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Resource Nationalism and Permanent Sovereignty Over Natural Resources: Time for a Divorce?

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The principle that the natural resources of a country in some sense "belong" to the people of that country is widespread.[1] Political philosopher Leif Wenar asserts: "The idea that the natural resources of a country belong to the people of a country is so intuitive that most people will need no proof than its statement."(2008, 10) Prominent businessmen like George Soros (2004, 146) and statesmen like former US president George W. Bush ("President's Statement to the Press," June 12, 2006) have also endorsed the view. Legally, the principle is enshrined in a large number of national constitutions (McHarg, et.al., 2010). Ownership, however, is a notoriously difficult sort of concept to pin down (Hamilton and Bankes, 2010). What does it mean to say that the people of a country "own" their resources? The rights one has over one's car are not same as the rights one has over one's dog - even though both belong to us in some sense. What should we read into statements like the ones above?

The Principle of Permanent Sovereignty over Natural Resources (PSNR) is a principle of international law that offers a framework to think about this sort of question. It affirms the right of peoples to "freely dispose" of the natural resources in their territory. It reaffirms popular sovereignty and permits the nationalization of natural resources held in private hands by the state (subject to compensation). It enjoins states to manage their resources sustainably and for the benefit of their citizens. Though its legal meaning has evolved over time, scholars generally agree that at the outset the principle had two overarching goals: the promotion of popular

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Notes

[1] The term "natural resources" can be interpreted in various ways and is sometimes extended to include any natural advantage of a territory like climate or geopolitical location. For the purposes of this paper, the term covers principally economically recoverable non-renewable subsoil resources. These include mostly oil, natural gas, and mineral ores. It excludes agricultural primary commodities, water, and livestock. Even narrowing the question to this subset of all possible natural resources leaves us with substantial variation.

sovereignty against external interference and the promotion of economic development. (Perrez, 1996; Schrijver, 1997; Marcel and Mitchell, 2005)

More controversially, some scholars and commentators have also interpreted the principle to be a principle of state ownership over natural resources. (Zorn, 1983; Cambou and Smis, 2013; Gumplova, 2014; Anderson 2015; Angeli 2015) We can therefore distinguish between more "liberal" interpretations of the PSNR, where states are understood principally as overseers and regulators of the terms and conditions under which individuals and firms will exploit natural resources and "resource nationalist" interpretations where states have both a right and a duty to take an active role in the management and administration of those resources on behalf of the people.

This paper highlights a possible tension between "resource nationalist" interpretations of the PSNR and the purposes which it was intended to serve. In so doing, it also casts doubt on a popular intuition - that something necessarily sinister is going on if the state is failing to exercise collective control over (or even fully profit from) the disposition of natural resources on its territory. Consequently, this paper serves as a partial rejoinder to Charles Beitz (1979), Brian Barry (1991), Chris Armstrong (2015) and cosmopolitan thinkers more generally who have challenged the notion that "the people" ought to be understood as the default resource owners inside a given territory.

In particular, two sources of tension are worth noting. The first is that because state actors have distinct interests from the population at large, strengthening state sovereignty (ostensibly from external interference) can strengthen state control over domestic politics in ways that weaken national self-determination and human rights protection rather than enhance it. Removed from the necessity of taxing or serving the needs of the domestic economy in order to ensure its political survival, a "rentier state" can use the proceeds from resource sales to finance repression and/or buy off demands for political or social reform. (Mahdavy 1970; Beblawi and Luciani 1987; Smith 2004; Jones Luong and Weinthal 2006, 2010; Ross 2012)

The second tension between the resource nationalist interpretation of the PSNR and the stated purposes of the principle is that state ownership and control over natural resources is no panacea for economic development. The link between resource abundance[2] and slower than expected economic growth has been widely observed (Gelb 1988; Auty 1993; Sachs and Warner 1995; Leite and Weidmann 1999; Sarraf and Jiwanji 2001; Ross 2001, 2012; Isham et. al 2002; Eifert et. al 2003; Davis et. al 2003; Smith 2004; Bannon and Collier 2003; Sala-i-Martin and Subramanian 2003). Two of the many channels through which this phenomenon is thought to operate involve state ownership. The first is the size of the economic rents accruing to the state (See for example: McPherson 2003, 2010; Ross 2012; McGuirk 2011) and the second is the widespread establishment of State Owned Enterprises (SOEs) since the mid-1960s (Jones Luong and Weinthal 2006; 2010; Quinn and Conway 2008).

It is always possible that for some reason justice requires that natural resources be owned in common through a state. However, for those who believe that natural resources should be used to further human emancipation and economic development, the tensions between the PSNR and resource nationalism should make us cautious about reducing questions of popular sovereignty over resources to questions of state control.

Part I: Origins and Purposes of the PSNR

On January 12, 1952, the United Nations General Assembly passed Resolution 523 (VI), which stated that "the underdeveloped countries have the right to determine freely the use of their natural resources and that they must utilize such resources in order to be in a better position to further the realization of their plans of economic development in accordance with their national interests, and to further the expansion of the world economy" and noted that "commercial agreements shall not contain economic or political conditions violating the sovereign rights of the under-developed countries, including the right to determine their own plans for economic development." (A/Res/523 (VI))

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[2] Usually measured as a ratio of resource sales or exports to GDP

On December 21, 1952, the United Nations General Assembly issued a further resolution asserting the right of peoples to "freely use and exploit their natural wealth and resources" as "inherent in their sovereignty." (A/Res/626 (VII): 18) Although the shift in language seems slight, the difference between "freely determining the use of" and "freely use and exploit" expresses a shifting conception the state: from an agent who determines how resources will be used by unknown parties to an agent who uses and exploits resources.

UNGA Resolution 626 is still known as the "nationalization resolution" (Schrijver, 2010: 2) Six months later, Guatemala used the resolution as a supporting argument for nationalizing the United Fruit Company. The following year, the Civil Tribunal of Rome ruled in favor of the Iranian nationalization of the Anglo Iranian Oil Company stating that the resolution might constitute validation of the move (Hyde 1956: 854) Though the general intent seemed clear, the exact conditions under which nationalizations should proceed were still unclear.

The principles articulated in 1952 were therefore further discussed, first in 1955 in the context of a draft covenant on human rights and later in 1962 as part of a dedicated Commission on Permanent Sovereignty over Natural Resources. This commission led to a new UN Resolution (1803), which attempted to clarify the issue. Resolution 1803 is longer and restates the basic concerns and aims of the PSNR (Paragraph 1), clarifies that it is up to each state to decide how and whether to include foreign capital in their economy, reaffirms both national legislation and international law (paragraph 3), explains that nationalization must be conducted on grounds of public utility, must be compensated, and that disputes over such must be addressed in national courts or by arbitration if agreed upon (paragraph 4), reaffirms the sovereign equality of states (paragraph 5), states that economic cooperation should be mutually beneficial (paragraph 6), that violations of the PSNR are contrary to the UN Charter and peace more generally (paragraph 7), and that agreements voluntarily entered into should be "observed in good faith." (A/Res/1803 (XVII): 15-16)

By reaffirming the duty to compensate expropriated parties and the primacy of international law, UNGA 1803 is more conservative than some would have preferred. (Schwebel

1963; Gess 1964; Visser 1988). If the purpose of the PSNR was to rectify inequities arising out of an unfair distribution of property rights established during the colonial era, the duty to compensate doubly gets in the way of that objective. It legally legitimizes existing property interests and makes it costlier for states to reassert control over their economies. However, the clause indicating that national jurisdiction applies when disputes about nationalization occur does afford states some leeway in crafting laws that can eventually lead to expropriation on favorable terms.

Although, the canonical formulation of the PSNR is usually thought to be found in UNGA Resolution 1803 (Perrez 1996: 1194) dissatisfaction with Resolution 1803 spurred further activity in General Assembly. Developing countries submitted Resolution 3201 (S-VI) in May 1974 entitled "Declaration on the Establishment of the New International Economic Order." This declaration asserted the right to nationalize resources, including a right to transfer these resources into domestic private hands. It also asserted a right to restitution and compensation (this time aimed towards developing countries) for resources taken during colonial occupation and a desire for an equitable relationship between the prices of the good developing countries exported and those they imported. (UN Doc. A/RES/S-6/3201)

Later that same year, the UN General Assembly passed the Charter of Economic Rights and Duties of States (CERDS) (UNGA Resolution 3281 (XXIX)) whose Article 2 states: "every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities." Article 2 further amends the rules about nationalization by stating that compensation should take "into account its relevant laws and regulations and all circumstances that the State considers pertinent." (UN Doc. A/RES/29/3281, 1974:52) This declaration breaks with the spirit of the Resolutions 532 and 1803 and aligns itself more closely with Resolution 626. As far as CERDS is concerned, states are encouraged to possess, use, and dispose of their natural resources and compensate foreign firms (or governments) if it seems pertinent to them. CERDS probably represents the apogee of resource nationalism at the United Nations.

Since CERDS, UN declarations have only restated the PSNR in a general way by affirming it and amending its contours in the context of the environment (Resolution 37/7, 1982), sustainable development (Rio Declaration, 1992), and the Law of the Sea (UNCLOS, 1982). The International Court of Justice (ICJ) has also used the PSNR to declare in favor of the Democratic Republic of the Congo (2005) and Palestinians (2004) in the case of restitutions for resources taken during armed occupations. The General Assembly backed up this latter opinion in Resolution 62/181 (2007).

This brief history of the PSNR is simplified in a number of ways. Many developing countries actually expressed concerns with the legal framework established by Resolution 626 and CERDS. These countries feared that access to capital and foreign direct investment depended on credible assurances that these investments would be protected and many, in fact, supported Resolution 1803. On their view, maximizing the benefit from natural resources in a territory required balancing between a desire to increase the government's share of resource sales and a desire to attract foreign investment and technology. Evidence that this balancing act was on the minds of several countries can be found, for example, in the discussions of the Committee on Permanent Sovereignty over Natural Resources leading up to Resolution 1803. In support of an amendment co-sponsored by Algeria, Burma, Indonesia, Jordan, Lebanon, the Philippines, Saudi Arabia, Sudan, Syria, Thailand, Tunisia, and Yugoslavia, the Tunisian representative remarked:

> "In view of the new legal status of several newly independent developing countries, the need for these countries to derive the maximum benefit from their own resources and *the no less vital need* to provide the best possible context for international cooperation in the economic, social and political fields, we must continue to study the question of the permanent sovereignty of States over their natural resources…" (UN. Doc. A/PV. 1193: 1122 – emphasis added)

A second simplification is that international practice falls well short of the resource nationalism endorsed by CERDS and aligns more closely with Resolution 1803. Indeed, when the practice of bilateral investment protection treaties is studied, the language used in contracts between states and investors rarely ever states that the country receiving investments retains the right to annul

the contract whenever it deems necessary or desirable. Instead, the treaty language tends to emphasize “prompt,” “effective,” and “adequate” compensation. (Verwey and Schrijver 1984)

Though the temptation for states to renege on agreements is always high once foreign companies have made expensive and immovable capital investments, most states have adopted legal language in law and treaties guaranteeing the rights of property owners (Visser 1988). As Dolzer (1986: 230) puts it:

> “Radical emphasis on an absolute concept of economic sovereignty and the corresponding negative attitude towards foreign private investment has disappeared in the light of sobering economic realities and the practical and urgent demands which the wellbeing of the people places upon the decisions of governments.”

A final simplification is that the issues of sub-national indigenous communities have made a dent in the resource nationalist ambitions of developing country states. The permanent sovereignty of peoples expressed in the 1956 declaration, was intended (at least by some) to cover the possibility of subnational groups having claims (Hyde 1956: 859; Gess 1964: 446) but those questions were eventually tabled[3]. The question of the rights to natural resources of indigenous peoples was picked up again by the UN in 1994, when a Draft United Nations Declaration on the Rights of Indigenous Peoples (Draft UNDRIP) asserted a right on the part of Indigenous Peoples to “develop, control, and use the lands and territories […] which they have traditionally owned or otherwise occupied. (Draft Declaration. Art. 25)” This provision of the Draft Declaration was finally adopted as Article 26(2) of UNDRIP in December 2007. UNDRIP specifically indicates that the rights of indigenous peoples derive from *inter alia* “the fundamental importance of the right to self-determination of all peoples.” (UNGA Resolution 61/295, Annex)

[3] The reasons for the tabling are interesting. The concern for national self-determination initially clashed with the need to build viable states out of former colonies In 1960, it was probably an open question whether anything like a Nigerian identity would supplant the Hausa-Fulani, Yoruba, Igbo or any of the other 250 indigenous ethnic identities present within the British Colonial Territory of Nigeria. The new Nigerian state, among others, was not anxious to legitimize the claims of its many ethnic groups by endorsing the claims of sub-national peoples to resources over that of the state.

Jamison (2005) reads the Draft Declaration prepared by the Working Groups as endorsing some form of collective ownership for indigenous peoples, reproducing a kind of resource nationalist interpretation of the PSNR, only at the level of indigenous peoples. “Another priority of indigenous peoples, considering that their survival requires survival of the collective entity, is that the ownership of the land and natural resources must belong to the group.” (421) The sovereignty/ownership of indigenous peoples within a larger state entity now constitutes a partial legal block to the rights of states over resources within their territory and thus modifies any reading of the PSNR to that degree.

These wrinkles aside, the history of the PSNR is coeval with the struggle of developing countries, many of them newly decolonized, to secure a measure of political independence and economic development. From this history, we can discern at least two major ways of interpreting the principle: a liberal and a resource nationalist interpretation. On the liberal view, economic development (including resource driven economic development) is consistent with stable and secure private property rights in natural resources – indeed it may even require them. National self-determination, on the liberal view, is perfectly consistent with foreign investment, economic interdependence, and private property rights. On the resource nationalist view, economic development is in conflict with private - particularly foreign - participation in the natural resource sector. Self-determination, on the resource nationalist view, is inconsistent with extensive private rights, foreign investment, and excess economic interdependence in the domain of natural resources.

Part II: Resource Nationalism and National Self-determination

According to David Mares resource nationalism “is a concept in which the natural resources in the ground or under the sea are the property of a nation rather than of the firm or individual who owns the surface area. In this view, resources are a “natural patrimony,” and, consequently, should be used for the benefit of the nation rather than for private gain.” (2010: 6) One might imagine different forms joint ownership might take, including an open access commons or a joint stock company, but it is state ownership that has most often captured the imagination of resource

nationalists. For example, near the apogee of resource nationalism about the PSNR, Stephen Zorn remarks that: “One of the most widely accepted aspects of the permanent sovereignty principle is that ownership of petroleum resources *in the ground* is vested in the state.” (1983:323)

Resource nationalists might also theoretically instantiate the concept of state ownership in a variety of different ways. The formation of a vertically integrated State Owned Enterprise, which explores, extracts, refines, and sells natural resources is the form of ownership that appears to give the state the most control. The state, through the SOE, would be able to make decisions (and reap the profits) all along the natural resource value chain. Moreover, with this amount of integration, the state would also in theory be in a position to better control negative spillovers associated with the industry (environmental degradation, certainly, but also perhaps the effects of price inflation and price volatility that accompany significant resource sales) and enhance positive spillovers to the rest of the economy (developing domestic human capital and organizational know-how, as well as spreading technology to other industries). This kind of SOE is the one states most often choose when they face no external constraints on their decision-making (Jones Luong and Weinthal, 2010)

However, owning something need not always involve exercising maximum control over it. Some resource nationalists might be satisfied if the state receives substantial profits from the natural resource. For organizational or technical reasons, some parts of the value chain might be beyond the state’s current capacity to profitably exploit. In those cases, Production Sharing Agreements (PSAs) can be created alongside an SOE. A contractor takes on the risk of exploring for the resource and, if successful, can use the sales of the resource to recover costs. Once costs are recovered, the state and the contracting company split the profit according to a predetermined arrangement. Another variation is the Service Agreement (SA). The state owns the resource, but cannot easily access it, and so contracts with a service provider to extract it for a fee, usually as a dollar amount per unit recovered, with some fixed allowance for costs. Variations and combinations of these at difference stages of the value chain are common. (Johnston 2007:62)

Finally, the state's ownership might even be consistent with the Royalty-Tax system (R-T), which was the dominant form of agreement between the state and International Oil Companies (IOCs) prior to the 1960s. The state would lease the right to explore to the company and then, if recoverable resources were found, the state could either claim a portion of the oil recovered or a portion of its sales. In addition, the IOC would pay taxes on profits. (Johnston, 2007:58-59) Today the R-T system is uncommon in the oil sector outside the United States, but is still used in mining.

These ways of structuring the resource sector vary based on the amount of control the SOE (and hence theoretically the state) exercises over the production process and the disposition of the resource. The vertically integrated SOE gives the SOE a high degree of control over both the production process and the final disposition of the resource. The R-T arrangement gives the state the least control over either the production process or the disposition of the resource. In between the two, the PSA can offer an SOE some degree of control over the process and the final disposition of some of the resource. The service agreement gives the SOE little control over the process but keeps control over the final disposition of the resource. It is worth noting, however that each method is at least theoretically capable of producing equivalent revenue for the state. (Johnston 2007, McPherson 2010)

Historically, R-T systems have been opposed by resource nationalists both because they were thought to raise less revenue for the state (Victor et. al 2012:9) and because they left major decisions about the development of the industry out of the hands of the state. (Jaidah 1980; Auty 1990) This view that (popular) control over natural resources is central to the meaning of collective (though not necessarily national) self-determination has been articulated most recently by Oliviero Angeli (2015, 125-127). If control over resources (rather than just profit) is the true essence of resource nationalism, then PSAs and Service Agreements are also less desirable to resource nationalists than vertically integrated SOEs.

Resource nationalists make two moves to get from permanent sovereignty to state ownership. The first is to firmly interpret the PSNR as a principle that primarily vests rights in states. The second is to conceptualize those rights as ownership rights.

Despite its appeal to the right of self-determination of peoples and more recent concessions to the rights of subnational groups, the PSNR is often simply asserted to be a principle that gives legal rights to states. For example, Petra Gumplova (2014:94) asserts that: "Permanent sovereignty over natural resources is a firmly established standard of international law that authorizes states to exercise exclusive jurisdiction over natural resources and all components of the natural environment within their national boundaries." This view is widely echoed by Armstrong (2015:130) and Cambou and Smis (2013:352) among others.

Though contestable, particularly in light of the rights accorded to indigenous groups based on the right of peoples to self-determine, the interpretation is quite plausible. States are the normal agents of citizens according to international law. Other entities may have some degree of legal personality (corporations, international organizations) but the sort of treaty law codifying international custom embodied in UN Resolutions is primarily meant to apply to states. Unless a State manifestly discriminates against a people and thus can no longer claim to be "possessed of a government representing the whole people belonging to the territory without distinction as to race creed or colour" (G.A. Res 2625: XXV) the state is taken to represent its citizens. In other words, states are the typical subjects of international law, though citizens and other groups are frequently its object.

The second move is less obvious. Why conceive of these rights as ownership rights rather than the more typical understanding of state sovereignty? For example, state sovereignty over its territory is not usually understood as incompatible with private ownership of land. Mares' definition of resource nationalism clearly contrasts subsoil rights (vested in the state) and surface rights (which can be privately owned). Sovereignty over other things (citizens, wildlife) is not usually conceived of as ownership. Resources however, appear to be placed in a category apart - especially in the developing world context.[4]

[4] No one to my knowledge has contested the private rights of American, British, or Australian mining companies in their home countries.

There are broadly two ways to think about the link between sovereignty over resources and state ownership over resources. The first is conceptual: sovereignty over resources logically entails state ownership over natural resources (in ways sovereignty over territory or people does not). The second is instrumental: the best way, as a matter of fact, for states to exercise their sovereignty over resources in the context of economic development is to take up the mantle of resource nationalism and take ownership of those resources.

The concept of sovereignty comprises the notions of political independence, territorial integrity, exclusive control and jurisdiction over that territory. (Henkin 1999:3) Ownership on the other hand, in a broad sense, involves the right to possess, use, and profit. (Honore 1961) Property forms vary in their details. Rights to possess, use, sell, and profit are always limited but sharp disagreements arise as to which limitations, if any, are essential in any particular context. (Hamilton and Bankes 2010) For our purposes, the exact conception of property is less important. Two potential sources of conflict between property and sovereignty arise in the context of the PSNR: the question of control on the one hand and the question of profit on the other.

If sovereignty means control (the right to freely dispose of can easily be read as a right to control) then a conflict between private ownership and public sovereignty appears inevitable. Either the state makes the decisions about use, development, and sales or the firm does. However, this conflict is almost certainly illusory. Unless one is willing to say that control in the context of sovereignty means actual involvement in the day to day decision making, rather than simply the capacity to impose policies - what political scientists might call state capacity (Skocpol 1985; Migdal 1988) - then day to day decision-making control is, at least in principle, unnecessary to achieve sovereignty.

We can easily imagine sovereignty over subsoil resources that parallels sovereignty over surface land. States might simply register appropriations made by individuals on unowned subsoil resources over which the State acts as sovereign. The General Mining Act of 1872 in the United States, which authorized prospecting and mining for minerals on Federal Lands, comes close to this sort of arrangement. On this more liberal view, the state's role is more limited and

less active. The state still has jurisdiction, but does not ordinarily claims the right to access, control, or profit directly from discovered resources. Whether or not this view is attractive or not is immaterial. The liberal state makes fewer decisions over the resources on its territory than the resource nationalist state, but *ceteris paribus* it is not obviously less sovereign over its resources. Since sovereignty over resources can be read as jurisdiction, sovereignty over resources does not seem to logically imply control in the sense intended by resource nationalists.

The PSNR is also clear on the principle that citizens must benefit from natural resources. If private property owners capture the benefits, then how can citizens as a whole? If those owners are foreign, then it appears as though the benefits are being denied to those to whom they should accrue. Once again, the conflict is resolvable without contradiction. At a conceptual level, we can distinguish direct and indirect benefits. A direct benefit would be a financial gain coming from the sale of natural resources. An indirect benefit would be any financial gain that accrues from the exploitation of natural resources. A shopkeeper in a mining town benefits indirectly from the mine as he sells tools and victuals to the miners and their families. A mining company benefits directly from selling ore. Benefit need not be direct to count as a real benefit.

If we can imagine someone who gets no direct benefit receiving great indirect benefits (like the shopkeeper) we can also imagine cases where a large direct benefit counts as a large indirect harm. For example, some think that there is a lottery winner's curse for families who experience large windfall lottery winnings but see the money ruin their lives. (McNay 2012) This is of course the sort of situation partisans of the "resource curse" think some resource rich countries find themselves in. We need not read the PSNR as requiring that the state (or the citizens) capture all the direct benefits from resource extraction, then. We can read it as requiring that resources provide a positive balance of direct and indirect benefits to the population.

Since conceptually and without difficulty we can imagine sovereignty over resources yielding different sorts of property arrangements (including private property) over the resource, a serious defense of a resource nationalist interpretation of the PSNR will have to take the instrumental route. To be successful, it will have to show that by some metric, it would be better to concentrate ownership of subsoil natural resources in the state.

One promising route for resource nationalists is to make their case based on the important role natural resources play in the economies of developing countries. Resource revenue can account for a large fraction of state revenue or even GDP (since by definition, the rest of the economy is underdeveloped). Allowing a small number of foreign private firms to employ large swaths of the population and provide large fractions of the tax base gives them undue influence over government policy. It is plausible to think that whoever pays the piper calls the tune and popular sovereignty demands that foreigners not be major sources of revenue for governments. (For more on fiscal contracts and the relationship between tax incidence and forms of public spending, see Timmons 2005)

We can certainly imagine scenarios where foreign ownership becomes deeply problematic for the capacity of a people to achieve national self-determination. For this to occur, however, individual firms in the resource sector need to provide large fractions of government revenue - large enough to make a difference if private owners and managers begin not cooperating with the state. There was a time in the oil industry where a small number of multinational firms (the so-called Seven Sisters) did agree not to compete on concession bids. (Ross 2012:7) This both drove down the number of bids (often to one) and the number of firms operating in any single country. Under those circumstances, foreign private participation might well constitute a threat to national self-determination. A single company might well be able to dictate the terms of its participation in a country desperate for income. The lack of competition and effective alternatives for the development of natural resources would have made establishing NOCs seem like the only way for a people to retain its sovereignty at the time.

It is hard to argue that the same international circumstances are present today. The market for developing oil fields is quite competitive. The number of oil companies is large and the technology for operating all but the most challenging fields is much more widespread. Governments can and do negotiate with a variety of companies at different stages of the process (from exploration, to extraction, to refining, marketing, and transport) Some of these firms are

quite large, with revenues exceeding that of the countries they are negotiating with,[5] but it is not the size of the firm that impairs self-determination as much as the number of effective alternatives, and these have grown substantially since the 1970s. Vivoda (2009) argues that these changes in the structure of international markets, access to technology, as well as other factors have contributed to IOCs finding themselves in a weaker bargaining position vis a vis exporting governments in the decade of the 2000s than ever before.

But let us admit that foreign participation in the resource sector contains an element of risk to national self-determination, as it surely must. State ownership is only better if it seems reasonable to believe that it offers a better risk profile to the people weighing their options about how to organize the resource sector in their territory. To make an informed decision, one needs to know something about the risks to self-determination coming from state-ownership.

Two sets of agency problems might help structure our discussion of state ownership and national self-determination. One set of agency problems characterizes the relationship between the government and whomever is actually managing the resource (the various government ministries overseeing the resource sector, the State Owned Enterprise, foreign private contractors, foreign private owners, domestic private contractors, domestic private owners, etc.). A second set of agency problems characterizes the relationship between the people and their government. An SOE faithful to the government will do little to enhance popular self-determination if the state generally pursues the objectives of an elite. Similarly, popular self-determination will not be much enhanced by the presence of an SOE if a government that is generally faithful to the wishes of its people is unable to effectively oversee or control it.

It is often assumed that a benefit of keeping natural resources under government control is that this will help better mitigate agency problems between the state and the organization extracting the resource. (Grayson 1981; Van der Linde 2000; Stiglitz, 2007) Oil companies are slippery customers, the argument goes, and because of their sophisticated knowledge of the

[5] Exxon Mobil Corp's annual revenue in 2013 was $393 billion dollars (down from the two previous years) and *the total GDP* of Papua New Guinea in that same year, a country Exxon Mobil has just started shipping Liquid Natural Gas (LNG) from was just $15.29 billion.

market, the technologies, geology, and contract design, they are often adept at outmaneuvering the relatively inexperienced governments they bargain with. Furthermore, extensive experience with governments in different countries have made them experts at evading taxes and oversight.

There is some truth to this story, but the relationship between a government and its large resource extracting SOEs is often equally fraught with danger. The same expertise and information asymmetry that makes private companies adept at dealing with governments can make SOEs and their managers good at dealing with regulators. Before the public can benefit from resource sales, even on the resource nationalist view, the government's budget must receive the revenues promised (or at least have control over where they go) but this is much harder to do than resource nationalists often assume. Thus Victor, Hults and Thurber (2012) conclude: "The creation of NOCs, generally, did not solve the principal -agent problem plaguing governance of the resource sector. Rather the emergence of NOCs has merely shifted the information asymmetry between governments and IOCs to the government and the NOC." (11)

SOEs have sometimes formed "states within a state": large opaque and politically influential organizations that function quasi independently from the government ministries they are legally, but not always in practice, accountable to. (Philip, 1982; Boué 1993; Mommer, 2002). At various times, PEMEX (Mexico), PDVSA (Venezuela), Pertamina (Indonesia), and Gazprom (Russia) have functioned as "states within states." These NOCs hire security forces, run social programs, run large diverse portfolios of businesses (hotels, airlines, department stores), fund political parties, and divert large sums of money into the hands of managers and friendly political supporters. If NOC managers succeed in capturing the agencies responsible for their oversight, a kind of iron triangle may form that is hard to dislodge given the sums of money involved. In this scenario, neither the state nor the people can be said to enjoy full self-determination when a fifth column is operating within the state.

A second way states and peoples may see their sovereignty eroded when they nationalize valuable natural resources is debt. Manzano and Rigobon (2007:58) note that many of the countries that experienced poor growth rates in the context of resource abundance also had very high debt/GDP ratios. The 1970s and 1980s provide an illustration of this. Commodity prices of

oil, natural gas, coal, iron, and copper all rose sharply during the 1970s. After nationalization, many countries borrowed heavily during this time period, using their resources as collateral. When commodity prices declined in the 1980s, these countries (Gabon, Guyana, Jamaica, Mauritania, Nigeria, Venezuela, and Mexico to name a few) faced severe debt crises and all went through an IMF or a World Bank program.

Among other unpopular measures, the Structural Adjustment Programs (SAPs) imposed by International Financial Institutions (IFIs) as a condition for receiving new loans to roll over old ones frequently required deep cuts in spending programs and/or increases in taxes. These programs were often bitterly resented. Some objected to these programs on grounds of state sovereignty or national self-determination (For a discussion of these issues, see Streeten 1987) It looked as though for all intents and purposes liberal financial institutions were dictating economic policies to developing countries in exchange for needed relief. Much of whether this argument succeeds depends on how one understands self-determination. For the liberal, whether such bargains violate a right to self-determine depend on whether such international assistance is something due as a matter of right (in which case it cannot justly be withheld). For the economic (and resource) nationalist, these sorts of deals are clearly violations of economic sovereignty.

Either way, debt can be understood as a form of dependence and is certainly a constraint on the capacity of any government to carry out common projects. There is ample evidence that governments of the 1970s handled their sudden revenue windfalls poorly. (Karl 1997; Ascher 1999) Programs that were expanded proved very difficult to curtail once commodity prices declined. Rulers often preferred additional debt to risking overthrow. Perhaps worse from a fiscal point of view, money earmarked for exploration or expansion of existing projects was raided, leading to seriously undercapitalized SOEs. At the same time this was happening in the state sector, there is also some evidence to suggest that private companies did a much better job at saving revenue windfalls against the possibility of a future decline in prices (Townsend 1995). Debt is not inevitably inimical to national self-determination but excess overseas debt might be and the governments who can leverage their ownership of natural resources can exploit deeper lines of credit than other countries at a similar level of economic development.

Another way in which state ownership can come into conflict with the right to self-determination concerns the deep ties developed by the SOE (and by extension the government) with foreign governments. This kind of interdependence is often very unpopular at home. The clearest example probably concerns the relationship between Saudi Arabia and the United States. The United States' support of the state of Israel often provokes anger in the Persian Gulf, but rarely has this fact much disrupted the relationship between the Saudi monarchy, Saudi ARAMCO, and the United States government. This relationship, which includes arms sales and military advice (most recently in Saudi Arabia's war with Yemen) is often thought of as propping up the regime, when it might otherwise face the sort of unrest experienced by other countries in the region. It is fairly clear what the United States government and the Saudi Monarchy receive from the relationship. It is much less clear whether the Saudi people's self-determination is enhanced. If sales decisions were made by private firms, the Saudi monarchy might have a harder time leveraging the country's resources into diplomatic and military support. (For evidence linking non-tax revenue and regime stability see Dunning 2008 and Morrison 2009)

Though the difference between a heavily taxed private sector and an SOE can sometimes be overstated when it comes to revenue, the existence of a taxable private sector changes the incentives for transparency for the actors in the resource economy. Although it might not seem that fiscal transparency in the oil or mineral sector of the economy is much related to the issue of self-determination, one of the greatest reasons to avoid SOEs is their tendency to exhibit excessive graft and corruption (Ross 2010: 59-62). Corruption almost by definition is in tension with national self-determination and majority state ownership of natural resources appears to be a strong predictor of corruption. (Otto et.al. 2006: 241; Quinn 2008) For example, one study found that between 1977 and 2006 in Cameroon only 46% of revenues owed to the government made it into the budget. The other 54% remain unaccounted for. (Gauthier and Zeufack 2009) Corruption is usually more prevalent is less wealthy countries but state ownership appears to be even more highly correlated with corruption than poverty alone. One reason for this is that it is fairly easy for the government and the heads of the SOEs to arrive at a bargain that makes them better off at the expense of the public. They often know each other, travel in the same circles, and therefore can relatively easily strike bargains with each other. (Jones Luong and Weinthal

2010) These bargains can only work, however, if information about sales and royalties is kept secret.

Using Russia and other post-Soviet Republics as case studies, Jones Luong and Weinthal (2010) argue that the government's demand for transparency in the oil sector is much increased when faced with a private industry (because it wants to discover any possible cheating). More surprisingly perhaps, the incentive for the oil firms (at least in the Russian case) is also in the direction of transparency because they want to limit the capricious taxation of authorities who always assume there is money being diverted that could be going to them. Oil firms in countries where state revenues are significantly affected by royalty payments want to be seen as honest to avoid excess demands by the state or the public.

Finally, the link between oil revenues and a lack of government accountability (or "internal self determination") is one of the most widely documented features of oil rich states. (Mahdavy 1970; Beblawi and Luciani, 1987; Chaudhry 1997; Vandewalle 1998; Lowi 2009) One reason is the aforementioned lack of transparency. Typically, though, oil revenue (and other resource revenue) is seen as spurring two distinct mechanisms. By enabling autocrats to spend more or tax less than they would otherwise have to, oil revenue enables governments to buy support through patronage, public goods, and the like. According to Ross (2012:29) oil producing states have governments 45% larger than non-oil states. This revenue also enables governments to, when necessary, finance armies and security services capable of repressing a restive population. (Mahdavy, 1970) Another possible linkage concerns the relationship between taxation and representation, which suggests that lower taxes also occasion less demand for representation, though this is disputed (For the affirmative case see McGuirk 2011. For the skeptic's view, see Ross 2004)

Whatever the case may be, a growing literature associates oil and authoritarianism. (Tsui 2010; Ross 2001, 2012) Writing in 2012, Michael Ross notes that, "Oil has not always been an impediment to democracy. Until the 1970s, oil producers were just as democratic - or undemocratic - as other countries. But from the late 1970s to the late 1990s, a wave of democracy swept across the globe, bringing freedom to countries in virtually every region -

except the petroleum rich countries of the Middle East, Africa, and the former Soviet Union." (63) Of course, the 1970s is exactly the period when resource nationalism spurred increased government control over natural resources in general, and oil resources more specifically.[6] (Victor, Hults, and Thurber, 2011) However, it is also the period when oil prices exhibited the most rapid rises - so it is difficult to draw a direct line between resource nationalism and authoritarianism. Whatever the case may be, when it comes to authoritarianism, most of the discussion focuses on the effects of state revenues not state control. Ross (2012) argues that one way of avoiding the "oil curse" is to find mechanisms to keep government oil revenue small (he suggests a mix of strategies to achieve this). Not claiming ownership, of course, would of course be a step in that direction.

So far, I have treated these negative consequences for self-determination as a series of regrettable and perhaps unforeseeable side-effects of a well-intentioned project. There is a more troubling interpretation of the wave of nationalizations that overtook the oil and mineral sectors in the 1960s and 1970s. Christopher Warshaw (2012) tries to explain why natural resources were nationalized in the first place and remain in the hands of SOEs despite so much evidence of weak performance. Following Bueno de Mesquita et. al (2003), his theory is that nationalization (and ongoing state ownership) reflects a desire on the part of governments to consolidate their rule. They are only thwarted in this mission when they face checks and balances. He tests the relationship between checks and balances and instances of privatization and nationalization and finds that indeed, authoritarian states that had fewer checks and balances were much more likely to nationalize their oil sectors and that democratic states with strong checks and balances were much more likely to privatize their natural resource sectors over time (presumably as evidence of poor performance mounted). This view is consistent with an earlier study on oil sector nationalizations by Guriev et. al. (2009) who finds that weak institutions and high oil prices are the two main determinants of nationalizations.

[6] In 1970, IOCs had access to 85% of the world's oil reserves, and NOCs 1%. By 1980, IOCs only had access to 12% and NOCs 59%. By 2012, that number for NOCs was 73% (Victor, Hults, and Thurber 2012:5-6)

None of above is meant to demonstrate that all of these problems would magically disappear if oil or mineral ownership were in private domestic (or foreign) hands. Private ownership brings with it its own set of risks and rewards. The capacity of SOEs to spur self-determination, however, appears to be significantly overrated by resource nationalists. The nationalization programs embarked upon by resource rich developing countries have instead been the locus of much graft and corruption, have helped elites enhance and stabilize their rule (and get rich in the process), and often focused the state's attention away from the needs of the domestic private sector.

Part III: The PSNR and Economic Development

If collective or state ownership is not a conceptual requirement of sovereignty over resources nor an especially effective means to pursue the self-determination of peoples, might it nonetheless be the most desirable way for resource abundant countries to pursue their economic development? This section examines the role of state ownership, focusing on SOEs in subsoil natural resources like oil and minerals, in the process of economic development. As the last section may have foreshadowed, there are reasons to believe that state ownership is no panacea for economic development. As a result, there may be some serious tension between the resource nationalist interpretation of the PSNR and the requirement that natural resources contribute to economic development of the countries where they are found. The goal of the section is not to compare and contrast state and private ownership, but only to show that state ownership has not, by and large, lived up to the economic expectations of resource nationalists. Whether some other ownership structure could have or would have done better (and would do better going forward) is a largely speculative project that I set aside in this paper.

To begin with, we should articulate the difference between state control and private control over the resource sector. Here, I focus on the ordinary meaning of private control. Private control does not exclude the state or the people as residual claimants to income generated by natural resources nor does it imply the absence of any restrictions on the use or sale of resources as prescribed by law.

The essence of the sort of control that can either be exercised by an SOE or a private company is given by the World Bank's Raw Materials Group:

> "To be in control is to have possibility to act decisively on strategically important issues. Such issues include the broad policies of a company, decisions on large investments, buying or selling of subsidiaries and power to appoint or dismiss management. To be in control of a company does not necessarily include having day-to-day influence over all its decisions" (2011, 43)

Next, we ought to take a moment to think about the notion of economic development. There are different ways to conceptualize economic development. At the time of the adoption of the first resolutions on permanent sovereignty, development was primarily conceived of as a matter of growth in per capita income. This is reflected in UNGA Resolution 1710, which establishes a program for international economic cooperation and a target growth rate of 5% per annum. More recently, other dimensions of human well-being have been advanced as a basis for evaluating development. Environmental quality, human rights, human security, health, sustainability, and other less readily quantifiable measures of well-being are often ignored or underappreciated by income-related measures of development. This point is made in UNGA Resolution 41/128 in 1987 and has been reiterated since.

Though the second measure of development is almost certainly superior to the first, it is often difficult to measure. Furthermore, most of the existing literature on SOEs tends to focus on GDP growth or even narrower measures of industry and firm performance. However, our earlier overview of the agency problems facing the state in the context of SOEs is likely to disabuse us of the notion that SOEs are necessarily better at carrying out government objectives than other parts of the government, including those objectives relating to development in this enlarged sense.

A government that exceptionally efficient at capturing a large share of the revenue from sales of natural resources, but dissipates all of it through corruption and diversion can hardly be

held up as fulfilling the mission outlined by the PSNR any more than a government that is effectively excluded from almost any revenue from its natural resources.

Typically, economists are skeptical of the economic performance of state owned enterprises (SOEs), including in the developing world (Smith and Trebilcock 2001; Eller et.al. 2007). What follows is a three-part discussion. The first sums up some of the main sources of inefficiencies thought to plague resource extracting SOEs in the developing world. The second looks at studies assessing the impact of SOEs on governance - particularly fiscal regimes. The third examines the impact of large resource revenues accruing to the state, the size of which I treat in part as a consequence of resource nationalist claims of ownership[7].

SOEs everywhere face the problem of soft budget constraints. Efficiency in the private sector is secured by the pressures of competition (or the threat of competition) and the threat that investors will withdraw their financial support in favor of more profitable businesses. State-owned enterprises rarely face intense domestic competition or a credible threat of exit by their primary backers (the government). SOEs are often a point of national pride and the government is often willing to use the credit of the country to back projects that lose money over the long run (Ascher 1999). State investment in the resource sector is also likely to be susceptible to the same problems as state investment in all large projects: because budgets are perceived as being soft, costs are routinely underestimated and benefits are systematically overstated, leading to over-spending (Flyvbjerg et.al. 2009). Some elaboration on these points follows.

Lack of competition is often held up as a major reason why SOEs in general underperform the private sector. However, SOEs are often accepted as monopolies where the good provided has significant public goods characteristics, where equity concerns are particularly strong, or where the alternative to a state monopoly is a private monopoly. In the developing world, the promotion of national champions is associated with an infant industry argument or a desire to secure spillover benefits from the development of an industrial sector.

[7] In other words, if the state merely claimed jurisdiction rather than ownership, the resources would be taxed - perhaps even heavily - but probably not to the extent justified by a claim of ownership.

The question of how much lack of competition hurts the operational efficiency of natural resource SOEs is contested. Smith and Trebilcock (2001) and the Baker Institute for Public Policy (2007) come out in favor of exposing SOEs to more competition. Hults (2012) believes that other factors like corporate culture can compensate for lack of competition, citing Petronas and Saudi Aramco as examples, but concedes that it can nonetheless be "helpful" (90). Hults also notes that competition alone is no panacea if the SOE faces soft budget constraints. (2012, 90)

The question of spillover effects is also controversial. Many scholars assert that the positive spillover effects of the resource sector are typically small because of the capital intense or enclave-like characteristics of their exploitation. (Ross 2012) Others argue that the absence of spillovers is not inevitable but the product of organizational choices. (Wright and Czelusta 2006; Blomstrom and Kokko 2006) Either way, it is not obvious why such spillovers are best secured by state ownership rather than other aspects of development policy. Wainberg and Foss (2007:30) find that technology transfers to NOCs are more frequent when they cooperate or compete with foreign investors. This suggests that the vertically integrated SOE forgoes at least some benefits by excluding formal foreign equity participation.

Many studies evaluate the performance of SOEs, and particularly NOCs. Coming up with a metric by which to assess NOCs is difficult, in part because of the opacity of the NOC environment and partly because there is some disagreement as to just exactly what NOCs are supposed to be doing. Outside of raising revenue for its principals, NOCs have been variously tasked with job creation, making sure local inputs are used in operations, providing social and physical regional infrastructure, providing energy subsidies, and more. (Aharoni 1981; Schleifer and Vishny, 1994, Bennedsen, 1998; Ascher 1999; Pirog 2007) Victor, Hults and Thurber (2012) find that these other tasks contribute to the wide variability in performance of oil companies. Eller, Hartley, and Medlock (2007) conclude that, whatever their other objectives, NOCs unambiguously raise less revenue for a given level of inputs. Even more striking is that when the authors control for variation in government ownership of the NOCs, the difference between NOCs and private oil companies largely disappears (21). This suggests that almost all of the inefficiency of NOCs is attributable to government participation (rather than their domestic

monopoly status, for example). Through other metrics, the relative inefficiency (on average) of NOCs is confirmed by Victor (2007), Wolf and Pollitt (2008), and Wolf (2009).

A related but distinct problem is undercapitalization. Relative to IOCs, NOCs invest less of their income into expanding future production, 47% less on average according to Wolf and Pollitt (2008). One reason is that the capital and revenue of SOEs is sometimes raided to satisfy political objectives. (Ascher 1999) A second reason might be the soft budget constraints many SOEs face. If money is needed to invest, the state can be persuaded to chip in, so the need to save is blunted. Jaffe (2012) worries that because so much of the world's oil reserves are under the control of NOCs, this general propensity to underinvest will lead to future shortages, to the detriment of the world economy. From the point of view of national self-determination, one might also worry that if oil becomes dramatically more scarce, the incentive for oil consuming countries to interfere in the internal affairs of developing countries will increase, impairing self-determination even further.

Though they are often inefficient, many resource extracting SOEs still generate plenty of revenue for the state - especially oil and natural gas. Moreover, the size of these rents provides opportunities for patronage. Joseph Stiglitz (2007:27) notes, "In countries with high levels of unemployment, the government-run oil companies become bloated with employees, a sort of welfare program directed disproportionately at the well-connected." This analysis is corroborated by Hartley and Medlock (2007). Indeed, this is one of the main reasons why establishing and maintaining an NOC is politically attractive (Auty 1990; Smith and Trebilcock 2001; Werenfels 2002).

Ascher (1999) provides detailed insights into how SOEs are sometimes tasked with a wide variety political objectives. For example, throughout the 1960s and 1970s Pertamina was used to finance a substantial portion of military expenditures in Indonesia when explicit financing through the official budget would have been damaging to Indonesia's attempts to curry favor with international lending organizations. Because of the lack of transparency of the company's books, it remains unclear just how much revenue was diverted (McDonald 1981). Pertamina also regularly engaged in public works programs and economic investments having

little to do with oil exploration such as a chain of hotels, rice estates, automobile dealerships, insurance, telecommunications, and the Pelita airline.

Pertamina is perhaps an extreme case, but requiring managers of SOEs to deliver public services or run other businesses is both relatively common and inefficient. (Victor, Hults, and Thurber, 2012) If a manager is hired for their competence in resource management there is no reason to assume that they would be the best candidates for building health clinics or managing a fleet of airplanes. Private companies generally have little incentive to purchase businesses in other industries unless they have reason to think they could do better. Private companies are of course not immune to political pressure to provide public and private goods for favored groups, but to the extent that they do, unlike many SOEs they will gain nothing by providing these services at anything more than the minimum possible cost.

D. Michael Shafer (1983: 113) points out another problem with SOEs is that they tend to poison the relationship between government and labor. Although public employees in the resource sector are often well paid relative to other workers, making the government the employer can strain this relationship during times of crisis. For example, in Zambia nationalization transformed the government from an ally to an enemy of labor. Actions against the state-owned company are now actions against "the nation." (Shafer 1983: 114)

A common point made in favor of NOCs is that they reduce the principal-agent problem between the state and oil industry by improving incentives and reducing information asymmetries (Stiglitz, 2007, 26-30). It is intuitively plausible to imagine that a state might have more capacity to force an NOC to act according to its wishes than an IOC. Tordo (2011:23) notes, "When a government deals directly with private investors in the petroleum sector, there are significant information asymmetries between the parties: the private operator usually has much better knowledge of the geology (after initial exploration has been conducted), appropriate production schedules, technology and associated costs, and the environmental impact of the project. In order to effectively perform its industry oversight, the government would require a comparable level of expertise and information, which is highly unlikely if the state has no direct operational involvement in the industry."

Despite its intuitive plausibility, Victor, Hults, and Thurber (2012) argue that the evidence is not so clear cut on this point. While some states have indeed improved their knowledge and revenues by creating a National Oil Company, others have not - seeing their NOCs escape government control (Philip, 1982; Mommer, 2002). And while some states have indeed been taken advantage of by International Oil Companies, "where foreign companies were kept at arm's length and competed to provide information and revenues to host governments they plausibly were more reliable agents than NOCs that concentrated their political talents on building their own political foundations and insulating themselves from government." (Victor, Hults, and Thurber, 2012:11) One possible reason for this is explored by Jones Luong and Weinthal (2010). Although, the government and oil ministry may acquire more information about the NOC's activities, they are often able to use that information for personal gain rather than to pursue social welfare. Though IOCs sometimes have incentives to minimize the government's take and hide information from regulators, in some instances transparency helps limit the unreasonable expectations of the public and the grasping hands of the public sector. (Jones-Luong and Weinthal, 2010:49)

If SOEs in the resource sector don't obviously generate more revenue for the state, might they nonetheless contribute to economic development in other ways. The evidence on this point is sparse but points in a negative direction. Quinn and Conway (2008) find that in the period 1966-2000: "majority state ownership of a country's major mineral or oil export sectors can greatly exacerbate the economic and political difficulties associated with mineral abundant economies." (2) For minerals, Quinn and Conway find lower incomes, higher levels of debt, lower rates of economic growth, higher levels of interstate and intrastate conflict, higher exchange rate volatility, and higher investment as a share of GDP in countries where less than 50% of the mineral sector is owned by the state. For oil, countries where the state owns a fraction of the industry higher than 50%, per capita incomes were lower, debt was higher, exchange rates were more volatile, investment as a share of GDP was lower and measures of intrastate and interstate conflict were higher.

If state control is not incompatible with growth (as the cases of Norway and Botswana suggest), especially in a democratic context, it is worth noting that neither is private ownership. In the 19th century, mineral rich states used domestic private ownership and consumption of oil, minerals, and even timber to fuel economic growth – including the United States, Canada, Australia, and Sweden (Davis 1995; Irwin 2003; Wright and Czelusta 2004, and Blomstrom and Kokko, 2006)

How might we explain the fact that resource rich developing countries, particularly those with extensive government participation in the resource sector, have performed more poorly than similar countries without resources in the period roughly between 1960 and 2000. Even if SOEs are frequently corrupt and inefficient, surely some income is better than no income? Resource abundant, and especially resource exporting and resource revenue dependent countries, face numerous challenges in their quest for economic development - independent of who owns the resources. Dutch Disease, if left unchecked, can cause price and currency inflation and lead to difficulties for non-resource exporting industries. (Neary and Van Wijnbergen 1986) The boom and bust nature of world commodity prices can also create difficulties for economies and governments seeking to smooth consumption and investment. (Cavalcanti et.al 2011) Point-source or enclaved resources, no matter who owns them, provide attractive targets for insurgents (Snyder 2006).

However, on at least some of the channels through which resource abundance is thought to lead to slower economic growth, ownership structure might matter. For some time now, scholars have focused on institutional quality (Davidson 1992; Chege 1998; Herbst 2000; van de Walle 2001; Acemoglu and Robinson, 2006) and in particular fiscal regimes (Bates and Lien 1985; North and Weingast 1989) as a determinant of the likelihood of economic development. A fiscal regime can be defined as the set of rules governing a state's taxation and expenditures practices. On the revenue side, weak fiscal regimes are unstable, rely excessively on a single source of revenue, and tax implicitly and indirectly. On the expenditure side, weak fiscal regimes are also unstable, unpredictable, and the process for allocating outlays is opaque. Strong fiscal regimes are the opposite. Tax revenue is stable, broad based, and revenues rely on direct and explicit taxes. Expenditures are stable, predictable, and the process for setting them is

transparent. (Jones-Luong and Weinthal 2010: 12) Fiscal regimes both constrain and enable the state, and strong fiscal regimes help develop strong, capable, and developmentally oriented states.

According to Luong and Weinthal, the aspects of a strong fiscal regime important to resource dependent states include legal limits on government spending and foreign borrowing (Manzano and Rigobon 2001), stabilization funds to help with consumption smoothing (Katz et.al. 2004; Mikesell 1997), savings funds intended to preserve capital for future generations (Matsen and Torvik 2005), and a broad based tax regime to limit reliance on export revenue and facilitate consumption smoothing during times of low commodity prices. (Chaudhry 1989; Karl 1997)

Jones-Luong and Weinthal's (2006; 2010) contention is that state ownership weakens the fiscal regime. Under state ownership, neither bureaucrats nor the public have an incentive to moderate their demands for expenditures, nor does the government or public have an incentive to restrain their demands on the SOE. Because societal expectations are high, taxation of the public tends to be indirect or implicit so as to make it less visible.

Also because the public's expectations are high, expenditures in countries where state-ownership is a widely accepted fact tend to focus on universal entitlements rather than more efficient and targeted means tested alternatives. (Jones Luong and Weinthal 2010: 59-63) Universal fuel subsidies are particularly prevalent, which encourages energy inefficiency in the domestic private sector and the development of ultimately unsustainable industries. (Ascher 1999: 94)

The cost of a weak fiscal regime in a resource dependent country is an anemic or dependent private sector (Chaudhry, 1989), unsustainable debt (Manzano and Rigobon 2007), and increased economic volatility leading to lower economic growth. (Cavalcanti et.al 2011) A weak fiscal regime is sometimes attributed to resource dependence itself (Karl, 1997, Auty, 1990), but if Jones Luong and Weinthal are correct, both resource dependence and the weakness of the fiscal regime can be mediated by the way in the which the resource is owned.

Jones Luong and Weinthal are not alone in placing the state at the center of the resource curse. Several scholars identify the state's capture of revenue as a leading cause of governance problems (Dubra et. al 2010; McPherson 2010; McGuirk 2011; Ross 2012). For them, the issue is not the SOE itself but the rents accruing to the state, whatever the source. For Dubra, Di Tella, and MacCulloch (2010), the problem is the increased societal expectations for redistribution, which motivates rent seeking in the population and discourages private investment. For McGuirk (2011) the lower tax rates in resource rich countries reduce the demand for accountability. For McPherson (2010) rent seeking on the part of domestic elites is what weakens governance and creates incentives for lower transparency, corruption, and weak oversight. These views challenge not just the desirability of state control over natural resources, but also the desirability of the state maximizing rents from the industry (at least in the short term). If little good can come of the state's capture of resource revenue when institutional quality is low (Mehlum et. al. 2006), then the right of some types of states to capture it might be called into question since as we have already noted the PSNR requires that resource revenue be used to benefit the population.

In sum, the evidence we have on state ownership of natural resources and economic development is not especially flattering for state ownership. It is possible that state ownership over natural resources performs better along other dimensions of economic development (inequality, sustainability, environmental impact), but as yet evidence for this is missing. It is also possible to argue that democracy and stronger fiscal regimes would fix some or all of these problems with state ownership. However, democracy and stronger fiscal regimes arguably make private ownership and control less problematic as well – especially if that ownership is relatively dispersed rather than concentrated. Since there is at least some evidence that state ownership and control weakens already unsteady fiscal regimes, the economic rationale for SOEs is unclear at best.

Writing for the IMF, Leslie Lipschitz (2011:2) concludes that: "the weight of country experiences worldwide tilts the balance in favor of leaving the extraction as much as possible to the private sector provided that: (i) the companies are selected on a competitive basis and (ii) the government has the capacity to ensure that contract negotiations lead to a balanced deal…" As

reflected in the qualifiers in the sentence above, most of the advice on how states should handle natural resources emphasizes how critical context is to the choice of development strategy (Davis et. al 2003; Mehlum et. al. 2006; Arezki et. al. 2011; Schaffer and Ziyadov 2012; Barma et. al. 2012). The political economy of natural resources has many moving parts that need to be complementary to overcome the challenges posed by resource led development. Ownership structure interacts with macroeconomic management, industrial policy, levels of political regime type, political culture and ideology, and fiscal regime strength to channel natural resources into political and economic outcomes. Only Stiglitz (2007) unequivocally states that countries to should hold on to ownership of the resources. Jones Luong and Weinthal (2006) stand out in the other direction, advocating privatization to domestic private companies when feasible. On the whole, therefore, the balance of the literature does not appear to support the economic virtues of resource extracting SOEs.

Conclusion

The PSNR presents itself as an affirmation of national self-determination and a way to promote national economic development. Resource nationalists treat the principle of permanent sovereignty as something like a principle of state ownership - with ownership understood as control over the resource sector and extracting maximum rents from the industry. The question addressed by this paper was whether this reading was a) consistent with a close reading of the history and purposes behind the principle and b) a good way of fulfilling these principles. We discovered instead several sources of tension between the resource nationalist interpretation of the PSNR and its fundamental objectives.

It is certainly possible that despite all that has been said in this paper, the vertically integrated state ownership model might still be better than the alternatives in any given context. The aim of this paper was not to provide some abstract comparison of different ownership regimes, however. The goal was more modest: to note that the PSNR does not require resource nationalism and emphasize the gap between the rhetoric of resource nationalism and its track

record. To be sure, as state ownership and control appears less attractive, the alternatives, whatever they are, must begin to appear relatively better.

What implications might we draw from this? Three points stand out: one political, one philosophical, and one about international human rights. First, economic nationalism seems to be making a political comeback in the democracies of the West. This paper serves *inter alia* as a reminder that whatever the faults of liberal approaches to the economy, various types of economic nationalism have been tried, albeit in a different context, with the sorts of results just outlined.

Second, it is a given that in any society viewed as a “cooperative venture for mutual gain” (Rawls 1971; 1993), ownership structures in the economy are justified by their long run benefits to the entire population. However, this moral imperative need not translate in any straightforward way into a direct claim for any particular agent to control or profit from any particular sector of the economy. Resource nationalism does not stand out because of its commitment to the well-being of peoples - all decent doctrines ultimately ground their principles in something of the sort. It stands out because of its emphasis on state ownership and control over the resource sector as a means for achieving national well-being. And while it may have been necessary for states to reassert active control over resources at one time, it is not clear that continuing this practice is yielding the benefits promised. The possible negative impact of SOEs on political development and fiscal regimes articulated in the last section of the paper is particularly worrisome.

Finally, if the international human rights regime is genuinely intent on supporting the self-determination and the well-being of peoples rather than the sovereignty and well-being of states, then the best interpretation of the PSNR is one that does not automatically assume that the interests of peoples and their governments are aligned - especially in resource abundant and authoritarian contexts where we have more reason than usual to suspect principal-agent dilemmas of the sort outlined in the paper. More state control over natural resources can often mean less protection, less autonomy, and less economic well-being for individuals, national

peoples, and indigenous communities – not more. It is time for the PSNR and resource nationalism to end their unhappy marriage.

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