We All Own Stolen Goods — and How Defending Property Rights Can Help the World's Most Oppressed People

by Leif Wenar
Lead Essay
Cato Unbound
May 12th, 2008
(See the debate over this essay at: www.cato-unbound.org/archives/may-2008/)

You very likely own stolen goods. The gas in your car, the circuits in your cell phone, the diamond in your ring, the chemicals in your lipstick or shaving cream — even the plastic in your computer may be the product of theft. Americans buy huge quantities of goods every day that are literally stolen from some of the world's poorest people. These thefts are permitted — indeed encouraged — by an archaic rule of international trade that violates the most fundamental rule of capitalism: to protect property rights.

Tracing these stolen goods back to where the thefts occur lands us in some of the most wretched places on earth. What these countries have in common is an abundance of natural resources and plentiful political violence and corruption. All suffer from what Joseph Stiglitz and Jeffrey Sachs call "the resource curse." Here dictators and insurgents sell off the country's resources to foreigners, terrifying the people into submission while keeping the wealth for themselves.

The lavishly tyrannical Teodoro Obiang of Equatorial Guinea has become richer than Queen Elizabeth II by selling off the country's oil and gas while killing or menacing anyone who might try to stop him. Obiang is the kind of dictator who has not shied from having himself proclaimed "the country's God" on state-controlled radio, or from having his guards slice the ears of political prisoners and smear their bodies with grease to attract stinging ants. Obiang sells two-thirds of Equatorial Guinea's oil to American corporations like ExxonMobil and Hess, and has recently spent 55 million of these petro-dollars to add a sixth private jet to his fleet. His playboy son and heir (who earns $5,000 a year as a government minister) prefers Lamborghinis, and recently spent $35 million on a house in Malibu. Meanwhile raw sewage runs through the streets of the country's capital, three quarters of the country's people suffer from malnutrition, and most citizens are forced to exist each day on what you can buy in America with one dollar. Obiang does not need to worry about the health or education of the population: he gets the money he needs to maintain his despotic rule by allowing foreign corporations to set up offshore platforms to extract the country's oil.

Resource-cursed countries like Equatorial Guinea are prone not only to authoritarian rulers but also to civil strife, since the prospect of obtaining fabulous wealth by wrenching resources from a poor country often sets off a violent struggle for the prize. In 2004 a cabal of businessmen (including Margaret Thatcher's son Mark) financed mercenaries who attempted to overthrow Obiang and replace him with a puppet president who would funnel the country's oil revenues to the plot's financiers. (The coup failed and Obiang had the captured leaders tortured.) Nor is Equatorial Guinea the only country whose resources have cursed it with authoritarianism and civil war:

- In the late 1980's and early 1990's Pol Pot supported the Khmer Rouge army by capturing and then plundering a strip of Cambodian territory rich in rubies and timber.

- In Sierra Leone in the 1990's insurgents recruited child soldiers to scare much of the population away from the country's rich diamond deposits with a brutal campaign of shootings and machete amputations. The rebels enslaved many of the remaining locals to work in the pits, selling these "Blood Diamonds" to international merchants like De Beers who then set them in wedding rings that Americans now wear as symbols of enduring love.

- The highly repressive Burmese military junta remains in power today partly by selling $2.8 billion of natural gas to Thailand each year and using these revenues to buy advanced weapons from India to quell domestic dissent. The regime is being protected from UN sanctions by China partly in exchange for access to large offshore gas deposits.

- In the Democratic Republic of Congo right now more than a thousand people die every day in the chaos caused by militiamen fighting over the minerals used to make our cell phones and laptops, who rape village women with bayonets and clubs as a tactic of war.

Authoritarianism and civil war both impoverish the people of resource-cursed countries. Sierra Leone this year ranks 177th out of 177 countries on the Human Development Index. Social scientists say that resource exports are correlated with higher rates of child malnutrition, lower healthcare and education budgets, higher illiteracy rates, higher poverty rates, and lower life expectancy.

The natural resources that the strongmen and civil warriors sell off are made into products sold in America. The money we spend on these products goes back to pay for their Kalashnikovs, helicopter gunships, and fleets of private jets. Paul Collier estimates that 290 million of the world's "bottom billion" people are caught in what he calls "the resource trap." Millions of these poor people must watch helplessly as their countries' resources are sent overseas while our money flows in to the men with guns.

This is literally theft. The authoritarians and insurgents have no right to sell these countries' resources. As the ancient Roman legal maxim says, *Nemo dat quod non habet*: no one can give what they do not have. The authoritarians and insurgents do not own these countries' resources. The natural resources of a country belong, after all, to its people.

George W. Bush and Tony Blair recently and repeatedly invoked this principle of national ownership in the case of Iraq: "The oil belongs to the Iraqi people," Bush said, "It's their asset." Nor is this principle parochial to any particular ideology: Hugo Chavez and Ayatollah Khamenei have proclaimed the principle as well. All of these leaders are drawing on one of the deepest ideas in modern international law. This is the principle of national ownership declared in Article 1 of the primary human rights treaties, ratified by the United States and the vast majority of the countries of the world: "All peoples may, for their own ends, freely dispose of their natural wealth and resources."

The principle of national ownership is deeply embedded in international law, but it is also violated daily under cover of a rule from the days of European colonial empires. By this archaic rule the internationally recognized power to sell off the territory's resources is vested in anyone violent enough to cow a country's people into submission. By this rule any tyrant or civil warrior can gain the right to sell off a country's resources simply through force of arms. According to this archaic rule for selling resources, might makes right.

It is this archaic “might makes right” rule that generates systematic incentives toward the curses of tyranny, violence, and poverty. Authoritarians who gain the resource right use the money from resource sales to buy weapons and spies to keep the population living in fear. Coup plotters look for ways to grab the resource right from the current regime and then become authoritarians in their turn. Rebels who can seize control of resource-rich territory gain the funds they need to start or escalate a civil war. And the people, whose resources are being sold off, become not the beneficiaries of this wealth but the victim of those who use their own wealth to repress them. “Might makes right” is the rule that sets off a violent contest to extract poor countries’ resources while crushing popular resistance, and it is the rule sends the products of crime into our gas stations and shopping malls.

How bad is the problem of stolen resources? The U.S. government uses the seven-point Freedom House scales to rate each nation on how much control citizens have over the those who hold power in their country. The very worst countries — the “sevens” — are places like Burma, Equatorial Guinea, Libya, North Korea, Somalia, Sudan and Zimbabwe. Taking these very worst countries as the places where the people could not possibly be authorizing the dictators and civil warriors to sell off their country’s resources, we can measure the amounts of stolen resources that enter America each year. By these official U.S. criteria over 600 million barrels of oil — more than one barrel in eight — have been taken illegitimately from their countries of origin. Stolen oil may be in your car’s gas tank right now. Stolen oil might have been used to make the computer mouse in your hand.

What can be done? One option is a public pressure campaign to divest from companies that invest in resource-cursed countries, as is endorsed by Nicholas Kristof in the case of Sudan (“Is your pension fund helping finance the Janjaweed militias that throw babies into bonfires in Darfur?”). Another possibility, in countries where this is politically conceivable, would be to institutionalize Vernon Smith’s proposal for a “People’s Fund”: a mutual fund built up by auctioning the country’s natural resources, from which any citizen could at any time withdraw their per-capita share of the revenues.

The most promising strategy, however, is to enforce property rights directly: to take legal action in U.S. jurisdictions against the middlemen who trade Americans’ dollars to the worst regimes in exchange for stolen resources. This means taking corporations like ExxonMobil and Hess to court for receiving stolen goods. The international and American laws needed are already in force: these legal cases could be brought tomorrow. International capitalism has already created strong laws and institutions for enforcing these property rights.

Americans may or may not blame these corporations for trading their dollars for stolen resources. These corporations are merely doing what they are designed to do, taking the “might makes right” rule as part of accepted business practices. Yet neither these corporations nor market-friendly governments can resist the reality that a significant portion of international commerce today is trade in stolen goods. More than any other country, the United States has worked to create a modern international order that protects human rights, especially the human rights that are property rights. This is why legal cases requiring the United States to follow its own principles are waiting to be made.

However, upholding market principles is not as simple as bringing some court cases. Stopping American corporations from transporting stolen oil from a country like Sudan will not end the resource curse there. We know this because the U.S. government has barred American energy companies from trading with the regime in Khartoum since 1997, in part because of this regime’s grim record on human rights. Yet the genocidal Sudanese regime continues to sell the

country's oil to China, using the money to buy more Chinese arms to menace the populations in Darfur and the south.

This is disastrous for the Sudanese, and it is also a problem for Americans. Stolen Sudanese oil today percolates through the Chinese economy, becoming part of the Chinese imports that Americans buy every day. Americans right now can't help dirtying their hands with stolen Sudanese oil when they shop at Target and Best Buy.

Discouraging China from buying cursed Sudanese oil is possible, and again turns on enforcing property rights — this time through trade policy. The key insight is that when China exports products made using the looted Sudanese oil it is not engaging in trade. It is literally passing stolen goods.

Say that China buys $3 billion worth of oil from the regime in Khartoum. The correct response on a property rights approach is for the United States government immediately to announce a Clean Hands Trust for the People of Sudan. This trust is a bank account that the U.S. government will fill until it contains $3 billion. The money to fill the trust will be raised from tariffs on Chinese imports as they enter the United States. The money in this Clean Hands Trust is to be held for the people of Sudan until a minimally decent, unified government is in place. At that point the $3 billion will be turned over to the true owners of the stolen oil: the Sudanese people.

The Clean Hands Trust will protect the American people from becoming tainted with the oil that China gets illegally from the regime in Khartoum. The tariffs extract from Chinese imports the value of the oil taken from Sudan, and the trust holds this money in reserve until it can be given back to the Sudanese people.

With the tariffs in place American consumers can buy Chinese goods with clean hands. The Chinese, for their part, will have much less of an incentive to buy more oil from Sudan — knowing that if they buy $2 billion more oil then the United States will impose tariffs worth $2 billion more on their goods. The Sudanese people will know that there is a great deal of money waiting to be turned over to them if they can replace the regime that is looting their resources with a minimally decent, unified government. The trust gives the Sudanese people an extra incentive to unite in installing a government that is in some way responsive to the people's wishes, while drying up the revenues that support and arm the current regime in Khartoum.

The trust-and-tariff mechanism protects property rights by retaining the value of the stolen property for the owners of that property: the citizens of Sudan. The tariffs here are different from other tariffs: they are "anti-theft tariffs" designed to enforce property rights. The trust-and-tariff mechanism is no more a restraint on free trade than a court order to return stolen property, and no more a restraint on free trade than a prison term for a thief. China, having violated market rules by passing stolen goods, has no standing to complain when these violations are rectified.

The World Trade Organization, for example, could not allow China to impose trade restrictions in retaliation for these anti-theft tariffs. The Chinese could no more protest these anti-theft tariffs in the WTO than they could protest sanctions were they to occupy Sudan militarily and attempt to sell off its oil. The WTO should find these tariffs as acceptable as the 1990 UN sanctions that kept Iraq from selling stolen oil from Kuwait.

This trust-and-tariff mechanism will generate strong incentives for a variety of American economic interests to support the property-based approach. The instant that China contracts for the Sudanese oil, American manufacturers will lobby the U.S. government to set up a Clean

Hands Trust. Many American companies (in apparel, electronics, machinery) will want these tariffs to protect them against Chinese competition in their sector. The American banking industry will also be enthusiastic about the Clean Hands Trust, as American banks will hold the tariff proceeds in trust until these are returned to the Sudanese. Both the manufacturing and banking sectors will also welcome the opportunity publicly to support measures aimed at helping the victims of a genocidal regime.

This trade policy will also be popular across the American political spectrum. Supporters of the free market will support it for correcting a major flaw in the global economy by enforcing property rights. Protectionists will support it for protecting good American jobs against Chinese competition. Security advocates will support it for strengthening failed states where terrorism can incubate. Environmentalists will support it for at least temporarily raising oil costs and so lowering carbon emissions. And humanitarians will support it for improving the prospects of millions of the most oppressed people on earth.

Americans today can't help funding death and terror when they buy gasoline and magazines, jewelry and laptops, cosmetics and cell phones. The materials used to make these goods are not just stolen: they have been stolen from the world's poorest people using weapons paid for with money gained from previous sales of stolen goods.

Peoples have rights, and there are things no person or group may do to them (without violating their rights). Trafficking in a country's valuable natural resources without the people's consent certainly crosses that line. The priority in reforming global trade must be to lock in the rights that define the market order. The first step in improving the prospects of poor people is to enforce the rights they already have.

—

Leif Wenar is this year a visiting professor at Princeton. From September 2008 he will hold the Chair in Ethics in the School of Law at King's College London.