elicited by rules incentivizing competition. Rawls regards the basic structure of society as a similar system of rules:

Suppose we begin with the initially attractive idea that social circumstances and people’s relationships to one another should develop over time in accordance with free agreements fairly arrived at and fully honored. Straightaway we need an account of when agreements are free and the social circumstances under which they are reached fair. In addition, while these conditions may be fair at an earlier time, the accumulated results of many separate and ostensibly fair agreements, together with social trends and historical contingencies, are likely in the course of time to alter citizens’ relationships and opportunities so that the conditions for free and fair agreements no longer hold. The role of institutions that belong to the basic structure is to secure just background conditions against which the actions of individuals and associations take place.¹⁷

The basic structure is “a shaper of actions, then, but it is also a dispenser of goods”¹⁸. Institutions shape actions because, just as the rules awarding victory in football, they elicit productive behavior, and enable social coordination through which goods

¹⁷ John Rawls, *Political Liberalism*, Expanded ed. (New York: Columbia University Press, 1996), 265–66.

¹⁸ A. J. Julius, “Basic Structure and the Value of Equality,” *Philosophy and Public Affairs* 31, no. 4 (2003): 333.

can be produced, even in the absence of a central planner. They dispense goods because they also include rules affecting how the benefits of social institutions are distributed.

Rawls provides two conceptual criteria as to why the basic structure is “basic”. First, it is basic in the logical sense. Justice of the basic structure logically comes *before* the evaluation of individual acts of justice. It is the way in which individual actions add up, not the individual act taken in isolation, which produces the consequences that are most relevant from the point of view of all the persons affected. For example, returning money to a villain may appear contrary to human happiness, and yet the institutions of promise and property, as a whole, tend to be beneficial¹⁹. The institutional view of acts can be used to justify singular acts that may appear contrary to benevolence, but are actually just. It can, on the other hand, also show why actions that appear just in isolation, actually build up to have effects that make society unjust. For example, individual exchanges of legitimately owned property between consenting adults may appear (to some) obviously legitimate and fair, in so far as they are voluntary and mutually advantageous. Only a consideration of tendencies enabled by the institution of property and unfettered exchange as a whole can reveal that the accumulated effects of such act can be to concentrate power in few hands and expose the least fortunate individuals to domination and exploitation²⁰. We find again, here, an analogy with the extraction of value from oil: the undesirable long-term effects of each commercial transaction concerning oil

¹⁹ David Hume, *A Treatise of Human Nature*, ed. David Fate Norton and Mary J. Norton (Oxford University Press, 2000), bks. 3, Part I, Sections 1-6.

²⁰ Rawls, *Justice as Fairness*, 53; Miriam Ronzoni, “The Global Order: A Case of Background Injustice? A Practice-Dependent Account,” *Philosophy & Public Affairs* 37, no. 3 (June 1, 2009): 229–56, doi:10.1111/j.1088-4963.2009.01159.x.

and oil-derived products are not visible if one focuses on individual transactions. But the oil-centered economy as a whole – the exchange network involving different economic agents each pursuing different social and economic goals – contributes to the “resource course” of the resource-rich countries, by sustaining corrupt and violent regimes as a wholly predictable byproduct of such markets.²¹

Second, basic institutions have a “profound and pervasive influence on the persons who live under its institutions”²². This influence can emerge as attitudes of respect for all in democratic society or of reverence and submission in rigid hierarchical societies; it can emerge as the fact that self-esteem is grounded in independence or in being singled out for special treatments by arbitrary powers; it can emerge as a favorable attitude to risk, innovation and entrepreneurship and the appreciation of open borders. In other words, basic institutions are basic *not only* because they affect the general expectations of which goods will be produced and by whom, but also because they influence individual values, preferences, expectations, what is commonly regarded as honorable behavior, a subject worthy of discussion, and just.²³

Having introduced Rawls’s concept of the “basic structure of society”, our next question is to what relation does information and communication technology (ICT) infrastructure have with it. Are ICT infrastructure *goods* or *resources* that the basic structure of society distributes? Are they *social primary goods* in the sense of the first formulation of Rawls’s theory, namely goods such that it is

²¹ Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules That Run the World* (Oxford University Press, 2015), chap. I and II.

²² Rawls, *Justice as Fairness*, 55.

²³ *Ibid.*

rational for each individual to want more rather than less of them?²⁴ Our thesis is that at least *some* ICT infrastructures are themselves *institutions*. The first step in this argument, is to introduce the concept of a dominant internet platform. Having done that, we argue that dominant influence internet platforms 1) are institutions, and 2) that they belong to the basic structure of society.

To define a dominant internet platform, let us first define:

- A) internet information platform: an implementation of information and communication technologies that enables, amplifies, or provides structure to the exchange of information from a given source to one or more platform user.
- B) internet communication platform: an implementation of information and communication technologies that enables, amplifies, or gives structure to the exchange of information between two or more platform users.

With these two concepts in mind, we can define a dominant internet platform:

- Dominant internet platform = (def)
an internet (information and/or communication) platform which:
- a. enables or sustains the generation and distribution of goods of significant value
 - b. has a profound and pervasive influence on the life of all or most persons in society.

²⁴ Rawls, *A Theory of Justice*, 54–55.

We shall now argue that dominant internet (information and/or communication) platforms, as here defined, belong to the basic structure of society in Rawls's sense. There are two steps in this argument: the first is ontological, and the second is normative. The first, ontological, question concerns whether internet platforms are the kind of entities - *i.e.* institutions²⁵ - that can possibly be considered as constituents of society's basic structure. The second, normative, concerns whether the institutions characterized as "dominant internet platforms" are sufficiently important to deserve being considered not only institutions, but elements of a Rawlsian basic structure.

Yochai Benkler analyzed the internet as an information environment consisting of three different layers: 1) the physical infrastructure, comprising, among other things, the computers and the wires connecting them, 2) the logical infrastructure, comprising all software, and 3) the third layer comprising the content that is created or exchanged by means of these infrastructures.²⁶ Similarly internet platforms *qua* entities populating the internet can be described as assemblages involving the three layers distinguished above, for example, Google's servers distributed in a few datacenters all over the world, the software running on these servers, and the information provided by Google users and stored in them. Is what Benkler labels "logical infrastructure" – *i.e.* software – the kind of entity that can be considered an institution in the Rawlsian sense, given the

²⁵ The definition of this term is not univocal. Clearly, here we are interested in the question whether dominant internet platforms are social institutions in the sense relevant to Rawls's definition of the basic structure.

²⁶ Yochai Benkler, "From Consumers to Users: Shifting the Deeper Structures of Regulation toward Sustainable Commons and User Access," *Federal Communications Law Journal* 52 (2000 1999): 561.

flexible way in which Rawls uses the term (including, that is, not only legal institutions but also social norms)?

Let us begin with the first question. Famously, Lawrence Lessig has claimed that “code is law.”²⁷ Lessig classifies software under the broader category of *architecture*: he claims that architectures, both physical and software ones, influence people’s behavior in a way that is complementary to law and social norms, for example by making certain options much easier to be taken than other²⁸. Architectures differ from legal and social norms in that, argues Lessig, they do not have to be understood in order to affect an individual’s behavior²⁹. In our view, what software architectures of internet platforms and social norms have in common is more important than what sets them apart. Moreover, the software running digital platform is closer to law and social norms than physical infrastructure, from a very important point of view. Rule-governed behavior, which is sustained by *both* positive law and social norms, constitutes *roles*, to which duties and rights are attached³⁰. For example, the rules of football constitute the role of the goal keeper. The rules of democratic politics constitute passive and active electorate. The rules of government define the function of governments and political offices. The persons who occupy roles defined by the rules of football, democratic politics, and government acquire specific

²⁷ Lawrence Lessig, *Code, 2.0* (New York: Basic Books, 2006).

²⁸ *Ibid.*

²⁹ One can legitimately doubt whether this distinction is valid. For example, it may be argued that legal code also affects the persons who do not understand the law, in so far as these individuals can be physically coerced (e.g. by police forces, or the military) to act in ways that are compatible with the rights and prohibitions that legally apply to them.

³⁰ Leif Wenar, “The Nature of Claim-Rights,” *Ethics* 123, no. 2 (2013): 202–29.

rights, immunities, privileges and duties, which are conditions that enable them to operate *in those roles*.³¹

The code running internet information and/or communication platforms works in a similar way: it not only creates new goods, but also new roles characterized by specific functions, attached to role-specific rights, limitations, immunities and privileges. Not only the registered user with a profile, but also the anonymous users, can be understood as roles defined *in* software and authorized to interact with information and other individuals in specific ways but not others. Some aspects of the roles operating in internet platforms are normally also defined in *legal terms* (in a platform service's terms and conditions), but what makes these norms *effective* is, in large part, their realization through the software architecture. A significant chunk of the software running in internet platforms is meant to operate an architecture of roles with specific rights and privileges attached, and at least this part of software can be appropriately considered an institution in Rawls's sense.

The above hopefully suffices to persuade the reader that software, or at least a significant part of the software operating in internet platforms, can be regarded as an institution in the sense which is relevant for Rawls's theory. The next step in the argument is to show that dominant internet platforms are not merely institutions, but constituents of the basic structure of society. There are two criteria to determine whether they are, which correspond to the two reasons provided by Rawls why the basic structure of society should be considered the first subject of justice. First, software platforms must be capable of generating and sustaining important goods, through coordinating (via

³¹ Ibid.

incentives and counter-incentives) individual actions enabled by rules. Second, that they must have a pervasive influence on all or most individuals in society. The question is whether it is possible, at least in principle, for software-governed platforms to fulfill these two criteria.

We believe this is in fact a concrete possibility. A predominantly used search engine, for example, provides *structured collections* of information and enables intelligent access to it (think again about the Leonardo-paint producer analogy). Efficiently organized and intelligently accessible information on the web is an emerging benefit made possible by a multitude of disparate atoms of individual behavior channeled, incentivized, and coordinated through the software of a dominant information platform. Each individual search contributes to improving the algorithms that ranks results by relevance, by sending feedback signals the platform, the moment the customer clicks through, or discards, a search result. Moreover, the data collected can be used to produce insights: for example, individual searches may contribute to generate user profiles, that are valuable assets for e-commerce. Structured information, selective access, and insight are all essential resources in the current economy. Without these goods, citizens would drown in the information made available on the world wide web, and be unable to use it profitably, and companies would not be able to exploit any of the opportunities of internet connectivity to reach their customers.

The second criterion is that the basic structure has a profound and pervasive influence on the persons who are engaged with it. The first question to ask is if it is conceptually possible for an internet platform to be dominant in this sense, or in other words, if the concept of a dominant internet platform is a contradiction in terms. This is tantamount to showing that the concept of “being an internet platform” and the concept of “being

dominant” (in the sense in question) can *conceivably* be realized by the same entity. Or in other words, we will argue that it is *at least* conceptually possible for internet platforms to be dominant.

Imagine a society in which the “ever-increasing pervasiveness of ICTs” and the “blurring of the distinction between reality and virtuality”³² entails that information sought and exchanged online can potentially affect all spheres of social life. Thus, if all or most citizens use the same search engine in such society, the search engine can steer human behavior in a profound and pervasive way, depending on the information it shows. The first page of search results about a person, displayed on a dominant search platform will, for example, define the reputation of a person in that society, for a large swath of internet users who may never have a second chance to acquire information about her. A book or website, whose content may affect the way persons think about their own lives or their society, may disappear from the public space, by virtue of not appearing among search results, or by appearing after too many other results. If customers predominantly rely on a single search engine to seek information about goods and services, the companies serving such customers in highly competitive markets cannot simply afford to disappear from search results. It is also at least conceivable to have a society in which almost every person uses the same social networking website. In this conceivable scenario, the information distributed by the website can have deep and pervasive social and psychological effects on most individuals. By channeling personal information and allowing it to reach many persons engaged in real-life interactions with the subject, the impact of any desirable

³² Luciano Floridi, “Introduction,” in *The Onlife Manifesto*, ed. Luciano Floridi (Springer International Publishing, 2015), 1–3, doi:10.1007/978-3-319-04093-6_1.

or undesirable piece of information would be widely amplified. Violating intimacy by leaking unauthorized visual content, for instance, is always undesirable, but it must have worse social and psychological consequences if it reaches the persons most likely to affect the offline life of the victim.

Finally, we can imagine a society in which all the important decisions and opinions of people in power and people with large amounts of capital (economic, cultural, or social)³³ are communicated through a social networking website. The formal constraints of the website – the rules about how information must be conveyed in it, e.g. how short or large the message, how links between pieces of information are established and made visible – may, in such hypothetical society, have an effect on the nature of political debate.

The relevant concept of “profound and pervasive effect” on citizens can be made more precise by invoking Rawls’s concept of the “two fundamental moral powers”, that is to say, capacities. The first moral power is the “sense of justice”, which is the capacity of contributing to defining terms of mutual coexistence and respecting them if reasonable. The second is a “conception of the good”, that is the potential to pursue and revise a view of what is valuable in life³⁴. A dominant internet platform is, by definition, an internet (communication and/or information) platform that affects the two moral powers of most citizens.

We have argued that an internet platform can, as a matter of conceptual possibility at least, be the sort of thing that (a) sustains the generation and distribution of goods of significant value and

³³ Mike Savage et al., *Social Class in the 21st Century*, A Pelican Introduction (London: Penguin, 2015).

³⁴ Rawls, *Justice as Fairness*, 18–19.

(b) has a profound and pervasive influence on all or most persons in society. How widespread the use of an internet platform must be – how dominant its position in the market it serves – for it to count as dominant, is difficult to determine precisely. In ethics and normative political philosophy we must satisfy ourselves with concepts which have fuzzy boundaries. The same is true, or so it may seem, of other institutions. A person can live as a hermit in the desert and be unaffected by the institution of property, or taxation. What percentage of the population must live as property-less hermits before property ceases to be a basic institution? We have introduced the concept of a dominant (information and/or communication) platform to capture an entity with characteristics similar to those of major social institutions considered by Rawls.

We therefore conclude that the concept of dominant internet platform is not logically contradictory and that, when they exist, dominant internet platforms belong to the basic structure of a society. In section 3, we will analyze some case-studies and argue that it is plausible to claim that some privately owned, commercially provided platforms, are dominant internet platforms in the sense defined here.

We claim that dominant internet platforms are proper *extension* of society's basic structure; they belong to it since their influence – by definition – can hardly be avoided by anyone. Because many individuals cannot help but relying on dominant internet platforms, these algorithmically organized entities – irrespective of whether they are organized as private companies, cooperatives, publicly owned companies, or some other form of institution – must be considered fundamental social institutions. If that is the case, we argue, then Rawls's principles of justice for society's basic structure applies to them. But what are these principles of

justice, and how are they justified? This will be the question of the next section.

II

Rawls's principles of justice as a framework for evaluating justice in the basic structure

Rawls's theory of justice applies to institutions forming society's basic structure. That is to say, it also applies to dominant internet platforms, if our previous argument is correct. Principles of justice provide criteria that allow one to sort institutions into just and unjust ones. Rawls's theory consists of two main principles:

FIRST PRINCIPLE

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

SECOND PRINCIPLE

Social and economic inequalities are to be arranged so that they are both:

(a) to the greatest benefit of the least advantaged, consistent with the just savings principle,³⁵ and

³⁵ Rawls's "just saving principle" deals with relations of justice between different generations. We will not explore the role of this principle in the application to big data and its balance with the Difference Principle (concerning justice for a single generation). A more encompassing evaluation of the justice of internet platforms must consider the intergenerational aspect, since a lot of the value of data is not fully realized, but only potential, and therefore potentially more valuable or harmful for future generations than present ones. Thus, distributive justice question concern not only the way in which such value is distributed across members of the same generation, but also between members of different generations.

(b) attached to offices and positions open to all under conditions of fair equality of opportunity.³⁶

Part (a) of the second principle is called “the Difference Principle”, perhaps the most important contribution of Rawls to the history of ideas. Part (b) of the Second Principle is the principle according to which person’s life chances ought to be similar, when persons have similar natural abilities and motivations (or ambitions), irrespective of the influence of their initial social class.

Rawls’s justification of the two principles relies on three leading ideas. The first is that persons should be conceived as “free and equal”. Persons are “free and equal” in the sense that they have enough of the two “moral powers” (introduced above) to deserve equal respect. A just society is one that protects and promotes the moral powers of all citizens *fairly*.

Rawls’s second main idea is that *fairness* should be conceived as the result of *an impartial procedure*, the so-called Original Position (OP). Parties in the OP choose the basic norms of social cooperation behind an imaginary “veil of ignorance”, a condition in which they ignore the specific circumstances of their society and their personal traits and circumstances. Since they *ignore* all morally irrelevant facts (e.g. facts about their individual characteristics), parties in the OP are forced to adopt an impartial

³⁶ Rawls, *A Theory of Justice*, 266. Rawls also argues (controversially, it turned out) that the first principle should have lexical priority with respect to the second, meaning that no infringement of the equal liberty principle should be ever tolerated as a means to realizing fair opportunity or to maximize the benefit for the least advantaged position. However, he also argues that this ordering of the principles only obtains as long as basic needs are met. Unequal rights could be extraordinarily and temporarily satisfied if strictly necessary to satisfy basic needs.

point of view. How would impartial choosers choose? According to Rawls, the two moral powers are so important, that it would be rational for a party in the OP to seek the sufficiently high level of protection for the moral powers in the worst possible circumstances. Failing to plan against the worst-case scenario in the OP is equivalent to not taking one's two moral powers seriously enough, since under the "veil of ignorance" one cannot exclude that the worst-case scenario is, in fact, the actual one. This is how equal fundamental rights are justified: one should select the right of freedom of conscience that it would be in one's interest no matter how popular one's religion happens to be in reality. This would clearly be one of equal freedom of conscience for all religions. Similarly, one would have to choose norms concerning race and discrimination assuming one belongs to the disfavored race, which would be one treating races equally, or, when equal treatment cannot be guaranteed, allowing unequal treatment that would benefit the worst off race and generate the preconditions for equality.

Let us now consider the Second Principle, concerning socio-economic justice. Here again social arrangements are evaluated taking as a guide the possibility of the worst-case scenario, which, for socio-economic justice, amounts to being a member of the group with the least opportunities and the worst expectations of income and wealth. Rawls argues that, should one select the norms that it would be rational to select in the worst-case scenario, one would not choose a principle of distribution of income and wealth that requires strict equality. Rather, one would choose a principle that justifies inequalities when (and only when) thanks to them, the expectations for the worst-off group are better than under a more equal distribution. (This possibility exists when the introduction of inequalities in the distribution of income and wealth goes hand by hand with an expansion of the resources generated by social cooperation. If a cake gets bigger

when it is divided more unequally, the smallest slice in the unequal distribution can be bigger than any equal slice.)

The Difference Principle could be interpreted as a principle requiring a form of *reciprocity* in inequality: unequal expectations are just only when there is no equal arrangement under which the least advantaged members are as well-off, as in the unequal one.³⁷

In the next section, we will illustrate by means of case-studies how Rawlsian principles of justice can be applied to a Rawlsian basic structure including dominant internet platforms.

III

Are there, in fact, dominant internet platforms?

The analysis of the following real-world cases is meant to achieve two goals: first to show that some existing internet platforms are plausibly taken to be dominant internet platform in the sense stipulated above. Second, to illustrate the relevance of Rawlsian principles of justice to evaluate the justice of dominant internet platforms.

³⁷ What about if the benefits for the more advantaged members neither add nor detract from the benefits from the least advantaged ones? Rawls assumes that this is not likely to happen (close-knitness assumption, *Ibid.*, 71). If close-knitness does not obtain, different interpretations of the Difference Principle are possible (and justifiable in the context of other Rawlsian claims), depending on the different emphasis placed on the idea of reciprocity or the Original Position argument. See Philippe Van Parijs, “Difference Principles,” in *The Cambridge Companion to Rawls*, ed. Samuel Richard Freeman (Cambridge, U.K.; New York: Cambridge University Press, 2003), 200–240.

Political speech on YouTube

Towards the end of September, 2017, MEP Marietje Schaake uploaded a series of videos on YouTube concerning the debate in the Parliament on the new law on European trade for good that are used in torture and the death penalty. According to the MEP, YouTube removed one of her video with a recording of the opinion of the Commissioner for European Trade, Cecilia Malmström. YouTube's reasons for removal was that the video was "flagged for review" by other users and that YouTube determined that YouTube Community Guidelines were violated.³⁸ MEP Schaake filed a "video appeal", where she had to argue in one sentence why the video needed to stay up.³⁹ After she publicized the incident through Twitter⁴⁰, Google reached out to one of her parliamentary assistants to smooth it out and revert on the decision. The video was back online after four hours.

This case illustrates how the combination of software, terms of use, and social norms, powered by an internet platform (YouTube), enables a new form of control of political speech. In this case, YouTube's software-mediated practices and their

³⁸ "Community Guidelines - YouTube," accessed October 26, 2016, <https://www.youtube.com/yt/policyandsafety/communityguidelines.html>.

³⁹ "When YouTube Took down My Video," *Marietje Schaake*, accessed October 26, 2016, <https://www.marietjeschaake.eu/en/when-youtube-took-down-my-video>; "YouTube Takes Down European Parliament Video On Stopping Torture For 'Violating Community Guidelines,'" *Techdirt*, accessed October 26, 2016, <https://www.techdirt.com/articles/20161006/00445835727/youtube-takes-down-european-parliament-video-stopping-torture-violating-community-guidelines.shtml>.

⁴⁰ Marietje Schaake, "Danger of Automated Content Removal: YouTube Took down My Video of the Anti-Torture Debate in the European Parliament!" microblog, *@MarietjeSchaake*, (October 5, 2016), <https://twitter.com/MarietjeSchaake/status/783699031746867204>.

policies about content removal inadvertently or intentionally helped a crowd silence a parliamentarian who was posting about democratic discussions of torture. The case illustrates both the potentially deep and wide-ranging impact of an internet platform (which makes it dominant according to our definition) and how the Rawlsian Theory of Justice can be saliently applied to it.

YouTube is a dominant platform because it can have a significant influence on the moral power of *reasonableness* of citizens – their capacity to judge what is just and unjust. Whether a content is accessible or not on YouTube can have far reaching consequences: according to the company itself, it has over a billion users and reaches more 18-34 and 18-49 year-olds – a significant fraction of the electorate – than any cable network in the U.S.⁴¹. Possibly the statistics concerning Europe are not that different. If users in this cohort remain faithful as they grow older and new cohorts replicate the same use patterns, the overall reach and influence of the platform is going to grow. The content of the video involves a textbook definition of political speech, which is a kind of speech that can have a widespread and profound effect on everyone, by affecting a society's *public* decisions. It could be argued that decisions concerning content on YouTube affect everyone in society, or almost so. First of all, even non-users can be indirectly influenced by opinions formed by accessing YouTube, via their social connections to non-users. Second, if the content available (or not) on YouTube affects the public conversation about public issues it can influence political decisions that are binding to all. If YouTube can affect everyone in society, also the non-users, and if it can affect the way in which

⁴¹ “Statistics – YouTube,” accessed October 26, 2016, <https://www.youtube.com/yt/press/statistics.html>.

citizen's sense of justice operates, then it qualifies as a dominant internet platform based on our definition.

Napalm Girl and Facebook

“Napalm Girl” is widely regarded as the most iconic documentary photograph of the Vietnam war, including a naked 9-year-old Kim Phúc running away from a Napalm attack. Norwegian author Tom Egeland, working for the newspaper *Aftenposten* included this picture in the context of a display of seven photographs that changed war history. Facebook promptly removed the picture, since it shows Kim Phúc's naked genitals, in violation of Facebook's Community Guidelines. Subsequently the editor of *Aftenposten* wrote an open letter to Facebook that circulated widely among media outlets and on the blogosphere. Erna Solber, the Conservative prime minister of Norway, voiced criticism on Facebook's choice on Facebook itself. Facebook reverted its previous decision, which pointed out at the difficulty of distinguishing between different instances of posting photographs of nude children, the day after the publication of the open letter.⁴²

⁴² Espen Egil Hansen Sjefredaktør, “Dear Mark Zuckerberg. I Shall Not Comply with Your Requirement to Remove This Picture,” *Aftenposten*, accessed October 26, 2016, <http://www.aftenposten.no/article/ap-604156b.html>; NTB, “Norsk Forfatter Midlertidig Utstengt Fra Facebook Etter å Ha Postet Bilde Fra Vietnamkrigen,” *Aftenposten*, accessed October 26, 2016, <http://www.aftenposten.no/article/ap-603854b.html>; Julia Carrie Wong, “Mark Zuckerberg Accused of Abusing Power after Facebook Deletes ‘Napalm Girl’ Post,” *The Guardian*, September 9, 2016, sec. Technology, <https://www.theguardian.com/technology/2016/sep/08/facebook-mark-zuckerberg-napalm-girl-photo-vietnam-war>; “Erna Solberg - Diary,” accessed October 26, 2016,

Plausibly enough, the emotional graphical content posted on Facebook (a child running away from the horrors of war) can be considered as an example of political speech of the kind that can contribute to the development of the sense of justice in the citizens. Afterposten is not an individual but a company that has with Facebook a commercial relationship, presumably regulated by a contract that secures very explicitly Facebook's entitlement to apply its policies on the content transiting through its platform. Here we see another aspect of Facebook dominance. As the most widely used social network in many countries, it is not a platform where any newspaper of high-income countries can afford *not* to be. News outlets such as Afterposten, operating in a competitive environment, can only avoid Facebook at great risk for themselves.

Breastfeeding and Facebook

Finally, Facebook image censorship guidelines, leaked in 2012,⁴³ revealed that images of breastfeeding had to be taken down by moderators if the nipples were exposed. Facebook's

<https://www.facebook.com/ernasolberg/posts/10154351913481832>; James Temperton, "Facebook Makes U-Turn on Decision to Censor an Iconic Vietnam War Photo," *WIRED UK*, accessed October 26, 2016, <http://www.wired.co.uk/article/facebook-terror-of-war-vietnam-napalm-girl-image-censored>; Sam Levin and Julia Carrie Wong Luke Harding in London, "Facebook Backs down from 'Napalm Girl' Censorship and Reinstates Photo," *The Guardian*, September 9, 2016, sec. Technology, <https://www.theguardian.com/technology/2016/sep/09/facebook-reinstates-napalm-girl-photo>.

⁴³ Charles Arthur, "Facebook's Nudity and Violence Guidelines Are Laid Bare," *The Guardian*, February 21, 2012, sec. Technology, <https://www.theguardian.com/technology/2012/feb/21/facebook-nudity-violence-censorship-guidelines>.

nipple policy could be charged of intentionally or inadvertently supporting corporate interests threatened by breastfeeding (e.g. powder milk industry), in so far as it limits the users' exposition to pictures of woman breastfeeding. This may have an influence on women's choices with respect to whether to breastfeed in public, or indeed breastfeed at all, and on their partners' motivation to support them. Second, it sends all kinds of messages about gender role, in so far as men's nipples, but not women's, are permitted.⁴⁴ Thus, the combination of Facebook software (for signaling content) and moderation rules is an institution of social cooperation with the power to influence the conceptions of what is good, appropriate, dignified (the second moral power, of "rationality") of many individuals in societies where Facebook usage is widespread.

We conclude that Facebook has the power to impose rules of social cooperation to significant portions of society. It achieves this influence through different stages. First, it affects those people who, due to their life goals, cannot afford *not to use* Facebook. The rules of the platform are – from the perspective of these persons – take-it-or-leave-it social institutions just as the rules of propriety and taxation. They are rules *shaping* their choices and *distributing* goods to them. Arguably, they are even *more* take-it-or-leave-it than rules of property and taxation since, to change the latter, constitutionally approved and familiar institutional mechanisms to change the institutions democratically exist. Second step: a platform like Facebook extends its influence to the rest of society because its users are a significant proportion of the total population and are enmeshed across all layers of

⁴⁴ Amar Toor, "Facebook Still Has a Nipple Problem," *The Verge*, October 12, 2016, <http://www.theverge.com/2016/10/12/13241486/facebook-censorship-breast-cancer-nipple-mammogram>.

society. By virtue of this social connectedness, Facebook content moderation choices affect the public culture and the behavior of non-users as well. A proof of Facebook's influence *outside* the *private* realm of active Facebook users is the large number of cases involving Facebook that are discussed *outside* Facebook (e.g. on the news).

If Facebook and Youtube are dominant internet platforms, in many societies, then, they belong to the basic structures of those societies. Rawls's Principles of Justice determine the justice of the basic structure, including the Facebook and YouTube platforms. We propose to analyze YouTube and Facebook as institutions to which the principle of the equal liberties applies. If that is the case, Facebook must guarantee equal protection of freedom of speech.

Do YouTube and Facebook protect equality of freedom of speech? The above mentioned cases suggest that they rules create roles and opportunities for the exercise of arbitrary power, that end up conferring advantage to some parties to the detriment of other parties, inadvertently or intentionally. These roles are: a) the role of decision-makers in the company with the authority to dictate internal guidelines for removing online content, b) the role of the employees who must apply these guidelines, c) the role of the platform users who can notify alleged violations of the community guidelines. Each role plays a specific function and has specific rights and authorities attached to it. In fact, the platform policies about speech are decided non democratically, exercised mechanically and yet somehow arbitrarily, and provide poor protection of a the right to appeal against such decisions.

Those who have designed the platforms, have not done so with the goal of protecting the ability of the users to challenge the platform decisions *to a degree compatible with the protection of their moral powers*. They have designed the platform to be compatible

with user satisfaction, which is necessary for profit (but only necessary to an extent actually modulated by the platform's true dominance). User satisfaction and protection of the two moral powers are two different goals. There is no *a-priori* guarantee that the level of user satisfaction that Facebook needs, in order to be profitable, will be achieved by protecting everyone's freedom of speech equally.

In fact, as the above analysis show, the existing rules appear to confer more opportunities of communication to the weapon industry, the artificial milk industry, and those who think that showing female breasts in public is necessarily inappropriate, than to the persons opposing those views.

We argue that, as a society moves online, the social norms and positive laws that were sufficient to guarantee equal freedom of speech *in the absence of the dominant internet platforms* can no longer be relied to fulfill this function. Existing safeguards – positive laws and social norms concerning speech and its regulation – have a limited reach in the new world of internet-based institutions. Constitutional rights may be framed ambiguously which makes it difficult to invoke them to protect online freedom of speech. Existing judicial procedures may have very uncertain outcomes and therefore be too difficult to enforce.

The enforcement problem is a particularly serious one. Take the MEP Schaake case first. The story has a kind of happy ending with a tweet storm reaction and the overturning of the initial verdict from the moderators. But a less prominent (and affluent) user who may easily be victim of a similar violation would neither be able to engage the Twitter people to stir public uproar, nor to sustain a potentially burdensome court case against YouTube.⁴⁵

⁴⁵ Moreover, Twitter could be purchased by the same company that owns

In the Napalm Girl case, again, Facebook arrives at a reasonable and timely judgment, but only after a significant reaction by the media and politics. Such reaction could be achieved by an established news outlet (an entity, almost by definition, with an above-the-norm capacity for public communication). But for all we know, there might have been many similar cases, involving ordinary Facebook users, that we have never heard of, simply because no response was elicited, and the decision of moderators was passively accepted. However, being a newspaper also exposes the agent in question to a particular vulnerability. Relationships between newspapers and Facebook are regulated by commercial contracts. The possibility to exercise data protection rights in the courts, while economically feasible for a newspaper, may be in this case be restricted by commercial clauses consented to.

IV

Inequalities generated by the internet

Economic inequality in big data

Internet is nowadays dominated by large companies, producing and controlling a huge amount of personal data as a collateral effect of providing their services through the internet. The technological innovations responsible for this are mainly the

YouTube. Existing laws are unlikely to prevent such possibility specifically. Current competition and antitrust laws (on either side of the ocean) have a different rationale (consumer welfare) and are not applied for the purpose of protecting the constitutionally enshrined value of freedom of speech. We believe our arguments show that the purchase of Twitter by Alphabet or Facebook would be a threat of freedom of speech, but it is unclear whether a constitutional judge (on either side of the ocean) would see it in this way. Yet the substantive implications for freedom of speech are clear.

Internet and the smartphone, which provide access to a wide variety of services, such as maps, blogs, videos and internet searchers, every day, 24h a day, in real time, globally. As a side-effect of interactions between platform companies and their customers, formidable amounts of data are collected.

The data produced and controlled by platform owners are considered a “new asset class”.⁴⁶ The ability to control and derive benefits from such assets is marked by significant inequalities. There is an inequality in the ability to *collect and control* these data, as the dominant internet platforms are uniquely positioned to do so. This unique position derives from the combination of different network effects that make it difficult, if not impossible, to compete against the first company that starts to benefit significantly from them. For example, it is hard to compete against Facebook offering the same product, if you start with a hugely inferior user base. For the number of users in the network – the number of potential “friends” you can reach adds value to the service provided.⁴⁷ Google search benefits from a host of interlocking network effects: marketplace network effects

⁴⁶ World Economic Forum and Bain & Company, Inc., “Personal Data: The Emergence of a New Asset Class” (World Economic Forum, 2011).

⁴⁷ It might be objected that Google may soon face serious competition by Bing, the Microsoft powered search engine. This is the kind of exception that proves the rule: few companies are able to sustain the huge losses that Microsoft suffered for several years in order to get a chance to compete with Google, and even in this case the possibility of competition only exists because Microsoft can exploit market dominance in another market, that of operating systems. See, By Robert Cyran, “Microsoft Ought to Kick off Search for Bing Buyer,” *Reuters Blogs*, accessed April 4, 2016, <http://blogs.reuters.com/breakingviews/2011/07/22/microsoft-ought-to-kick-off-search-for-bing-buyer/>; Seth Fiegerman, “Microsoft’s Bing Search Engine Is Actually a Success,” *Mashable*, accessed April 4, 2016, <http://mashable.com/2015/06/30/bing-not-losing-money/>.

(advertisers affiliated with Google can access to the best profiled individuals, while each individual advertiser contributes its bit to the profiling), data network effects (if you have more data, you can more easily build a richer ecosystem of better services around each person), recruiting network effects (particularly on social networks, a larger user base attracts even more users), and feedback network effect (the behavior of users tells Google which search results are selected after typing a given search key - thus helping Google to identify the most fitting search results).⁴⁸ Due to these network effects, many markets of internet services (e.g. the search or social network markets) tend to be winner-takes-all.⁴⁹

Google allows the activities of social cooperators to generate and distribute goods (intelligently organized information, insights, customer profiles), that would not exist independently of it and of the actions of individuals it enables, which is a typical feature of a dominant internet platform. These goods are then converted into wealth for some (through the legal mechanisms of intellectual property ownership), and opportunities for others. Second, Google has a profound and pervasive influence on the life of all or most persons in society. In many countries, Google is by far the most widely used search engine. Hence, it has the capacity to affect the reputation of individuals and commercial success of companies, as the “imaginary” platform introduced in

⁴⁸ This asymmetric relationship between those who collect, store and mine data and their targets is sometimes referred to as the “big data divide”. See Mark Andrejevic, “The Big Data Divide,” *International Journal of Communication* 8 (2014): 1673–1689.

⁴⁹ See also Loi, M., P. Dehayé, and E. Hafén, “Towards Rawlsian “property-owning democracy” through personal data platform cooperatives”, submitted manuscript.

section 1. If that is correct, the Second Principle of Justice applies to Google. What are the implications of this fact?

The first is that Google is bound to respect the principle of *Fair Equality of Opportunity*. The original Rawlsian principle applies to persons and their chances of success. Arguably, however, the Fair Equality of Opportunity principle should also apply to *business*, also because behind businesses there are persons, who are largely affected by the success or lack of success of businesses. The internet version of the Fair Equality of Opportunity principle would be based on the following equivalence

Individual's chances of success	→	companies' chances of success
Initial position relative to social class	→	position relative to the economic interests of dominant internet platforms
Similar talents	→	similar potential profitability
Similar ambitions	→	similar ambitions

Fair Equality of Opportunity for companies on the web, then, is the claim that:

Equally ambitious and potentially profitable companies should have similar chances of success, irrespective of their relation to the economic interests of dominant internet platforms.

The principle in question is a plausible requirement of fairness in commercial competition for companies in societies where a single internet platform dominates the search market. Customers have an interest to obtain services from companies that meet their needs and expectations; they do not have an interest in

solidifying the dominance of the dominant search engine. Moreover, the success of a company (and derivatively, of the persons who lead it or work on it) must not depend on its positive contribution to the solidification of entrenched players. Such a dependency would run afoul of Fair Equality of Opportunity, which is interpreted (by Rawls himself) as incompatible with the concentration of economic assets and powers in few hands, and requires anti-monopolistic measures⁵⁰. That, of course, does not mean that Google should not charge for the ads it sells, that also appear on its search result page. Arguably, companies with similar potential profitability and similar ambitions (that is to say, operating in the same markets) normally have similar chances to buy ads. The real issue of justice concerns a company's rank in the *organic* (that is, the unpaid) search results, those that are not for sale and that, for that reason, appear to be “meritocratically” assigned. For dominant internet platforms, realizing Fair Equality of Opportunity means an obligation to provide a level playing field for all companies competing for their users' attention, without preferential treatment to own or allied companies and strategic handicapping of potential competitors. It is worth mentioning that some have accused Google of failing precisely on that count. Frank Pasquale's *The Black Box Society* reports the allegation of Foundem, a UK company specialized in price comparisons.⁵¹ The uncontroversial facts of the case are the following: six months after its launch, Google blocked Foundem from appearing in its organic search results. Google and Foundem provide different justifications for this: according to Google, its algorithm had classified it as “ ‘a low-quality’ site, composed mainly of links to

⁵⁰ Rawls, *A Theory of Justice*, 243 and 246.

⁵¹ Pasquale, *The Black Box Society*, 67.

other sites”⁵². According to Foundem, Google did not come to such assessment based on impartial criteria. Foundem’s preferred explanation is that:

If Google has no interest in an area, it will let an upstart be. But once it enters (or plans to enter) the market of a smaller finding service, it downranks that service to assure the prominence of its own offerings. (Major incumbents are not displaced lest their users revolt, so they usually retain their access to prime real estate.) If the smaller engine is a potential acquisition target, Google has another interest in suppressing traffic: to discourage its hope of succeeding independently. Like Pharaoh trying to kill off the baby Moses, it denies its rival the chance to scale. When a would-be purchaser controls significant access to its target’s potential customer base, overtures of interest are offers that can’t be refused.⁵³

Let us suppose that Foundem’s allegations, as reconstructed by Pasquale, are true⁵⁴. We could explain the resulting injustice by

⁵² Ibid.

⁵³ Pasquale, *The Black Box Society*.

⁵⁴ The recent fine levied against Google in the EU antitrust case (that Google will appeal against) is based on evidence of this kind of behavior. See Nicholas Hirst, “Wanted: Expert to Monitor Google’s Algorithm for €10 Million,” *POLITICO*, June 29, 2017, <http://www.politico.eu/article/wanted-expert-to-monitor-googles-algorithm-for-e10-million/>. Notice that Facebook has been brought to court by an app company for allegation of a similar anti-competitive behavior. The former startup Six4Three maintains that Facebook used its power to grant or deny access to its customers’ personal data as a threat at the bargaining table with companies, such as Six4Three. Allegedly, Facebook’s command over the data of roughly one third of the world population allowed its managers to terminate the business of unwanted competitors, if they wanted to, or buy them at below market price, or to force them to purchase undesired commercial services from Facebook, such as sponsored ads on its mobile platform. See Cadwalladr, Carole, and Emma Graham-Harrison, “Zuckerberg Set up Fraudulent Scheme to ‘weaponise’ Data, Court Case Alleges.” *The Guardian*, May 24, 2018, sec. Technology. <http://www.theguardian.com/technology/2018/may/24/mark-zuckerberg->

appealing to the (modified) Fair Equality of Opportunity Principle. Seen as an institution, Google search includes two social roles with a potential conflict of interest: Google owners and search *subjects* (in this case, the company Foundem). The first role aims to protect and strengthen Google's market share, while the second aims to reach their customers, and these two goals may not be aligned.

If Google is a dominant internet platform then, according to our argument, there are limits to the extent that it can promote its own commercial interests. Not all means would be permitted: the company owning the dominant internet platform could only maximize its own profits through strategies constrained by the prior principle of justice of Fair Equality of Opportunity. Google – as the company that owns an arguably dominant internet platform – should arguably be prohibited to pursue its own commercial objectives by reducing the chances of success of a potential competitor.

So far, we have analyzed justice in the dominant (search) internet platform in terms of the relationship between a particular set of *search subjects* (namely, companies) and the platform *owners*. Let us now turn to the relationship between the two roles of *owners* and *users* and let us consider the question of *income and wealth inequality*, the subject of Rawls's *Difference Principle*. We must consider the roles created and sustained by Google search – regarded as an institution – in relation to how income and wealth are distributed between them. Google owners include a small number of owners with a significant proportion of the shares, who are extremely wealthy, and a large number of owners each owning few shares, who are predominantly middle- or high-

set-up-fraudulent-scheme-weaponise-data-facebook-court-case-alleges.

income citizens with a capacity to save and invest in a public company, such as Google. On the other hand, there are the Google users, including everyone with a computer or a smartphone with internet connection, which is to say, excluding perhaps a significant proportion of elderly citizens, virtually everyone in societies where internet usage is widespread. Google users presumably have, on average, lower expectations of income and wealth than Google owners. Moreover, Google contributes to reinforce this inequality in so far as the distribution of benefits from that is concerned. The way Google does this is by extracting economic value from user-provided data and converting it to profits that are then paid to the owners of its shares.

Notice that Rawls' Difference Principle is actually *not* violated because Google's *owners* are, as a group, much better off than Google's *users* and Google, as an institution, contributes to reinforcing such inequality. In order to show a violation of the Difference Principle, more elements are needed. Justice, for Rawls, is not synonymous with the equal distribution of income and wealth. Rather, according to Rawls's Difference Principle, the inequalities produced by the internet can be considered *just* if they cannot be removed without making least advantaged individual worse off in absolute terms. Rawls's *Difference Principle* is only violated if Google users would be at least equally well off with services analogous to those offered by Google but provided within an alternative set of institutions, distributing the economic value of data more equally. Thus, Rawls's Difference Principle directs our inquiry to assess the following empirical question: are there possible institutional/technological arrangements that can provide effective search services while generating more equal expectations of income and wealth from the data, in which the expectations of the search engine users are not *worse* in absolute terms? If the only way to achieve a more equal distribution of wealth from data were to deprive consumers of the highly

valuable service for searching information Google provides, making their expectations worse off in absolute terms, Google-sustained inequality would be justified. If alternative arrangements are possible, where consumers have *both* access to valuable search services and where users are equally or better off than they are today thanks to alternative ways of distributing wealth from data, than the Google dominant platform for search is unjust, in that it violates the Difference Principle.

At this stage in our argument, we lack the empirical information necessary to assess the truth of the above claim. Our purpose here is *conceptual*, not *empirical*, i.e. to reflect about the kind of *criteria* that ought to govern the assessment of justice in the extraction of value from data. What could greatly help a scientist's ability to assess the Google dominant platform from the point of view of the Difference Principle is research about, and implementation of, *alternative institutions for governing data provided by citizens in the search market*.

This is a field for interdisciplinary inquiry in which exciting innovations are taking place. Consortia such as the MyData movement,⁵⁵ data cooperatives such as Healthbank⁵⁶ and MIDATA.coop⁵⁷ are proposing innovations in both corporate governance and software systems. In alternative institutional arrangements, search services would not be allowed to collect data about their users to redeploy them for any purpose, except

⁵⁵ "Homepage," *MyData 2016*, accessed August 24, 2016, <http://mydata2016.org>.

⁵⁶ "Healthbank Innovation Ag, Baar," accessed May 16, 2016, http://www.moneyhouse.ch/u/healthbank_innovation_ag_CH-170.3.039.845-6.htm.

⁵⁷ "MIDATA.Coop | My Data - Our Health," *Midata*, accessed May 16, 2016, <https://www.midata.coop>.

those strictly necessary to provide, monitor and improve their services. Individuals would have a legal right to demand and obtain a copy of all the data collected about them by internet services in a usable form⁵⁸. In this way, data could be returned from dominant internet platforms to their users and controlled by users directly. Ordinary citizens would be empowered to derive value from data by new kinds of institutions, such as data aggregators and personal data management systems. These systems could be owned by internet users cooperatives such as Healthbank and MIDATA⁵⁹, or technological start-ups with a different business model from the currently prevailing one, which consists in accessing as much user data as possible. These companies would develop business models in which they act as intermediaries or facilitators, that enable the internet user to control their data and profit from the data (for instance by pooling together the data of many individuals, in a way that is nowadays only achieved by providers of popular online services).

⁵⁸ Arguably, the coming European Data Protection Regulation goes some steps in this direction, in particular by virtue of the principle of *data portability* (Art. 20). See “Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation 2016/ 679)” (2016), http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG&toc=OJ:L:2016:119:TOC. Yet, the data portability principle does not really extend to the majority of data that internet companies are nowadays able to record and process, as it tries to balance the rights of the data controllers. It is also unclear whether it can be leveraged by consumers and companies to undermine the current hegemony as data collectors of large providers of services, or if it could even further entrench their dominance by selectively choosing beneficiaries of this portability.

⁵⁹ E. Hafen, D. Kossmann, and A. Brand, “Health Data Cooperatives – Citizen Empowerment;” *Methods of Information in Medicine* 53, no. 2 (February 11, 2014): 82–86, doi:10.3414/ME13-02-0051.

These technological and governance innovations could empower individuals to bargain, individually or collectively (in the case of the cooperative model), their own data with services or even income, in a way that is more informed and transparent. In this alternative data economy, providers of search or social networking services would lose most of their capacity to extract value from the data of their users and would have to change their business model into one in which they are paid for their services, either by individuals or cooperatives of internet users. But internet users would, for example, be able to derive income from their data, and after using some of this income to pay the services that used to be offered for free, they would totalize a net gain, on top of more agency in the overall data economy.

Developments in this area are exciting. They suggest that there could be alternative arrangements, both legal and technological, able to sustain a tendency to equality, as opposed to the tendency to inequality promoted by a company like Google. Still, in this moment we do not know whether these alternative arrangements would really work and whether internet users would be better off, under them, than they are now, from the point of view of the Difference Principle.

If the argument in this paper is correct, these developments are important not only because they are innovations, but also because they contribute to our normative knowledge. Given the way the Difference Principle works, we need to compare the present state of affairs to alternative possible arrangements in the data economy, in order to be able to assess whether the existing level of inequality they support is justified (because the least advantaged group would be worst off without it) or not justified (because a more egalitarian distribution that does not compromise expectations for the worst off group is possible).

V

Conclusion

The initial question of this paper is how to assess justice in the extraction of value from data. We start by assuming that the extraction of value from data is just, when the institution that enable this activity are just. We defend the following theses:

1. that software should not be regarded simply as a *distribuendum* of justice, but rather as a social institution;
2. that *dominant internet platforms*, human-software assemblages formed by software, legal arrangements, and the social norms constraining the behaviors of their users, are institutions of society's basic structure;
3. that *dominant internet platforms* ought to fulfill principles of social justice;
4. that YouTube, Facebook, and Google Search are plausibly considered (relative to their position in many societies) dominant internet platforms;
5. that YouTube, Facebook and Google Search are *unjust institutions*, if they violate Rawls's Two Principles of Justice;
6. that there are indications that YouTube, Facebook and Google search may violate these principles.

Depending on the strength of considerations for thinking that these platforms are indeed dominant ones according to the definition provided and of considerations for thinking that they fail to satisfy the Rawlsian two Principles of Justice, we may come to the conclusion that these platforms are *unjust institutions*. If that is in fact the case, the extraction of value from data of these companies can be considered *unjust*.

Our examination of the justice of these concrete internet platforms must be understood as a “proof of concept” of the approach, but could not provide definitive results. There are elements in support of the idea that YouTube and Facebook at the moment do not deliver equal protection to the freedom of speech of their users, but it could be objected that these platforms are not dominant enough, or that they provide sufficient guarantees of impartial treatment to their users. We have also mentioned allegations that Google Search violates the “internet Fair Equality of Opportunity Principle” but, due to the opacity of Google Search ranking criteria, it is hard if not impossible to obtain conclusive evidence⁶⁰. Finally, we cannot determine if the Difference Principle is violated until we achieve a more solid understanding of the expectations of the least advantaged groups under alternative arrangements of digital rights and alternative forms which the data economy could take. At least three direct policy implications follow from this analysis:

- 1) legal scholars and constitutional judges cannot ignore the right to equal protection of freedom of speech expressed in the spaces provided by dominant internet platforms;
- 2) more transparency is needed to assess whether dominant internet platforms violate Rawlsian Principles of Justice. Or in other words, justice provides an argument against *opacity*;

⁶⁰ Due to this opacity, the Directorate-General for Competition of the EU has recently opened a 10M Euros tender for expertise to help evaluating “processes and methods determining the display and positioning of generic search results” and “paid search results (such as online search advertising)”. See European Commission Directorate-General for Competition, “Framework Contract for Services Number — Comp/2017/012,” February 2016, 16, <https://etendering.ted.europa.eu/cft/cft-document.html?docId=27863>. See also Hirst, “Wanted.”

- 3) governments and societies ought to promote initiatives to rethink and revolutionize the way the data economy operates.

Only then we will be able to determine whether the distribution of income and wealth engendered by existing dominant platforms is just or unjust.

University of Zurich

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PersonalData.IO, Geneva