Popular Resource Sovereignty
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The Alpha and Omega of the Covenants
The two human rights Covenants give legal expression to the *Universal Declaration of Human Rights*. 178 states (including all of the OECD states) have ratified at least one of these treaties, leaving only 15 outliers. One right in these treaties is prominently proclaimed yet rarely discussed; it is stated in the second paragraph below:

**Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources.

These words begin common Article 1 of the two human rights Covenants. The two paragraphs together describe a human right to popular sovereignty. The second paragraph sets out a human right to what we will call popular resource sovereignty.

The principle of popular resource sovereignty appears in the first article of both human rights treaties. It is also affirmed in the last substantive article of each treaty:

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Popular resource sovereignty is the only right in the human rights treaties that is asserted, as if for emphasis, twice. Popular resource sovereignty is affirmed at the beginning and the end—it is the alpha and the omega of the Covenants. And as we will see popular resource sovereignty is also declared in many national constitutions and proclaimed by national leaders with quite different political orientations.

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1 This paper is dedicated to Jim Nickel, who has shown us so much about how to do good philosophy, and how to apply it. My deep appreciation for Jim’s work has been magnified by reflecting on how much better this paper could be—if only he had written it.

2 The Universal Declaration of Human Rights was a declaration of the UN General Assembly. As such, it is not legally binding; though many lawyers hold that at least parts of the Declaration have become binding as customary international law.

3 [International Covenant on Civil and Political Rights (ICCPR), 999 UNTS 171 (1966); International Covenant on Economic, Social and Cultural Rights (ICESCR), 993 UNTS 3 (1966).] The wording is identical in Article 1 of both treaties.

4 ICCPR Art. 47; ICESCR Art. 25.
Popular resource sovereignty is not, however, today a principle of international law. Despite being stated plainly and prominently in primary treaties legally approved by a large majority of countries, few international lawyers would say that popular resource sovereignty imposes a legal obligation on states. Nor can one work out a clever proof that it really does so—one cannot sneak up on international law in that way. Ultimately, international law is what state officials and legal experts believe that it is. And, today, few of these would hold that popular resource sovereignty is a binding legal principle, at least in any sense that makes a difference in practice. Many would agree that popular resource sovereignty is lex ferenda (what the law should be), but they will insist is not lex lata (what the law is).5

Why not? One reason is that the meaning of the principle of popular resource sovereignty is not settled—leaders and lawyers are not certain what it would mean to say that a people should have the authority to control a country’s natural resources.6 A goal of this paper is to explore the meaning of this principle and so remedy that uncertainty. Our thesis is that we find ourselves in a fortunate historical situation, captured by Hegel’s Doppelsatz: “What is rational is actual; and what is actual is rational.”7 What is rational is actual: a natural and attractive understanding of popular resource sovereignty is expressed by the international legal documents that most states are already party to. And what is actual is rational: there is a straightforward and philosophically sound interpretation of the international legal texts that elucidates an ordinary understanding of what popular resource sovereignty requires.

We have inherited texts that set out, in easily explicable ways, a compelling doctrine of popular resource sovereignty, and these texts are none other than the international legal documents that we have. Indeed, though we must be alert while explicating this doctrine, none of the underlying theory will be particularly controversial. The real challenge comes not with the doctrine as philosophy, but with the doctrine as foreign policy—not on what popular resource sovereignty requires, but on whether outsiders are capable of judging whether those requirements are met. In

5 Among philosophers there is also a reluctance to conceptualize popular sovereignty (what lawyers call self-determination) as a human right; e.g., Nickel and Reidy, “The self-determination of countries and peoples should be viewed as a norm that extends into the area of human rights. This means that conflicts between self-determination and human rights will sometimes have to be resolved by balancing against each other.” James Nickel and David Reidy, “Relativism, Self-Determination and Human Rights,” in Deen Chatterjee, ed., Democracy in a Global World: Human Rights and Political Participation in the 21st Century. Rowman and Littlefield, 2007: 91-110, at 103. Cf. Nickel, Making Sense of Human Rights, “Rights of peoples rather than of persons… do not have a good fit with the general idea of human rights, which concerns rights that people have independently of group or national membership… This is not to deny, however, that group rights may appropriately be included in human rights treaties and in other areas of international law.” (p. 164)

6 This is not the only reason. Like any principle popular resource sovereignty can, if overemphasized, conflict with other principles of the international system. So even when we know what popular resource sovereignty means, we will have to work out how its requirements can be meshed with those of other major international principles such as non-interference. One might also suspect that there is a third reason for the legal neglect of popular resource sovereignty: some parts of the elites that have the most direct control over the international system do not want to give power (instead of words) to the people of their own and others’ countries.

the final part of this paper we apply the doctrine of popular resource sovereignty to real-world cases, to see whether outsiders can make judgments based on it to an adequate standard. The answer is that they can. There are no insurmountable epistemological barriers to the operationalization of popular resource sovereignty in international law.

This will still leave open the question of who must act to secure all peoples’ rights to resource sovereignty: what Nickel calls the questions of the primary and secondary addressees of a human right.8 That question raises large and complex issues—and the answer to that question, which this paper builds towards, really matters. The literature on the “resource curse” suggests that resource-dependent states are at higher risks for authoritarian governance, civil war and corruption (as well as further pathologies such as slower growth and radical gender inequality).9 As argued elsewhere, the main resource curse pathologies either are or result from insufficient public control over natural resources; and the resource curses of authoritarianism, civil war and corruption are bad for both the peoples of exporting and importing states.10 There are widespread and strong interests in standards for securing peoples more control over the resources of their countries.

Which is why it is so fortunate that we have the treaties that we do. History, through its cunning, has already given us the legal texts that should be law. We first take advantage of our happy Hegelian situation by elaborating a doctrine of popular resource sovereignty based on the human rights Covenants, and then test that this doctrine can be applied by outsiders in contemporary cases.

Focus
The meaning of the human rights treaties is central to our inquiry, and the natural first assumption is that they mean what they say.11 For popular resource sovereignty, the treaties helpfully supply the two different formulations. If we ask the treaties what it means to say that the people, “may for their own ends, freely dispose of their natural wealth and resources,” the

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8 James Nickel, Making Sense of Human Rights (Oxford: Blackwell, 2007), pp. 38-41. Secondary addressees bear “back-up or monitoring responsibilities connected with the right… [for example,] creating and maintaining a social and political order that respects and protects the right… assisting, encouraging and pressuring governments” and so on. (p. 41)

9 [RC cites]


11 This assumption is supported by the general rule on treaty interpretation in international law, set out in the Vienna Convention of 1969: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” (Vienna Convention on the Law of Treaties (the “treaty on treaties”), Article 31.) The US government, for instance, appealed to the “plain text” of the ICCPR in arguing that extraordinary rendition does not violate its terms. [*US reply to HR Committee, 2008.] The general rule on interpretation is not, however, a license for complacency; as Judge Spender of the ICJ said, “Ambiguity may lie hidden in the plainest and most simple of words even in their natural and ordinary meaning.” Certain Expenses of the United Nations (Art. 17, Para. 2, of the Charter), Adv. Op., Sep. Op. Spender, ICJ Rep. (1962), at 184.
treaties answer that the people have a “right… to enjoy and utilize fully and freely their natural wealth and resources.” At least on first pass, then, we take the ordinary meanings of the terms in the human rights treaties as conveying their sense. The people of each country have the right to control the natural resources of their country.

To explore what this means in detail we will need to put some topics to one side. There are some lawyerly misconceptions about popular resource sovereignty that we will not take the time to dispel. For example, Article 1(2) is not tied to the era of the New International Economic Order; it does not express a “third generation” right of solidarity, and it need not express an “emerging right” of democracy. It does not apply only in the context of decolonization; it is justiciable. A people can have rights against its government (e.g., under international law a regime must not impose an apartheid system). And collections of citizens are capable of acting independently of their government (e.g., under international law no government can transfer territory without the explicit consent of its population, ideally through a referendum.)

More importantly, we will here just stipulate the answer to the question about the meaning of the term “people” in the treaties. Here “people” in Article 1 will mean the people of an independent state. And the people of an independent state is made up of all of the citizens of that state. It is the citizens of each country who have ultimate authority over the resources of their country.

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12 [Schrijver book & entry]

13 Though it is contained in declarations of such rights; for example, the UN “Declaration on the Right to Development” (GA Re. 41/128, 1986) states, “The human right to development implies the full realization of the right of peoples to self-determination, which includes (...) the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.” On the emerging right to democracy, see [Frank, Thornberry]

14 [decolonization]

15 [For the claim that self-determination is non-justiciable, Cassese, at 142-143; ICJ (Namibia – Liberia, Ethiopia enforce); inter-state complaints procedure. Mechanisms of complaint appear to be limited to those currently available to states, including the International Court of Justice (ICJ) and the inter-state complaints procedure provided for under Article 41 of the ICCPR. These mechanisms would require claims to be brought by states acting on behalf of peoples but, as Crawford observes with regard to both the ICJ and Human Rights Committee, ‘there is no difficulty in principle with a legal system vesting in third parties the right to bring proceedings to vindicate the rights of another, especially where those rights cannot be asserted directly by the other’. Crawford at 164. For ICJ see e.g. South West Africa cases (Ethiopia v South Africa; Liberia v South Africa), ICJ Reports (1966), in which Ethiopia and Liberia took up the cause of the Namibian people’s right to self-determination. Crawford, ‘The Rights of Peoples: Some Conclusions’, in J. Crawford (ed.), The Rights of Peoples (1988) 159, at 164, footnote 14; for HRC Crawford notes that, in principle, the Human Rights Committee permits third parties to bring claims on behalf of an individual whose rights have been violated if that individual is unable to bring the proceedings herself (fn.15, pp.164-165). See Art. 90(b) in Human Rights Committee, Rules of Procedure, CCPR/C/3/Rev.3 (1994). In practice, though, it applies this rule with caution. See Crawford at 164-165, footnote 15. However, the scope of these mechanisms in the context of self-determination remains unknown: the latter has not yet been used, while the former has, thus far, only adjudicated on self-determination in the context of decolonization. Crawford, at 36]

16 [cite]

17 [cite]
That, we stipulate, is popular resource sovereignty.\(^{18}\) Lacking space, we set aside questions about the proper legal relation between national and sub-national peoples such as national minorities and indigenous groups.\(^{19}\)

**Peoples Existing and Acting**

The early stages of our philosophical explorations of popular resource sovereignty are easy. A people is a group, and philosophers are relaxed about groups. The contemporary philosophical consensus is that talk of groups is friendly to methodological individualism, and need require no positing of ghostly entities beyond the individuals that comprise the group.\(^{20}\) The ontology of groups is modest; reference to groups is respectable. A group supervenes on individual persons, for example as on standard accounts a person supervenes on his or her body.\(^{21}\) Groups have their own interests and can bear rights.\(^{22}\) If there were no groups there could be no genocides, as a genocide consists of acts intended to destroy a group.\(^{23}\) Yet there have been genocides, and there will likely be more. In 2011 Umida Abbedova was convicted of insulting the Uzbek people with her photographs of daily life; the charge was absurd, but its alleged victim is not.\(^{24}\)

Nor need the idea of groups acting cause excitement.\(^{25}\) Couples go on cruises, corporations pay their dividends, churches change their doctrines. After Pearl Harbor, the American people supported war with Japan; after the war, the British people supported the creation of a national

\(^{18}\) [SW - On the recognition of the whole populations of states as ‘peoples’, see e.g. Cassese, at 59-61; comments from the Netherlands, France and Germany cited in Human Rights Committee; Quane, *supra* note 71, at 571.] The set of citizens and the set of voters are not exactly aligned in every country, even after restrictions for age and non-incarceration are added. For example, as a legacy of its empire and the Representation of the People Act 1918, Irish and Commonwealth citizens living in the UK are allowed to vote in British general elections.

\(^{19}\) For a placeholder account, one can think that the proper relationship between national and sub-national peoples is similar to that between federal states (e.g., the US) and sub-national states (e.g., North Carolina): the national entity has ultimate authority, the sub-national entity has some local authority and certain rights against the national entity. This is not intended as an adequate account of this important issue, which deserves a full and separate discussion.


\(^{24}\) [FH 2011 Uzbekistan]

health service; in 1989 the Polish people rejected the ruling communist government. A people learns as its citizens learn; a people deliberates as its citizens converse; a people decides when its citizens make up their minds. A people acts, we might say, when most of its relevant members act as citizens with the same intention. (Individuals act “as citizens” when they vote, march in protest, go off to war, write letters to the newspaper on political topics, and so on.) So we say that “the Finnish people resisted the Russian invasion” when most Finns who could resist the Russians did so, and “the Irish people considered the referendum” when Irish voters discussed the referendum with each other in the weeks leading up to the vote. This account allows us to talk quite literally of groups acting while again remaining as individualistic as we like. And we can hold groups responsible while also holding individuals responsible for their contributions to the group.

Talk of group action is respectable when we find it useful to take an intentional stance toward the group: to see the group as acting for reasons, instead of just as a mass of individual actors. Another sign is when we find groups taking active roles in our normative discourse. Even Americans, so individualistic, live within a public political philosophy saturated with group action. California for example is one of many states in which criminal cases are called, *The People v. Doe*—where “The People” is both plaintiff and respondent. In fact “the people” is the subject and the actor in the first sentence of each of America’s founding documents. The people is the protagonist of both the Declaration and the Constitution.

So peoples can be agents—indeed, as Nickel notes, the agency of groups such as peoples is often more effective than that of individuals. Yet this is not to say that peoples always qualify as agents. In order to perform an action such as resisting a regime or amending the constitution,

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26 This account of collective action is more permissive than those in the literature that require, for example that members act toward some goal to which they are jointly committed (see Margaret Gilbert, *A Theory of Political Obligation* (Oxford: Oxford University Press, 2006: 101-47)); or require that each member have beliefs about the beliefs of other members regarding everyone doing their part (see Raimo Tuomela, “Actions by Collectives,” *Philosophical Perspectives* 3 (1989): 471-96). On the account sketched here, a people elects candidate C so long as each of a majority of eligible citizens, acting as a citizen, votes for C (for whatever reasons and with whatever beliefs about what others will do).


29 [Dennett (1987)]

30 American Declaration of Independence, “When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them…”; US Constitution, “We the People of the United States… do ordain and establish this Constitution for the United States of America.” As we saw above, the Chinese people is the hero of the first paragraph of the 1982 Chinese constitution.

citizens must be able to coordinate their intentions by sharing information and discussing courses of action. This is how a people deliberates. Where these coordinative mechanisms are entirely lacking, a people may be unable to act at all. “People” can be a success term, like “adult.” An entity can be an adult in a biological or legal sense, without being capable of agency. Similarly a people can exist in the demographic or legal sense without its members being informed or coordinated enough to act together. Citizens may be, in circumstances we will consider, like neurons in a sedated adult brain: in close proximity, but unable to send signals to others in ways that could result in coherent intentional states.32

**Popular Resource Sovereignty as a Public Ideal**

Popular resource sovereignty is part of popular sovereignty, the principle that “all minimally competent adults coming together as one body” should be the ultimate political authority in their country.33 To many these principles will need no more proof than their statement. France belongs to the French, Canada’s resources belong to the Canadians, and so on. As former Senator and Governor Bob Graham said in 2011, “It is a fundamental fact that the oil and gas off our shores is an American asset. It belongs to the people of the United States of America.”34 If it were found that Cuba had drilled a long diagonal pipeline through the Gulf of Mexico and was now siphoning American oil, the American people would immediately (and perhaps literally) be up in arms. The oil within the territory of the United States belongs to the American people, and foreigners must not take it without their permission.

Popular resource sovereignty also explains the indignant reaction to the thought of private usurpation of a country’s resources. In the years leading up to the Reagan administration, companies like Shell discovered large oil deposits off the coasts of Louisiana and Florida. One can imagine the response had President Reagan secretly sold this oil to Shell, then put the profits into his private bank account and ordered the FBI to squash any dissent. Part of why this would have been wrong is because America’s natural resources belong to the American people, and must not be disposed of in ways that wholly bypass the control of the citizenry.35

The principle that the people of the country own the resources of the country is affirmed in many national constitutions and laws, indeed even in countries where the principle is flouted in fact. For example: “All deposits of liquid and gaseous hydrocarbons which exist underground or on the continental shelf within the national territory. . . belong to the Angolan People”36 And even:

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32 [List & Archibugi on constitutive/agential accounts of group agency]


34 http://findarticles.com/p/news-articles/political-transcript-wire/mi_8167/is_20111011/national-commission-bp-deepwater-horizon/ai_n56652595/ *

35 What the Reagan administration actually did in 1982 was to start a system of public auctions for drilling leases in American coastal waters, which sends the revenues from these auctions into the national treasury. That auction system is still in place today.

“The fundamental Law of the Republic of Equatorial Guinea consecrates and designates as the property of the people of Equatorial Guinea all resources found in our national territory… It is by the mandate and delegation of the people, to whom these resources legitimately belong, that the Government undertakes to manage them.”

The Iraqi constitution declares that, “Oil and gas are owned by the people of Iraq in all the regions and provinces.” George Bush and many in his administration emphasized this principle (“The oil belongs to the Iraqi people. It’s their asset.”) Tony Blair made the more general assertion (“Iraq’s natural resources remain the property of the people of Iraq.”) Indeed there is a remarkable consensus on popular resource sovereignty, at least at the rhetorical level, among national leaders—including those of quite different political orientations:

What we say is that when it comes to the mineral resources of Australia, the Australian people own those resources. – Rudd of Australia

I have said it before, and I will reiterate again, this oil belongs and will continue to belong to all Mexicans. – Calderon of Mexico

The oil belongs to 190 million Brazilians, and we will show everyone that the oil is ours. – Lula of Brazil

Oil belongs to the people. – Morales of Bolivia

The oil belongs to the Venezuelan people. – Chavez of Venezuela

The oil belongs to the people of Azerbaijan. – Albufaz of Azerbaijan

37 EG Hydrocarbons law no. 8/2006 of 3 November 2006.

38 Constitution of Iraq, Article 111.

39 “President’s Statement to the Press,” June 12, 2006; see also Bush’s pre-invasion address to the American people: “Remarks by the President in Address to the Nation” March 17, 2003. Several Bush administration officials echoed the assertion of Iraqi popular resource sovereignty, including Colin Powell when he was US Secretary of State (edition.cnn.com/2003/WORLD/meast/01/23/iraq.powell/) and Commerce Secretary Don Evans (georgewbush-whitehouse.archives.gov/ask/20031022. html).

40 [georgewbush-whitehouse.archives.gov/news/releases/ 2003/03/20030316-3.html]

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The oil belongs to the people. – Khamenei of Iran

There is no ruse here. People cannot be fooled. This oil belongs to the Libyans. – Gaddafi of Libya

The [oil] resource belongs to the people of Ghana... and we decide how we want that resource to be used. – Mahama of Ghana

Norway’s petroleum resources belong to the Norwegian people. – The Parliament of Norway

Like popular sovereignty generally, popular resource sovereignty is all the world’s ideal (or, as we will see, nearly so). Elites tell their people that the people own the resources, and elites tell each other and each other’s people that the people own the resources. What, then, does this public ideal come to?

Definitions and Relations

The principle of popular resource sovereignty contains two terms that refer to a relationship of control: “All peoples may, for their own ends, freely dispose of their natural wealth and resources.” What exactly are the relationships suggested: are these relations of property, or rather of sovereignty? And what is the difference between those relationships? “The central core notion of a property right in x,” wrote Robert Nozick, “is the right to determine what shall be done with x.” Yet is that not also the central core notion of a sovereignty right in x? Common sense seems undecided. Property and sovereignty, ownership and rule—which for example did Abraham Lincoln mean when he said, “This country, with its institutions, belongs to the people who inhabit it”? Did Lincoln mean the people are sovereigns or owners—perhaps both? And the questions multiply on the object side as well. If “this country” belongs to the people: is that the country’s land, its resources, its government, something else?

We are looking at different types of control, and several things controlled; we need distinctions. Unfortunately through its history the law has snarled property and sovereignty into hopeless tangles. Classic international law borrowed terms like “occupation” and “abandonment” from Roman property law to describe changes of sovereignty over territory. Salmond’s *Jurisprudence* attempts to link sovereignty with *imperium* and ownership with *dominium*. Yet *dominium*, Latin for “lord,” can itself mean a relation of either sovereignty or property. (Since the Treaty of the Pyrenees in 1659, France and Spain have shared sovereignty over Pheasant Island, making the island a “condominium” in the sovereignty sense in international law—but not in the property law sense of “condominium” familiar from real estate.) The British Crown granted chartered corporations both political and property rights in colonial Canada and India without

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42 [ASU, p. 171.]

43 Lincoln, “First Inaugural Address.”

differentiating them (the first flag of the East India Company had the flag of England as its canton). Semantic seepage is also seen with “territory” (from *territorium*: “land belonging to”). One might hope that “territory” would be a purely political term in the law: territory is the area over which a sovereign exercises authority. Yet then what to make of the italicized terms in the “territory clause” of the US Constitution? “The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”

Within the law these concepts have grown into a mare’s-nest. For our interpretation of popular resource sovereignty we need more precise characterizations of the key terms and main relationships. Following are the characterizations we will use:

**Jurisdiction.** A sovereign has the right to authorize laws: that is, a sovereign has jurisdiction (from *jus* ‘law’ and *dictio* ‘declare’). A modern sovereign has personal jurisdiction: the right to authorize laws valid for citizens, wherever they are. A modern sovereign also has territorial jurisdiction: the right to authorize laws valid in a specified physical space. A sovereign’s territory is the physical space over which that sovereign has the right to authorize laws. Territorial jurisdiction, the right to authorize laws valid in a space, is the core of modern political authority.

**Jurisdiction and property.** One dimension of territorial jurisdiction is the right to make property law. Property law defines property rights and establishes property entitlements. The paradigm of a property right is an alienable, waivable right to exclusive occupation of some space or to exclusive manipulation of some non-bodily object.

**Sovereignty and natural resources.** Within any territory there will be natural resources (non-manufactured and unprocessed non-human objects with a value in use). One dimension of a

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45 [Dani Rodrik]

46 *United States Constitution*, Art. IV, Sec. 3. [For heroic attempts to sort the relations between these terms in law see *Mabo v. Queensland* and the ICJ *Western Sahara* case.]

47 The analysis in this section derives from the seminal paper by Allen Buchanan, “Boundaries: What Liberalism Has to Say,” in Allen Buchanan and Margaret Moore, eds. *States, Nations and Borders: The Ethics of Making Boundaries* (Cambridge: Cambridge University Press, 2003), pp. 231-61. Buchanan’s analysis has been further developed by [Stilz, Meisels, Nine, etc.]. We here omit an account of what Buchanan calls meta-jurisdictional rights (rights to change borders), which is important for the doctrine of rightful secession. On rightful secession see Buchanan, *Justice, Legitimacy and Self-Determination* and Christopher Heath Wellman, *A Theory of Secession: The Case for Political Self-Determination* (Cambridge: Cambridge University Press, 2005).


49 “Non-bodily” means “not presently part of a human body” (one can sell one’s cut hair). The concept of property is itself protean; the prototype-based characterization here sets a meaning suited to our purposes. There are objects plausibly called “property” that do not fulfill all the specifications of the prototype (one cannot, for example, legally alienate the prescription drugs that one owns). The characterization would need supplementation to capture intellectual property (for example, copyrights in plays). These details will not matter for our purposes.
sovereign’s jurisdictional right to make property law is the right to make law for natural resources. A law may specify, as in the United States, that entitlements to oil will be auctioned off to private bidders, the revenues going into the national treasury. Or rights over oil can be granted to a national oil company, as in Mexico in 1938. Or the law may vest title to oil in the Crown, as in Britain, while management of the resource is assigned to a government ministry. Or the law can require that oil be left in the ground. Any of these laws and more is possible: a sovereign has the legal right to free disposition of the resources of its territory.

**Popular sovereignty.** When the people are sovereign, they hold all of these rights. The country’s laws and institutions “belong” to the people in the sense that the people have the ultimate jurisdictional rights over persons and territory, which rights they use (as common Article 1 of the Covenants says) to “freely determine their political status and freely pursue their economic, social and cultural development.” The citizens have ultimate control over which laws will be in effect for each citizen, and for each person within the borders of their territory.

**Jurisdiction over land and resources.** The land (the country) “belongs” to the people in the sense that the people have the ultimate jurisdictional rights over that territory. All of the country’s natural resources also “belong” to the people in this sense: the people have the jurisdictional right (as the Covenants say) to “freely dispose of” these resources—the right “to enjoy and utilize” them “fully and freely” by authorizing laws regarding those resources. One implication of “free disposition” is that without a valid law, no one can gain ownership of resources—and with a valid law, the people can create any property relations it chooses.

**Property in land and resources.** The land (the earth’s surface) “belongs” to the people in a second sense, in the sense that the land is a natural resource. All of a territory’s natural resources are property originally vested in the people. The resources belong to the people: as the human rights treaties say, these are “their” resources. The resources are originally the property of the people—the resources start out in their hands. The natural resources of a country are, as the UN General Assembly once put it, the people’s “birthright.”

**Original Ownership of Natural Resources**

It is worth pausing on this last point, that the people have original property rights to what the Covenants call “their” natural resources. What this means is that at independence the people own all of the country’s known natural resources, and that property rights over any natural resources discovered within the territory thereafter also vest first in the people.

This is a natural corollary of popular sovereignty, and it is also the common assumption in everyday politics of countries where popular sovereignty is the public philosophy. When the people are sovereign they originally own the nation’s resources, and thereafter have the right

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50 [GA Namibia resolution.]

51 The type of estate held by the people most closely resembles the common law tenancy by the entirety, in that ownership of the property is treated as though the citizenry were a single person, and when one citizen dies the entire interest in the property passes to the surviving citizens.
freely to dispose of them. We see quite different exercises of the people’s right freely to dispose of their originally-owned natural resources within different national laws. For example, the Mexican constitution states:52

Ownership of the lands and waters within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property.

While Zambia’s constitution sets itself against privatization of the people’s natural resources:53

The State shall devise land policies which recognize ultimate ownership of land by the people. The management and development of Zambia’s natural resources shall not bestow private ownership of any natural resource or authorise its use in perpetuity.

Each country’s people has original rights to their natural resources, and as they exercise their rights freely to dispose of those resources for their own ends quite varied ownership arrangements will result.54 As Jones Luong and Weinthal show, peoples would be well-advised not to choose state ownership and control over their oil in particular, as this ownership structure is associated with weak fiscal regimes that correlate with authoritarianism, slower growth and less public accountability overall.55 But this choice is, for each people, a matter of prudence in their exercise of their right freely to dispose of what they originally own.

52 Mexican Constitution, Article 27. Article 27 further specifies that “The Nation owns what follows: all natural resources at both the continental platform and the islands’ seafloor… all the oil and all solid, liquid and gaseous hydrocarbons.” It is notable that the Mexican constitution carefully distinguishes “the nation” from “the state.”

53 Constitution of Zambia, Arts. 10v, 339f.

54 To be sovereign is to have ultimate jurisdictional rights and original ownership rights, not necessarily to have unlimited such rights. And in the modern international system, these rights cannot be unlimited. This is clear in the human rights treaties themselves: all the rights of popular sovereignty in Article 1 are limited in their exercise by the human rights in the articles that follow. Indeed it is plausible that the people’s sovereign rights over their resources should be seen as limited in many ways. For example, a people should not dispose of their natural resources in ways that cause harm to the people of another country—through pollution, say—or to all people through excessive greenhouse gas emissions. Moreover, it is plausible that “the future is being plundered by the present”—the current generation of people in many countries is wrongly using up assets that should be saved for future generations. International environmental regulation, or an international fund to pay for climate change mitigation, would be compatible with popular resource sovereignty.

Even quite progressive proposals for global justice often involve nothing more than limitations on popular resource sovereignty. For example, Pogge’s Global Resource Dividend allows nations full discretion over when and how to exploit their resources, only requiring a payment into a fund for the world’s poor whenever resources are used or sold. Whether this and similar proposals are feasible and desirable are questions of policy; as a matter of principle, they are compatible with peoples’ sovereign rights over their resources.

55 Pauline Jones Luong and Erika Weinthal, Oil is Not a Curse (Cambridge: Cambridge University Press, 2010).
It would buck ordinary understanding of popular sovereignty to hold that the people have jurisdictional rights over their territory but lack original ownership over its resources.\textsuperscript{56} For what are the alternatives? Few would hold that natural resources within a national territory are originally unowned. In 1975, Shell discovered the Cognac oil field in US territorial waters, 100 miles offshore from New Orleans. No one ventured that Shell’s discovery was an “original acquisition” of unowned resources; what Shell found was a resource already owned. The people’s original property right explains why Shell had to ask the US government for permission to drill into Cognac, and why Shell had to pay into the national treasury for each barrel of oil extracted from it. (Recall Senator Graham, “It is a fundamental fact that the oil and gas off our shores is an American asset. It belongs to the people of the United States of America.”)

Nor could one easily interpret popular resource sovereignty to allow that natural resources are originally held by some other owner, such as the country’s government considered separately from the citizenry. If Scotland becomes independent, no one will think that the new Scottish government initially owns the North Sea oil, holding rights to sell off that oil and spend the revenues even against the wishes of the Scottish people. Such an arrangement would require a people wanting to stop government resource sales first to exercise a jurisdictional right of adverse possession against the government—a paradoxical requirement, as the government is the usual instrumentality through which a people acts. The natural assumption is rather that the people is initially seised of the resources, and the government is the fiduciary of the people, managing their assets for them. This is again the assumption beneath ordinary talk:\textsuperscript{57}

\textsuperscript{56} Among certain philosophers there is a persistent Lockean fantasy about the history of property rights. The essence of this fantasy is that stateless individuals through their own efforts acquired full property rights over unowned land and objects, which rights national governments (instituted by the owners) then believed themselves in some sense constrained to respect—at least to the point of not taking these pre-institutional entitlements arbitrarily or without compensation.

The Lockean fantasy evaporates in contact with the historical record of property rights in a country like the United States, even holding aside the familiar point that native peoples were already on the land when European settlers arrived. What we see in American history is not stateless individuals acquiring property rights according to notional rules of natural law. What we see is citizens being granted property rights by authorities (first by European monarchs or the Mexican government, then in some cases by the independent states, then by the United States) within territory already under the jurisdiction of those authorities, and according to the property rules instituted by those authorities. Maryland, named after the wife of Charles I, was a province granted by royal charter to the Barons of Baltimore, who instituted a headright system to parcel out the province’s land to Englishmen. Thomas Jefferson proposed a right in “every person of full age” to 50 acres of Virginia in his draft Constitution for the Commonwealth of 1776. The California Land Act of 1851 required land claimants to present evidence of their stake’s basis in Spanish or Mexican titles. US soldiers kept (most) settlers out of two million acres of public lands of Oklahoma until the stroke of noon on April 22, when the pull of federal grants incentivized the Great Land Rush of 1889. Anyone maintaining that extant property titles within the US originated within a Lockean fantasy should be challenged: habeas data.

\textsuperscript{57} [Epstein 2003.] Emphasis added. The text continues, “President William Howard Taft acted quickly on this report by issuing an executive order on September 27, 1909. The order was called the Temporary Petroleum Withdrawal No. 5 and it withdrew more than 3 million acres of land in California and Wyoming that had been available to the public for development. At the same time, it proposed legislation that would control the use and sale of the petroleum deposits on these lands currently in the public domain.”
In the early 1900s, the United States was trying to encourage people to populate areas—mainly out west—that it considered to be unpopulated. Mining speculators who recognized the value of oil were gobbling up the petroleum-rich property relatively cheaply. On September 17, 1909, the director of the Geological Survey sent a report to the Secretary of the Interior concluding that oil lands were passing into private control so rapidly that it would “be impossible for the people of the United States to continue ownership of oil lands for more than a few months. After that, the Government will be obliged to repurchase the very oil that it has practically given away.”

The Fiduciary Regime
Where the citizens are sovereign: they have original property rights in their country’s resources, and ultimate jurisdictional rights to approve laws that determine what will happen with those resources. We now turn the relationships between the people and regime that allow the people to exercise those rights: that allow citizens freely to dispose, for their own ends, of their natural wealth and resources. Basic legal concepts will be all we need to unpack these relationships.

We have already found that the axioms of popular resource sovereignty are ownership and authorization: the people originally own the resources, and the people authorize the regime’s decisions concerning them. A people may use its sovereign powers to authorize any law regarding resource ownership: for example, a people may authorize resource privatization, or it may rather entrust resource management to the regime. The people’s authority over resources—its jurisdictional rights—continues regardless of where title currently rests. If the people once authorize a law allowing privatization of resources, they may later (as in the Fifth Amendment to the US Constitution) authorize a law calling the resources back for “public use.” If citizens once authorize a law entrusting resource management to the regime, they may later change those arrangements or countermand the regime’s decisions. The only conceptual limit to the people’s sovereign power is what we might call Rousseau’s Thesis. The people cannot cede their continuing jurisdictional rights to the regime, without negating popular sovereignty itself. “If then the people promises simply to obey, by that very act it dissolves itself and loses what makes it a people; the moment a master exists, there is no longer a Sovereign, and from that moment the body politic has ceased to exist.”

The legal relation envisioned since ancient times is that the citizens are the principal and the state is the agent. As Jefferson wrote:

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58 US Constitution, Amendment V. The Takings Clause of the Fifth Amendment requires that private property may only be taken for public use on payment of “just compensation.”

59 [SC, 2.1*]

I consider the people who constitute a society or nation as the source of all authority in that nation; as free to transact their common concerns by any agents they think proper; to change these agents individually, or the organization of them in form or function whenever they please; [and] that all the acts done by these agents under the authority of the nation are the acts of the nation.

A sovereign people may relate to its agent, the regime, within different legal forms. Today’s national constitutions typically institute one of two forms for natural resources. First is a principal-director relationship in which full ownership of the resources remains with the principal and the agent undertakes to manage the resources. This is the arrangement envisioned, for example, in the Sudanese constitution, where it says that natural resources remain public property and the state should prepare plans to exploit them. This legal form is familiar from joint stock companies, in which the shareholders own the assets, and the board of directors is in charge of administering those assets.

A second agency relation is described in the Ghanaian constitution, which states that all minerals in the territory “shall be vested in the President on behalf of, and in trust for the people of Ghana.” This is a trust model: in common law jurisdictions we say that the regime is given legal ownership of the resources as trustee, while the people retain equitable ownership, the people being both the founder and the beneficiary of the trust.

Whether citizens are like shareholders or like beneficiaries, their relationship to the regime demands little of them: citizens need not be involved in, or even aware of, the daily management of the country’s natural resources. Like shareholders of a corporation, or the beneficiary of a trust, most citizens will not be interested in tracking the administration of their assets. Popular resource sovereignty only requires that citizens be able to find out what those in power are doing with the country’s resources, and that citizens be able to influence these decisions collectively if they so choose. To take the analogy: there is nothing unusual about shareholders who do not know about or try to influence how a company’s assets are managed. There would be something seriously wrong, however, if shareholders could not find out about mismanagement of the company, or if there were no means by which shareholders could affect what the company will do.

While the people’s engagement with the regime’s resource management may be slack, a regime’s obligations to the people are tight. Whether it is a manager or a trustee, the regime is a fiduciary of the people and a fiduciary’s duties are rigid. The legal rules here are definite: a fiduciary’s primary duty is to manage the principal’s affairs for the principal’s benefit, not for

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63 On this reading the people, as the absolute owner of the resources, transfer legal title to the state. The people here are both settlor and beneficiary, so they retain equitable title in the resources. The people retains a continuing control right in the trust to direct the trustee (the regime) regarding management of the property it contains. The rights of the beneficiary here follows the rule in Saunders v. Vautier (1841) EWHC Ch J82, “First, a proprietary right in the trust fund, and secondly, personal rights against the trustees in relation to the proper management of the trust’s affairs.” Alistair Hudson, Equity and Trusts (New York: Taylor and Francis, 2009), p. 151.
any benefit to the fiduciary. The main rule is that a fiduciary must not profit from their fiduciary position without the principal’s agreement. This rule includes all profits from transactions made in the principal’s name, and also profits that come about because of opportunities that arise because of the agent’s position (e.g., all opportunities for profit that a president gains because he is president). All of these profits must go to the principal, unless the principal approves another arrangement. The same is true of any bribes, kickbacks or secret commissions. A fiduciary may, at most, collect a reasonable fee for services. For all of these rules a fiduciary’s liabilities are strict. The fiduciary may offer neither the defense that he intended no breach of duty, nor the defense that his deals anyway left the principal better off.

The duty of a president entrusted with a country’s natural resources, for example, is to manage the people’s resources for the benefit of the people—not for any benefit to the president. A president may not profit from being the manager of the people’s resources without the people’s agreement, but must direct all revenues from resource transactions to the people. All payments gained by the president because he manages the people’s resources must go to the people, as must all bribes, kickbacks and secret commissions, unless the people approve another arrangement. The president may collect a reasonable salary, and can offer no defense for any other income from resources except that the people approved its payment.

Throughout all of this law, the people’s consent is critical. It is critical on the level of ownership. In a fiduciary relationship, the baseline is that the principal (here the people) receives all of the profits. Yet a fiduciary (the regime) can legally profit from managing the principal’s assets—so long as the principal consents. The people’s consent is also critical on the level of jurisdiction. A fiduciary can collect a reasonable fee, the reasonableness of the fee being decided by the legal authority of that jurisdiction—again ultimately the people. Indeed on the jurisdictional level the people’s consent is required for approving the form and continuation of any agency relation whatsoever: the people must consent to the regime’s management of the resources, whatever form that takes. A regime’s resource management can take a shareholder model or a trust model, and any of the many variations of these models—so long as the people consent. Or the regime may privatize certain resources, taking them out of public ownership—so long as the people consent.

In short, the people’s consent is necessary for a regime to manage resources in any way whatsoever, and on two levels. Rousseau famously asked the sovereign people to answer a double-layered question in authorizing its regime, which we can adapt for resource sales:

Does it please the Sovereign to preserve the present form of resource management?

Does it please the Sovereign for the regime to manage resources as it is doing?


65 [SC, XVIII]
Consent is the core of all authorization. And the people can only authorize a regime’s decisions in conditions where popular consent is possible. Those conditions are our next study.

**Conditions for Consent**

Call all of a regime’s decisions regarding the country’s resources its “management” of those resources. Management includes enacting laws regarding resources. So in Liberia when Charles Taylor’s regime passed the Strategic Commodities Act 2000, which ascribed to Taylor the sole right to sell any of the country’s natural resources, that was an act of management. Management also includes decisions to sell particular resources within current laws. So the decision of the US Congress to auction off exploration leases for oil acreage in the Gulf of Mexico in 2012 was an act of management. What must be true for a regime to be able to claim the people’s authority to manage a country’s resources in any given way?

In order to consent, an agent must have the capacity to do so. The theory of capacity to consent is well understood for individuals, having been developed in consequential areas like consent to medical procedures. So for instance under the British Medical Capacity Act 2005, an individual is taken to have the capacity to make a decision affecting his or her own health when he or she:

1. Can understand and retain information relevant to the decision;
2. Can use that information in a process of deliberation leading to a decision;
3. Can communicate his or her decision.

In elaborating the first, informational condition, courts have required that a person must understand “in broad terms the nature of the procedure which is intended.” Consent is negated if the nature of a proposed treatment is misrepresented, or if there is a deliberate withholding of information. The second, deliberation condition centers on the person’s ability to weigh the information he or she has in a rational process leading to a decision. The third, communication condition requires that the person be able to convey his or her decision in some efficacious form to the relevant authority. If these three conditions obtain, then a person is considered to have the capacity to consent. The law sets out a further condition for an individual’s consent to be valid consent and so authorize. Valid consent cannot be given with a pistol to the bridge of the

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66 The Act reads, “The President of the Republic of Liberia is hereby granted the sole power to execute, negotiate, and conclude all commercial contracts or agreements with any foreign or domestic investor for the exploitation of the strategic commodities of the Republic of Liberia. Such commercial agreement shall become effective and binding upon the Republic... upon the sole signature and approval of the President of the Republic of Liberia.”

67 UK Mental Capacity Act 2005, sect. 3(1); see Jonathan Herring, *Medical Law and Ethics* (_), pp. 155-

68 Herring, pp. 159-61, 166-67.

69 Herring, p. 157.

70 Herring, p. 163.
nose or, as British law has it, where the consenter is under undue influence of a coercive power, his will overborne.\footnote{Herring, pp. 161-62. Gandhi was not speaking of validating consent when he said, “Even the most despotic government cannot stand except for the consent of the governed which… is often forcibly procured… Immediately the subject ceases to fear the despotic force, the power is gone.” \[Gandhi, “Young India,” June 30, 1920\]}

Such conditions for capacity and validity set natural bounds on the interpretation of what it would mean for peoples to be able to dispose of their resources “for their own ends, freely.” Yet what kind of consent are we looking for? In pleading that it has the people’s authorizing consent a regime may claim that the people \textit{asked} the regime to pass certain laws, and then sell off the resources within those laws. Or a regime may claim that the people explicitly \textit{agreed} that the regime should do these things. The claim that regimes are most likely to make is that the people signaled their \textit{acquiescence} to its management of the country’s resources by remaining silent as the regime took its decisions. Any regime’s most likely appeal is to the people’s tacit consent. And as above is a plausible appeal, since as above many citizens may not be interested in tracking the administration of the country’s natural assets, but may only have the general idea that the regime is making decisions as to the assets’ disposition.

Tacit consent is real consent: under the right conditions silence “can be just as much an expression of consent as shouting ‘aye’ after a call of ayes and nayes.”\footnote{A. John Simmons, \textit{Moral Principles and Political Obligations} (Princeton: Princeton University Press, 1979), p. 80.} The theory of valid tacit consent is also well understood for individuals. As Simmons says, in order for tacit consent to be valid in interpersonal contexts:\footnote{Simmons, pp. 279-80 [check]}

1. The situation must be such that it is perfectly clear that consent is appropriate and that the individual is aware of this (awake and aware of what is happening);

2. There must be a definite period of reasonable duration when objections or expressions of dissent are invited or clearly appropriate, and the acceptable means of expressing this dissent must be understood by or made known to the potential consenter;

3. The point at which expressions are no longer allowable must be made clear to the potential consenter;

4. The means for indicating dissent must be reasonable and reasonably easily performed (e.g., the proposer of a motion cannot say, “anyone with an objection to my proposal will kindly indicate it by lopping off their arm at the elbow”);

5. The consequences of dissent cannot be extremely detrimental to potential consenter.

When these conditions obtain, an individual can give valid tacit consent.
To spell out the conditions in which popular authorization of resource management is possible, we need only to retailor such account of individual consent to suit our potential consenter—a people. A people is a group agent, which acts when its members act as citizens with the same intentions. Theorists may debate precisely what conditions for consent fit such an agent; since we are looking for an interpretation sturdy enough to be useful in international law we set out four conditions that should be beyond doubt. These are four minimal conditions for valid tacit consent, formulated simply so as to maximize their certainty:

1) *Information.* Citizens who cannot find out about the management of their resources cannot approve that management, even tacitly. At the very least, citizens should be able to obtain reliable general information about how resources are being sold, and where the revenues are going. Citizens need not have the details of all commercial arrangements (any more than, say, shareholders do). But there must be some systems in place that will reliably alert citizens to what they would regard as gross mismanagement of their assets.

2) *Independence.* To be authorizing, acquiescence must be to some minimal extent independent of the will of the person seeking authorization. Citizens who are brainwashed, relentlessly propagandized by the regime, or subject to extraordinary psychological manipulation do not validate the management of their resources even if they remain silent as the country’s resources are sold. North Korea has some oil, but the comprehensively dominated people of North Korea could not now give tacit assent to the current regime selling their oil abroad, even if the regime were inclined to do this.

3) *Deliberation.* In order for the citizenry to be able to consent to the regime’s resource management, citizens must be able to discuss that management with each other. Citizens should be able to pass information to each other about resource laws and policies, without a reasonable fear of suffering major harms like serious injury, loss of employment, imprisonment, torture, disappearance, or death. And citizens should be able to debate the regime’s resource policies with each other, in private or public, without reasonable fear of such harms.

4) *Dissent.* In order tacitly to consent to the regime’s resource management, citizens must have the ability to dissent from that management without incurring severe costs. Any regime claiming that it has the authority of the people must make mechanisms available through which it acknowledges that the citizens can safely dissent to its resource policies. Citizens must also be able peacefully to express their dissent, alone or together, inside or outside of these formal mechanisms without justified fear of major harms. And the people’s dissent must ultimately be efficacious: if a majority of citizens strongly oppose the regime’s resource management, that management must, within a reasonable time, change to reflect the people’s opposition.

In concrete political terms these conditions require that citizens have at least minimal civil liberties and bare-bones political rights. There must be at least some absolutely minimal press freedom if citizens are to have access to information about the regime’s resource decisions, and about possible gross mismanagement. The regime must not be so deeply opaque that it is nearly impossible for the people to find out who gets the revenues from resource sales and how these are spent. Citizens must be able to pass information about resource sales to each other without fear of arrest, dismissal or worse. The regime must put effective mechanisms in place through which the people can express their dissatisfaction resource management: at least a free and fairly
elected consultative body that advises the regime, and occasions on which individuals or civic groups can present petitions. There must also be a minimally adequate rule of law, ensuring that citizens who wish to protest resource sales publicly and peacefully may do so without fear of serious injury, loss of employment, imprisonment, torture, disappearance, or death.

If these conditions do not obtain in a country, then the silence of the people when a regime disposes of their resources cannot express the people’s consent. Absent these conditions, the people’s silence is just silence. Either the country’s citizens cannot find out about resource sales, or they are too scared or oppressed to discuss and protest them. Where citizens cannot learn what is happening with their resources, where they cannot communicate about the regime’s resource management, or where they cannot conceivably say no to their resources being sold off, they cannot possibly be authorizing resource sales.74 Popular resource sovereignty says that the natural resources of a country belong to the people of that country. The rights of a people are violated whenever anyone controls that property beyond the people’s possible consent.

Epistemological Concerns
In 1947 the United Nations asked dozens of the world’s leading intellectuals—including Gandhi, Croce and Huxley as well as leading Confucian and Muslim scholars—what human rights should be included in the universal declaration being drafted. What surprised those who received the lists of rights back from these distinguished thinkers was how similar they were.75 Cross-cultural consensus is sometimes waiting for us, and it should be well within reach for the interpretation of popular resource sovereignty just set out. There is nothing particularly controversial in the theories on which the interpretation rests; they satisfy what Buchanan calls the criterion of moral accessibility.76 As so often in political affairs, the central challenge comes not in finding right content of a doctrine, but rather in applying the doctrine found.

In order to be any use at all, after all, this doctrine will need to be used by outsiders to a state. “The central idea of international human rights,” as Beitz says, “is that states are responsible for satisfying certain conditions in their treatment of their own people and that failures or prospective failures to do so may justify some form of remedial or preventative action by the world community or those acting as its agents.”77 For the world community to take action when some state is failing to secure the conditions for popular consent, the members of the world community must be able to agree when those conditions are not being met. It is with epistemology that we might begin to have apprehensions about the political sustainability of a

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74 [regime acting in sovereign vs commercial capacity]


76 “A proposal for reforming international law should be morally accessible to a broad international audience. It should not require acceptance of a particular religious ethic or of ethical principles that are not shared by a wide range of secular and religious viewpoints.” Allen Buchanan, Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law (Oxford: Oxford University Press, 2004), p. 44.

human right to popular resource sovereignty. For applying this doctrine requires foreigners to judge the relations between a people and its government from outside, and from outside these relations can sometimes seem quite uncertain—especially within authoritarian countries. Such apprehensions are captured with real skill by Michael Walzer:78

The state is constituted by the union of people and government... Foreigners are in no position to deny the reality of that union, or rather, they are in no position to attempt anything more than speculative denials. They don't know enough about its history, and they have no direct experience, and can form no concrete judgments, of the conflicts and harmonies, the historical choices and cultural affinities, the loyalties and resentments, that underlie it. Hence their conduct, in the first instance at least, cannot be determined by either knowledge or judgment. It is, or it ought to be, determined instead by a morally necessary presumption: that there exists a certain “fit” between the community and its government and that the state is “legitimate.” It is not a gang of rulers acting in its own interests, but a people governed in accordance with its own traditions. This presumption is simply the respect that foreigners owe to a historic community and to its internal life...

There is no point at which foreigners can point to a tyrannical regime and say, ‘Self-determination has clearly failed…’ For revolution often comes unexpectedly, as it came to the Iran of the Shah, a sudden upsurge of previously invisible political currents. Walzer evokes a widespread formation of sentiments. The words that glow from this text are, “Foreigners... don’t know enough,” and “respect.”

Walzer’s words may capture our own thoughts when we feel mystified by events in other lands, when we wonder how people there can be reconciled with their rulers. The words may also come back to us when we see what Walzer calls “previously invisible political currents” suddenly surge up, as we did recently in the Arab Spring. Walzer’s own example of the revolution against the Shah of Iran is excellent. That charismatic, modernizing, leader—the Shah—the darling of a superpower, in command of great wealth, a huge army, and a savagely efficient secret police, had ruled for decades and in 1977 faced no obvious challengers or crises. In little over a year he was gone, replaced with great public celebration by ultraist Shi’a clergies politically his opposite. What outsiders can know what accommodations a people make with their leaders; who can know the people’s plans to change their country’s fate? Those who don’t know should not judge, and should assume a fit between the people and state—until the people themselves show otherwise through their own actions. Above all, peoples should respect each other, and assume except in the most extreme circumstances, that each people is tacitly consenting to the manner of its rule.

As we consider Walzer’s challenge, we isolate those issues from any thoughts about the rightness or wrongness of possible actions against the regime from outside. We are, that is, only considering what outsiders can know about popular resource sovereignty—not the rights and wrongs of outside interventions. Our interest is the epistemological issue raised by Walzer’s words, which is how much outsiders can know about the tacit consent of a people to its government’s acts.

78 Walzer 1980, pp. 212, 222.
Consent in Saudi Arabia
Are the citizens of Saudi Arabia giving their valid consent to how the Saudi regime is managing the country’s oil? This question brings the full force of our epistemological concerns to bear on the theory of consent, because Saudi is a country about which many Westerners feel very much in the dark. Walzer would say that we must presume a union between people and regime, because we do not know enough to say otherwise. Even if we are neutral instead of presuming, we may be unsure of what to say next. Saudi Arabia certainly does not seem to meet the minimal conditions for valid consent by the people. Yet things are so different there; perhaps the best we can do is to suspend judgment about the people’s consent altogether.

The epistemological problem with Saudi Arabia is not in knowing the basics of its political structure or of citizens’ daily life. Saudi is not Mars. One can go there—with your embassy’s help you could be in Riyadh this time tomorrow. Saudi has superhighways and the internet, reformers and reactionaries, loving parents and child prostitution, Dunkin’ Donuts and drug addicts, soccer games and silly rumors about the politics of other places. Because of its great geopolitical significance, there is much excellent analysis of the country, both scholarly and journalistic, and Western governments and think-tanks keep close watch on developments.79

The difficulty for Westerners is that much of what they discover is so different from what they are accustomed to. The three dramatic impressions are the apparent devotion of the majority of Saudis to a very conservative interpretation of Islam, the segregation and inequality of the sexes, and the radiation of public authority into areas of life that in the West would be protected as private. In many ways these impressions are disorienting, yet the country also seems quite stable. To fill the cognitive void we may grasp at the idea that perhaps the Saudi people like things, more or less, as they are.

Saudi is also difficult because it is one of the few countries left where popular sovereignty is not the public philosophy. Unlike most states, the Saudi leadership has never signed the treaties that would commit it to popular sovereignty. This is, quite explicitly, an absolute monarchy. Were James I of England brought back to life and made Saudi king, he would not care for the clothes or climate yet he would find much of the country’s constitution quite congenial. The Saudi king is the head of the Saudi ummah, the body of believers that is the national population. In this role he orders the promotion of virtue and the punishment of sin (including, as James might be pleased to see, the public beheading of witches80), so as to help guide the souls entrusted to his care to heaven instead of hell. The king commands piety, the people obey piously, that is the ideology.

79 [cites; Bronson, State Dept., CSIS] There is also, unfortunately, a great deal of cartoonish caricature and conspiracy theorizing about the country, especially since 9/11.

80 Amina bint Abdulhalim Nassar was the second person beheaded for witchcraft in 2011 (and the 73rd overall), having been charged with tricking people into paying for cures for illnesses. BBC News, “Saudi Woman Executed for ‘Witchcraft and Sorcery’,” 12 December 2011.
Arabia is the name of a place; Saud is the name of a family. Referring to the place by the family should be striking—it would be like officially renaming the UK, “The Windsors’ Britain.” (Reference to “Saudis” should be equally striking; imagine that Americans are instead called “Roosevelters” or “Bushians” after being ruled by that family continuously for generations.) The House of Saud has been extraordinarily successful in keeping its kingdom its own. The Saudis have controlled fractious tribes across a territory the size of Western Europe, they have maintained a united front through many palace intrigues, and they have so far guided their theocracy through all the gales of modernity. The regime has weathered long periods of low oil prices, and it has secured the greatest terrestrial energy source in history from jealous neighbors and covetous foreigners across eight decades of crises in the Middle East. Simply in terms of dynastic survival skills, the Saudis must be ranked with the Medicis, if not (yet) the Ming.

The primary resources with which the Saudis have maintained domestic power have been oil money and Wahhabi Islam. The Saudis have controlled gigantic oil revenues ($318.5 billion in 2011, according to OPEC); African and Asian petrocrats are poor cousins in comparison. The Saudis have pushed the money through a classic patrimonial political economy, with vertical channels of patronage topped by senior royals. They have used the money to waive taxes and provide benefits for citizens: to subsidize food and housing, to provide free education and health care, and to create many unnecessary government jobs for those who would otherwise be unemployed. They have also built an extensive secret police and informant network that the East German Stasi would have envied, and have generally kept a loose leash on the fearsome Mutaween religious police. When internal discontent has threatened, the regime has characteristically dialed up both benefits and repression: during the Arab Spring King Abdullah announced a raft of handouts, subsidies, public works and bonuses worth tens of billions of dollars, just a few days after a senior prince warned plausibly that the regime would “cut off any finger” raised against it.

A body of Wahhabi religious scholars, the ulema, is integral to the Saudi regime. The ulema approve important royal decrees, form the judiciary of the country’s main (sharia) courts, and have much influence on the educational system and the definition of public morals. The ulema are ultra-conservative in their social views, to the right of even the most extreme American fundamentalists, and their politics are quietist. The ulema teach that the Saudis are the legitimate Islamic authority of the country, and any public protest against them is a sin and a crime (the concepts are closer than elsewhere). Insofar as the ulema differ from the Saudi royals on social issues, they pressure toward more conservative policies such as the greater memorization of the

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81 It is sometimes forgotten that Saddam’s forces invaded Saudi Arabia during the first Gulf war, and that several Arab states supported this attack. Nasser’s Egypt also bombed Saudi repeatedly during the Yemeni civil war in the 1960s.


Koran in schools and more restrictions on women’s dress, interactions with men, and activities outside the house.\textsuperscript{84}

Within all the fascination of Saudi politics, our question is only one: could the Saudi people be tacitly consenting to how their regime is managing the country’s oil? Outsiders might express genuine uncertainty about, for example, how thoroughly the majority of Saudis accept the state’s official ideology. Citizens cannot consent to the state’s management of the people’s resources, it might be said, if they do not believe that the resources ultimately belong to the people. And, recalling Rousseau’s Thesis, citizens cannot give their consent as part of a sovereign body if they believe they must obey the state, whatever the state decides. We can imagine a public poll in which Saudi citizens were asked, with assured anonymity, whether they generally approved of the ways in which the regime is managing the country’s oil given that the oil belongs ultimately to the Saudi people. It might well be that the average citizen would express puzzlement at the question—at the idea that the resources belong to the people or that a Saudi subject should sit in judgment over the regime’s policies, instead of supporting the regime as a matter of religious duty. We cannot know: the regime will not allow such a poll.

Outsiders might also wonder how independent the views of citizens are from the regime. The state closely supervises schools, mosques, media and public spaces, so it is a live question whether the regime controls citizen beliefs at the level of “extraordinary psychological manipulation.” Certainly when the regime made a sharp rightward shift in social policy in 1979, there appeared to follow a corresponding shift in social attitudes.\textsuperscript{85} But it might also be said that the regime was here getting out in front of a wave of popular Islamic conservatism sweeping through the region. And many Saudis, especially in more progressive urban centers such as Jeddah, would scoff at the idea that they had been brainwashed by the state.

\textbf{Saudi: Sapere Aude}

Justifiable doubts surround such issues, and having given them space we can return to what we do know. The answer to our question is the obvious one we started with: Saudi Arabia has a highly authoritarian regime, the citizens cannot control the oil. Saudi citizens do not have the minimal political rights and civil liberties required for their silence to signal valid tacit consent to the regime’s management of the country’s resources. Since 2003 the kingdom has been in a reformist phase that has reversed some of the most reactionary trends of the 1979-2003 period. There have been attempts to diversify the economy, modernize the educational system, make

\textsuperscript{84} When a \textit{sharia} court sentenced a woman to 200 lashes for being alone with a male non-relative shortly before she was gang-raped, it was the king who pardoned her. \textit{New York Times}, “Saudi King Pardons Rape Victim Sentenced to Be Lashed, Saudi Paper Reports,” December 18, 2007. (Not all gang rape victims are fortunate enough to get a royal pardon; see \textit{Saudi Gazette}, “Girl Gets a Year in Jail, 100 Lashes for Adultery,” February 8, 2009.) The royals also intervened to keep a noted preacher in prison when a court had sentenced him to a few months in jail and the payment of a fine for killing his daughter. The preacher had admitted to using a cane and cables to burn his daughter’s skin and to break her arm, ribs, back and skull, after he began to suspect the five-year-old’s virginity. \textit{Independent}, “Saudi Royal Family Intervenes over Preacher Released Despite Raping and Killing Daughter,” 12 February 2013.

\textsuperscript{85} [cite]
enforcement of *sharia* law more predictable. But the political conditions necessary for popular assent are still unsatisfied.

*Information.* Saudi citizens cannot get reliable information about how the country’s oil is being managed, and crucial facts about the national budget (such as how much oil money the royalties are taking for themselves) are state secrets.⁸⁶ All newspapers must be licensed, journalists and the internet are closely monitored and restricted.⁸⁷ In 2011 the king created an anti-corruption agency, and the royalties do allow some stories about corruption to run in print.⁸⁸ Yet in the same year a law was passed threatening fines and closure of any print or internet media guilty of “inciting divisions between citizens,” or “damaging the country’s public affairs.”⁸⁹ No critical reporting on possible royal corruption is permitted. For example when the British media were full of stories of the one billion pounds that a British defense firm allegedly kicked back to Prince Bandar, the Saudi press was limited in its coverage to a single story in an English-language daily devoted to the Prince’s categorical denials of impropriety.⁹⁰

*Deliberation.* Citizens cannot deliberate together in public about the regime’s management of resources without risking severe consequences. Political parties do not exist in Saudi Arabia, nor legal trade unions, human rights organizations, women’s organizations or youth groups. Any public debate can be closed down by the regime for raising “sensitive” issues; indeed scholars debate how far civil society should be said to exist at all.⁹¹ On resource issues the Saudi people are like a sedated brain, the neurons fully alive but the connections between them blocked sufficiently that the signaling between them cannot, at the collective level, produce action.

*Dissent.* “Ministers,” as Jefferson said, “cannot in any country be uninfluenced by the voice of the people.”⁹² The Saudi regime is not deaf to public discontent; indeed like all successful authoritarian regimes it is quite sensitive to disquiet in the populace. Interior Ministry informants at mosques, universities, and at large report incidents; government officials brief the royals on the trend of broadcast media (and especially call-in shows); and the *majlis* where citizens appeal

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⁸⁶ The 2010 *Revenue Watch Index* rates Saudi Arabia as having “Scant Revenue Transparency” for its oil industry, and the 2010 *Open Budget Index* scores the country at 1 out of 100 for release of information on the national budget.

⁸⁷ Reporters Without Borders lists conditions of press freedom as “Very Serious,” and has given Saudi Arabia its designations as “Press Predator” and “Enemy of the Internet.” [en.rsf.org/report-saudi-arabia,146.html]

⁸⁸ King Abdullah created a National Authority for Combating Corruption in 2011, which along with the General Auditing Bureau got domestic coverage for claims that they will target “big heads,” and these agencies have charged the Oil Ministry in one case. *Emirates 24/7,* “Saudi to Hunt ‘Big Heads’ in Anti-Corruption Drive,” (January 30, 2012); “Saudi Oil Ministry Faces Corruption Charges,” (March 23, 2011).

⁹⁰ *Economist,* “Nothing Liberal Yet,” [2011].


⁹² [Letter to John Jay (1786), ME 5:452]
to officials to solve local disputes also help alert the regime to trouble spots. The regime responds, as all regimes must, to public unease. What the regime does not allow is for the Saudi people to protest its resource decisions. The regime does not allow itself to be held accountable by the people.

The royals do not welcome petitions. The main consultative body is appointed by the king and can only express views on matters referred to it by the king. Most seriously, in Saudi Arabia public protests are prohibited. The US State Department reported in 2011, “There were no government-permitted, peaceful political demonstrations during the year”. The law requires a government permit for an organized public assembly of any type, and it was a crime to participate in political protests or unauthorized public assemblies… The Basic Law does not provide for freedom of association, and the government strictly limited this right in practice. The government prohibited the establishment of political parties or any group it considered as opposing or challenging the regime. All associations must be licensed by the Ministry of Social Affairs and comply with its regulations. Groups that hoped to change some element of the social or political order reported that their licensing requests went unanswered.

During 2011, when some Saudis tried to organize Egypt- and Bahrain-style protests via social media:

On March 11, the day of the planned demonstrations, things were quiet. Helicopters flew low in the skies over Saudi cities, mirroring the intimidation of protesters in Tahrir Square and Pearl Roundabout. Security forces spread through every corner and street. An unannounced curfew loomed over Riyadh and Jeddah. At noon, Saudis prayed as usual, then they got into their cars to drive home for lunch and the usual siesta. One man dared to defy the curfew. The lone demonstrator, Khalid al-Johani, told BBC journalist Sue Lloyd Roberts and her camera crew, “The royal family don’t own us. . . . I need freedom; all the country is a jail. . . . We need a parliament.” Al-Johani anticipated that he would be arrested. “I demonstrate because it is worth it,” he said, “I am doing this for my four children.” He gave Roberts his mobile number, but after that day, al-Johani stopped answering his phone… he disappeared.

The regime does not allow informed citizens to deliberate together on whether they approve of the regime’s resource decisions, and to act individually or collectively to demand changes if they do not approve. The monarch as Rousseau says, “Takes advantage of a silence he does not allow to be broken, or of irregularities he causes to be committed, to assume that he has the support of

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93 [Majlis al Shura]


95 [Madawi Al-Rasheed, “No Saudi Spring,” Boston Review (2012).] Al-Johani was held without trial for nearly a year, then charged with support of demonstrations, presence at the location of a demonstration, and communications with the foreign media in a manner that harmed the reputation of the Kingdom of Saudi Arabia. Amnesty International, “Saudi Arabia: Trial of Riyadh Protester ‘Utterly Unwarranted’,” 22 February 2012.
those whom fear prevents from speaking, and to punish those who dare to speak.” An average citizen, and even more a group of them, would rationally fear serious consequences for dissent to the regime’s resource management. Any informed observer of Saudi Arabia will predict high risks for any individual or group to try to spread this message: “The oil belongs to the people. The royals must tell us how much of our oil money they are taking for themselves—or we should give them none of our oil money, at all.”

The Saudi regime has survived by pushing a strategy of coercion and clientelism down to the household level. Each household is effectively offered a mix of benefits for obedience and punishments for dissent, against a background of limited information and, most significantly, serious blocks to combining with other households for greater bargaining power. The regime might vary this mix across households, and as conditions change, but the overall goal has been to make it appear to each family that there is no rational alternative to their rule. The strategy has so far been successful. Faced with the overwhelming resources of the state, most citizens have acquiesced. Citizens have not been powerful enough in themselves, or in the limited alliances they can make with each other, to challenge the regime. But neither can the citizenry, in such conditions, give its valid consent to the regime’s management of the country’s resources.

**Line-Drawing**

These are joyless conclusions from our theory. There is no pleasure in confirming that the Saudi people lack control over their natural resources. Theory has no enemies, and the Saudi regime is now at least better than it was. In recent years the Saudi regime has done more to secure political rights and civil liberties, to open the educational system, to diversify the economy. Friends of popular resource sovereignty can only wish these efforts success. Still, the country is considerable distance from satisfying the minimal conditions for popular consent, and experience advises caution in thinking that the regime can cure itself of the worst symptoms of its long addiction to oil revenues.

There are some reasons to hope. Indonesia, formerly authoritarian and the world’s largest Muslim country, beat its addiction to oil and is now completing its democratic transition. Islam itself is obviously not incompatible with popular sovereignty. (Perhaps even Wahhabism is not: the Qatari regime is also Wahhabi, but is closer to constitutional monarchy than Saudi Arabia, and it even went out of its way to create Al-Jazeera.) In Nigeria, which is still very troubled but improving, widespread public protests and a general strike in 2012 forced the government to reverse course on oil subsidies; Nigeria in 2012 satisfied the minimal conditions for popular assent, at least regarding those subsidies. The Arab country farthest down the road of reform,

[SC, XVIII]

97 Muslim-majority democracies include large countries Bangladesh and Turkey, and small countries like Senegal and Mali. Pace Kedouri, “The notion of a popular sovereignty as the foundation of government legitimacy, the idea of representation, of elections, of popular suffrage, of political institutions being regulated by laws laid down by a Parliamentary assembly, of these laws being guarded and upheld by an independent judiciary, the ideas of the secularity of the state, society being composed of a multitude of self activating autonomous groups and associations—all these are profoundly alien to the Muslim political tradition” [9]
Morocco, does nearly satisfy the minimal conditions for popular resource sovereignty. Yet—less hopeful—the one topic about which Moroccans are least free to discuss and dissent (besides the dignity of the king) is a topic tightly connected to the country’s primary resource export.

And, overall, the global situation is dire. Looking around the world for oil we see the big authoritarian Middle Eastern producers: Saudi Arabia, Iran, Iraq, Kuwait, UAE, Qatar, as well as major producers elsewhere like Kazakhstan and Angola. That is already half of the world’s proven oil reserves, and none of these countries is close to the minimal conditions for popular resource sovereignty. Mankind’s primary energy supply is primarily controlled by a roomful of men. These few men are—financially, militarily, geostrategically—extremely well entrenched. They have used their oil money to inculcate authoritarian ideologies in their populations (and, in some cases like Saudi, to spread them vigorously abroad). The peoples of these countries, often overborne and ideologized for generations, are usually in bad shape for taking control over the country’s resources. Popular resource sovereignty is the ideal, but not the reality, of today’s state system.

Beneficent Despotism
We have been considering whether the Saudi people could be, by their silence, tacitly consenting to the regime’s management of the country’s resources. The epistemological barriers have turned out to be low: we know the people cannot be so consenting. In this way the Saudi case is like Equatorial Guinea’s. Saudis do have some political rights and civil liberties that Equatorial Guineans lack, yet the conditions in neither country meet the minimal conditions for valid consent.

“Look into the Absolute Monarchies of the World,” says Locke, “and see what becomes of the Conveniences of Life, and the Multitudes of People.” Locke was right about Equatorial Guinea, but wrong about Saudi Arabia. Saudi is different in a way that is apparent to all observers. The average Equatorial Guinean is materially badly off; the average Saudi is not. Saudis receive many more benefits from the country’s oil wealth than their African counterparts, both in public and private goods. Infant mortality is fairly low in Saudi, life expectancy is a very respectable 74 years, literacy is above the world average and about the same as in South

98 Comoros is a member of the Arab League, and Comorans are in more control over their resources than Moroccans are over theirs. But Comorans, as small set of islands with a more diverse population, is a less interesting comparison for our purposes here.

99 Moroccans are below the minimal conditions for consent to the regime’s management of resources in Western Sahara. An average citizen protesting the regime’s control over Western Sahara’s phosphates (a large part of the country’s export revenues) would rationally fear serious consequences from the regime. The regime’s restrictions on citizens’ deliberation and dissent on Western Sahara are tightly focused; without them, Morocco in 2012 would meet the minimal conditions for popular resource sovereignty.

100 Oil reserve figures from BP, *Statistical Review of World Energy*, June 2012, Ch. 6, p. 6.

101 [Locke, First Treatise, sec. 41.]
A crude way to measure how well a regime is transforming “national income” into “national development” is to start with the country’s ranking in GDP per head and compare it to the country’s ranking in the Human Development Index. Saudi’s per capita income is only 19 ranks higher than its HDI; Equatorial Guinea’s is 90 ranks higher.\(^{103}\) Even if the Saudis cannot now actually assent to the deal they are getting from their oil, it might be thought that they might, just perhaps, consent if they could.

This kind of thought may be lingering in our attempts to evaluate Saudi resource sales. It resembles the imagined public poll above, yet its philosophical orientation points in a different direction. The thought is not that Saudis are consenting, only tacitly; the thought is that the Saudis would consent because they are getting a good enough deal. The average Saudi, it might be said, would not complain about what he is getting from the oil. In philosophical parlance, we are moving from tacit to hypothetical consent.

We can construct competing hypotheses about what benefits the average Saudi would want from the oil. Saudis are devout; the average Saudi gets all that a good Muslim should want, and he or she does not begrudge the royals—who lead the Arab and the Sunni worlds, and protect the holy sites—their palaces. Indeed the average Saudi enjoys her royals’ celebrity, much as the average Briton or Spaniard does. Alternatively: the average Saudi doesn’t like the royals so much, living their lavish, jet-set and sometimes debauched lifestyles while imposing strict *sharia* on the people. The average Saudi wants his or her children to develop their socially useful talents, and enjoy the satisfactions of meaningful work, instead of being unemployed or trapped in a pointless bureaucratic post. The average Saudi worries that when the oil money runs out, the foundations of the country’s economy and political system will collapse. Their grandchildren may well be taking crowbars to the abandoned palaces, loading up camels with scrap.

Such speculations reveal more about the speculator than about the Saudis. We could try instead to rigorize our thoughts about hypothetical consent with more scientific comparative evaluations across resource-exporting countries, to see in which countries the citizens are getting more benefits from their resource base. For example, we might look at the country scoring system developed by Hamilton and Clemens that measures resource depletion against environmental quality and investment in human capital.\(^{104}\) Or we could deploy “sustainable development” measures of Arrow et. al. or Dasgupta to evaluate how well different regimes have used natural capital to build up human and manufactured capital in ways that can sustain standards of living intergenerationally.\(^{105}\) The Saudi regime has in recent years gained a reputation for more prudent resource management, so it would not be unexpected if that the kingdom came out well in such indices when compared to other authoritarian countries.


\(^{103}\) [GDP, HDI]

\(^{104}\) [Hamilton and Clemens (1999), and see data.worldbank.org/indicator/NY.ADJ.SVNG.GN.ZS/ .]

\(^{105}\) [Arrow et. al., (2004); Dasgupta (2010).]
We should resist making the question of “enough benefits” a technical one, however. The entire discussion is misconceived from the start, as we can see by recalling what initially attracted us to Walzer’s text. First, recall Walzer on what foreigners can know about the relations between a people and a regime. It is extremely difficult for outsiders to know whether citizens are happy with the deal they are getting from their regime in culturally distant countries. Statistics about economic performance are not helpful. Egypt’s economy grew at 2.6% in the decade before the 2011 revolution, and Tunisia’s grew at 3.4%—higher rates of growth than in Europe or the US. Before the revolution against Ben Ali in Tunisia, the head of the IMF called his economic model a miracle. A month after the Syrian uprising started the IMF forecast 3.1% growth for the year and 5.1% for the year to come. “Revolution often comes unexpectedly,” as Walzer said, “a sudden upsurge of previously invisible political currents.” We would need to see those currents to form a judgment about hypothetical popular assent, but we cannot.

Nor, recalling Walzer’s appeal to “the respect that foreigners owe to a historic community and to its internal life,” should we hypothesizing consent at all. Tacit consent is actual consent; hypothetical consent is not. “A hypothetical contract is not simply a pale form of an actual contract,” as Dworkin says, “it is no contract at all.” The only consent that can make a regime’s actions valid is actual consent—the actual consent of the citizenry. For outsiders to think otherwise, and make a technical exercise out of the level of benefits they believe the people should consent to, would be a kind of cognitive colonialism.

Popular resource sovereignty concerns the control that peoples should exercise, not the benefits others think they should be given. Peoples “may for their own ends, freely dispose of their natural wealth and resources,” they have a “right... to enjoy and utilize fully and freely their natural wealth and resources.” The people’s consent is required for approving the form and continuation of any agency relation whatsoever. The people must consent to the regime’s management of the resources, whatever form that takes and whatever the distribution of its benefits. Foreigners respect a people not by judging what its citizens should want, but by respecting the choices they actually make.

We have now cornered a final thought, a final sentiment about sovereignty in Saudi Arabia, growing perhaps from memories of stories we were read as children, which stories are themselves an inheritance from the many centuries when our own ancestors could only muse on whether God had given them a good or bad king, one blessed or unlucky. This thought is that Obiang of Equatorial Guinea is a brutal despot, while the Saudi king is benevolent—or, to be
more agnostic about his motives, at least beneficent.\footnote{In the Arab Spring year of 2011, the Saudi regime announced an extra $130 billion of spending on affordable housing, civil service salaries, unemployment and other benefits. (Freedom House, \textit{Freedom in the World 2012, “Saudi Arabia”) A White House official described this spending as one in a series of “safety valves the Saudis open when pressure builds”; another official said the subsidies ‘stimulus funds motivated by self-preservation.’” \textit{New York Times, “U.S.-Saudi Tensions Intensify With Mideast Turmoil,” [*] 2011.}} A good king confers benefits on his people, a bad king cruelly deprives them.\footnote{It should be noted that under any interpretation the Saudi regime has often not been particularly beneficent to the Shi’a minority that is between 10 and 15\% of the kingdom’s citizenry, and has not been at all generous to the migrant workers who constitute more than a quarter of the country’s population.}

If we have this thought, it can serve as a touchstone for our convictions about popular resource sovereignty. If we believe in popular resource sovereignty, there can be no such thing as a ruler who is beneficent with public resource revenues. No fiduciary can be generous by giving to the principal what they already have a right to. The citizens of a country are entitled to all the value of their resources, without their consent the regime is entitled to not a penny. \textit{“Nahhab, wahhab”} is the Arabic phrase that Saudis used of Prince (later King) Fahd when he used state funds to spend prodigiously on his family and friends: “He steals, then he gives.”\footnote{Lacey, \textit{Inside the Kingdom}, p. 36. Lacey continues, “It was an accusation that could have been leveled at many members of the royal family. They had built the Kingdom. It carried their name. It was hardly surprising if a large number of princes found it difficult to distinguish between what theirs and what belonged to the still-growing state.”} All of Saudi Arabia’s natural resources belong to the Saudi people, and the royals can only have their jets and palaces—indeed, anything bought with resource revenues—at the people’s sufferance. A king’s baseline is not “all,” it is “nothing.” And the same holds for all dictators, supreme leaders and big-man presidents.\footnote{“It is sometimes suggested that the citizens of the oil monarchies feel gratitude to their rulers for giving them the money, and that this gratitude translates into political support. Yet gratitude results from the receipt of a gift. The Gulf Arabs, however, think that they themselves, as citizens, own the oil, not the ruling families. . . . Few are particularly grateful on receipt of something they think is theirs in the first place.” Michael Herb, \textit{[1999, p. 241]}}

**Conclusion**

Despite being declared prominently in the main human rights treaties, popular resource sovereignty is not yet international law. In this paper we have played through what Nickel calls the opening and into the middle game of justifying this principle: identifying the abstract norms behind the principle and showing the specific norms that follow from them.\footnote{Nickel, \textit{Making Sense of Human Rights}, p. 3.} In these stages we have achieved strong positions in setting out an interpretation of popular resource sovereignty and in applying its standards to contemporary cases. Nickel’s end game still awaits: the delineation of feasible requirements to protect and promote popular resource sovereignty internationally. Until we play that end game, we will not have shown that the doctrine satisfies Buchanan’s criterion of “minimal realism”: having “a significant prospect of actually being
adopted in the foreseeable future, through the processes by which international law is actually made.”

Still, our historical situation is promising. The world has agreed the legal texts that it needs regarding popular resource sovereignty—texts that declare a familiar and compelling ideal of popular control. Looking ahead, we already can see the moves that will turn those legal texts, and so that ideal, into law.