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The balance of sovereignty and common goods under economic globalization

Abstract

Common goods and the political sovereignty of nation-states are intertwined, because without government, orderly treatment of common goods would be unlikely, especially in an increasingly crowded and interconnected world. This article concerns the significance of large corporations, especially global multinationals, to the topic of sovereignty, and it outlines their consequent social responsibilities, particularly with respect to common goods. Discussions of state sovereignty and of political economy, and an example concerning the aluminum industry in Jamaica, will yield the following conclusions:

1. The domain of corporate responsibility must reach far beyond the limits of the stakeholder view, and must include the effects of corporate activity on national economy. Political sovereignty, in our era, is balanced between legitimate government and productive business corporations, because the latter provide the economic means for many activities that fall within the purview of the former. (Sections 1-2)
2. Corporations are, consequently, required to enter into discussion with legitimate national leaders, to promote business and economic growth and to limit contraction that will reasonably coordinate with the social welfare programs of those leaders. (Section 3)
3. Corporations are also required to adopt a principle of action analogous to the public trust doctrine of English common law, which states that common goods are to be held in trust for the advantage of the people of the entire nation. (Section 4)

1. Sovereignty and common goods

Management of common goods and political sovereignty are intertwined, since without government, orderly treatment of common goods would be unlikely, in an increasingly crowded and interconnected world. Garrett Hardin's now famous argument of the tragedy of the commons is that as the burden of resource use increases with a rise in population density, fewer and fewer aspects of the commons may be freely drawn upon by all, if we wish to avoid its degradation. As we reach the limits of what we might once have thought were inexhaustible resources, Hardin argues, restrictions upon use become necessary, and it becomes the government's role to legislate that restriction. Here is Hardin's formulation of the problem regarding pollution:

The rational man finds that his share of the cost of the wastes he discharges into the commons is less than the cost of purifying his wastes before releasing them. Since this is true for everyone, we are locked into a system of "fouling our own nest," so long as we behave only as independent, rational, free enterprisers.

...the tragedy of the commons as a cesspool must be prevented ... by coercive laws or taxing devices that make it cheaper for the polluter to treat his pollutants than to discharge them untreated.¹

So, legal structures are at least one way -- Hardin argues that "mutual coercion mutually agreed upon" is really the only way -- to democratically put a stop to the fouling of the commons.²

Hardin's conclusion has its contemporary global image in Peter Singer's *One World*. Singer refers to Hardin's analysis of the tragedy of the commons, and considers the possibilities for reasonable response in cases from international politics and law:

Norway is seeking an international convention on environmental pollution, first at the European level, and then, through the United Nations, globally. The principle is one that is difficult to argue against, but if Norway can force Britain to pay for the damage its leaking nuclear plant causes to

their coastline, will not nations like Kiribati be able to sue America for allowing large quantities of carbon dioxide to be emitted into the atmosphere, causing rising sea levels to submerge their island homes?³

Thus the governmental solution that is a key to Hardin's response to the tragedy of the commons is changed to one of international relations and international sovereignty in Singer's global discussion. Singer argues that infringement on national sovereignty by the United Nations is a reasonable solution to problems such as rising sea-levels, where the commons of concern is itself shared among nations. Singer, like Hardin, sees the necessity of mutual coercion mutually agreed upon. To effect such agreement, however, government must have the ability to produce the coercion, and this leads the discussion directly to the topic of the practical sovereignty of governments.

Sovereignty in our day is generally accepted as resting at the level of the nation state, but it is always under some negotiation or challenge from above, below, or beyond; at the level of the community of nations, at the level of state or local government, or against the demands of alternative sovereign claims, such as those of indigenous groups. Over the past half-century, the community of nations has invoked three general principles of international law to determine whether one nation's laws are just within its own borders. These principles are state sovereignty, universal jurisdiction, and *jus cogens*. The first, sovereign immunity regarding a state's internal affairs, allows that each nation is exempt from the laws of other nations for events occurring within its own territory.⁴ The second principle tempers the first: international law countenances universal jurisdiction that overrides state sovereignty for some affairs.⁵ The third provides the content to the second: universally or near-universally accepted standards that define egregious error, referred to as violations of *jus cogens*⁶, provide the content to universal jurisdiction. *Jus cogens* violations trigger a universal jurisdiction that overrides the norm of state sovereignty, "because punishing them is the concern of all states."⁷ Singer chooses to argue for a distinct incursion upon state sovereignty through an extension of international

property law that would cover the wrongdoing. Singer suggests that a disproportionate destruction or draw upon common resources should be considered as the equivalent to an "wrongful expropriation" of the property of the people of other nations.⁸ An alternative approach, using the doctrine of public trusteeship, will be considered in the final section of this paper.

Sovereign immunity from the interference of other governments is a clear enough concept, and the above paragraph provides a swift analysis of the most relevant theoretical structure *vis a vis* international law. But what of the more basic concept of sovereignty itself, upon which the analysis rests? Are nations sovereign? I will argue that they are not, since they are presently yoked in economic bondage to private enterprise, which must, consequently, occupy one pan of the balance of sovereignty.

2. Political economy and the balance of sovereignty

State sovereignty implies a general command by the state of various aspects of government. Clear examples of failure of state sovereignty are abundant in the stories of various 18th to 20th Century states colonized by European, and later, by American governments and forces. In many cases, such as that of Rhodesia, dominance of colonies' political and martial history appears not to have been the point of colonization; rather, those operations were in service of economic exploitation. Country-on-country economic exploitation, in these cases, gave the lie to any claims to universal national sovereignty.⁹

It is not much of a stretch to reflect on traditional colonialism, and move to the more current concept of 'economic colonialism,' to describe the relations of many governments of developing countries to structured aid programs administered by powerful nations and the World Bank. But the fashionable descriptor hides the full truth, first, because it is often still used exclusively to indicate a means by which one country dominates another, rather than dominance by international capital. Second, the presence of corporations calls sovereignty, and not merely national economy, into question. Jürgen

Habermas has made the picture of capital's role, as distinct from that of nations, most clear:

Sovereign states could profit from their economies only as long as they functioned as “national economies” over which they could exercise influence by political means. But with the denationalization of the economy, in particular with the increasing global interconnection of financial markets and industrial production itself, national politics loses its control over the general conditions of production and with it any leverage for maintaining its standard of living.¹⁰

What was apparent regarding colonized states centuries ago is now true of all states, though it is not especially apparent to all the residents of states in the developed world.

Our demand for expensive social services in the form of civil and human rights pushes the relation of corporations to government to the point of a problem of sovereignty. Various among the social benefits that many now consider to be fundamental responsibilities of the state (welfare, minimal universal health care and education, effective policing for all, *etc.*) were not so in the past, and could not have been. They are detachable from the responsibilities of the state insofar as they become possible only by virtue of high economic productivity; and they first became attached with the opportunity that productivity offered. In his radical re-visioning of rights theory, Amartya Sen has characterized our growing expectations for services as “freedoms” that develop alongside economic development.¹¹ In capitalist society, it is largely by dint of the activity of for-profit corporations, however, that such economic productivity has become and remains possible. Thus, sovereignty is yoked to business -- one might say it has been ever since *the Universal Declaration of Human Rights* of 1946 -- because some of the responsibilities we have since expected of the state are very expensive, and the state is not in direct control of the means to meet those expenses.

An example that suggests the importance of business to the balance of sovereignty, and one that concerns national resources as common goods, is the case of aluminum production's effects on Jamaica in the 1970's. Bauxite mining, which is the

first stage of aluminum production, had great significance to the Jamaican economy beginning early in the 1960's. By the mid-70's, two-thirds of Jamaica's export economy, and about 15% of its GDP, were due to bauxite mining.¹² These numbers represent a hefty portion of the national economy and a large foreign exchange source and financial prop for the government. They would have represented a larger factors still, by the early 1970's, had the multinational aluminum companies paid the agreed light burden of taxes, which was greatly reduced by a decade's currency inflation, and further reduced by creative bookkeeping across branches of the companies.¹³ In 1972, a new government was elected that chose to repudiate the longstanding tax structure, which was previously contracted to run for over a decade in the future. According to Michael Manley, Prime Minister of the government from 1972-80, a levy was passed by parliament after tax negotiations with the companies failed, and a round of compulsory but compensated nationalization of property, in partnership with the companies, was also commenced in 1974.¹⁴

One centrist observer has found Jamaica's socialist turn as:

initially very mild. Rather than a wide-ranging programme of nationalisation, the dominant theme was that of partnership with existing ownership. ...public ownership would have to work together with foreign and local private capital, at least for the foreseeable future, in such areas as bauxite, sugar, tourism and the banking system.... [and] Manley proceeded to declare that "The ordinary manufacturing sector belongs naturally in private hands."¹⁵

National business leaders, rather than leftist politicians, were installed at the head of the National Bauxite Commission from its inception in 1972. The new arrangements were clearly not a barrier to profitability: deals were swiftly struck with Kaiser and Reynolds Aluminum, and later with others, and bauxite mining remained big business in Jamaica. The changes were also not judged inappropriate, in lengthy suits before U.S. and international trade bodies brought against the government by Revere Jamaica Alumina.¹⁶ Nevertheless, in what many observers agree was implicit retaliation, most companies

reduced operations in Jamaica and expanded operations elsewhere.¹⁷ This left the country with few integrated processing facilities and a seriously contracted export market for raw bauxite, because the processing market was vertically integrated, and primarily populated, by those same companies. The Jamaican government's efforts to develop domestic managerial and technical talent, and its expensive programs for primary education and other national social services, subsequently floundered in a long-term economic contraction.¹⁸ Though blame rests largely on poor government and international politics, the capital flight and the wage, tax, foreign trade, and foreign exchange losses that resulted from the decisions of the aluminum companies had great impact.

My point is not to castigate the aluminum companies: they may have, for the most part, been engaged in maximizing company value, which multinational enterprise considers business-as-usual. I will launch a criticism of that position in the next section; here, I wish only to indicate the political significance of their decisions for national development. To a great extent, the national economies of developing nations are determined by the decisions and pressures of corporations, and increasingly, of multinational corporations. Sovereignty in these cases is clearly lacking.

What is apparent for such a less-developed country should be plain also for any well-developed country with corporate organization: capital idling and capital flight present substantial limitations to sovereignty, at least with respect to provision of expensive social services. The point does not seem obvious within developed countries: national governments do appear to have significant control over social services and the economic fates of the bulk of their citizens. They are able to draft minimum wage laws that are enforceable, and are able to tax sufficiently to provide safety nets that are effective, even if not universally so. But national sovereignty with respect to social issues in the first-world is also illusory -- or rather, it is shared with resident productive corporations. The demands we have chosen to place upon government, particularly concerning social services, have grown with prosperity, but those demands have been

made possible only as a result of the advance of industry. Governments can direct the flow of services only insofar as productivity allows for the possibility of those services. Consequently, sovereignty in these regards is dependent upon the fruits and the decisions of industry.

It is reasonable to allow that some older and still fundamental aspects of government can and should remain outside the purview of corporate consideration: the structure of election, and the process of legislation, for examples. Sovereignty may remain entirely with government in these features, though incursions might also be legitimately advanced by corporate interests. But we must now admit that national sovereignty is lacking in important respects that it was not before the industrial revolution, and before the economic dominance of businesses and limited liability corporations that are not a part of the national commonweal.

3. Responsibility vs. maximizing corporate value

The balance of sovereignty argument is meant to develop the idea of sovereignty and its implications: to point out that political sovereignty, at least with respect to social welfare, is partly in the hands of business in our time. How are these responsibilities of business to be articulated?

The argument cuts against some old saws of the liberal-democratic analysis of economic philosophy; what Hardin refers to as the approach taken by "independent, rational, free enterprisers." The *locus classicus* for such an economic philosophy lies in Milton Friedman's familiar writing, which argues that executives have the exclusive responsibility of promoting egoism "within the rules of the game" in the corporate setting.¹⁹ Friedman finds:

...there is one and only one social responsibility of business — to use its resources and engage in activities to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud. ...Few trends could so thoroughly undermine the very foundations of our free society as the

acceptance by corporate officials of a social responsibility other than to make as much money for their stockholders as possible.

Friedman's position ignores the new balance of sovereignty. By doing so, it may also serve to undermine a larger goal of his, for in this passage and elsewhere, Friedman refers to the economic relation that he is considering as a component of a larger goal of “free society;” a condition of society that plays its role in a broader “freedom of choice” that is valued for its own sake.²⁰ But freedoms of the sort that Friedman values the most are gained through the successful ordering of society. That ordering arises partly through the activity of good government, and so, to the extent that economic choice destabilizes government, or reduces government's capacity to provide the conditions for those freedoms, the advantageous ordering may be compromised.

In simple terms, the point that Friedman rolls over is that it is because society has been organized to allow one to think beyond the next meal, or beyond a safe place to hide for the night, that one can maintain the freedom to plan productively, and to choose from more than the sole option of self-preservation. The capability to choose -- what Friedman has called freedom to choose -- is a result of good social and economic ordering: it is a result of social and economic development, as Amartya Sen has argued at length.²¹ To the extent that corporate behavior destabilizes economy and the advantageous development of society, then, it is detracting from freedoms, even though unobstructed choice by the corporation's owners and directors is being exercised at the same time.

Friedman's approach is reflected in the writing of a more recently influential Harvard economist, Michael Jensen.

200 years' worth of work in economics and finance indicate that social welfare is maximized when all firms in an economy attempt to maximize their own total firm value. The intuition behind this criterion is simple: that value is created—and when I say “value” I mean “social” value—whenever a firm produces an output, or set of outputs, that is valued by its customers at more than

the value of the inputs it consumes (as valued by their suppliers) in the production of the outputs.

Firm value is simply the long-term market value of this expected stream of benefits.²²

Jensen goes on directly to admit that "there are circumstances when the value-maximizing criterion does not maximize social welfare," and he introduces the situation of monopoly pricing, and cases of "externalities" such as polluting the commons, where the "decision-makers do not bear the full cost or benefit consequences of their choices or actions." His solution to such problems is not the suggestion that corporations have a responsibility to refrain from polluting the commons, but that governments should charge a fair price for the rights for so using the commons:

There can be no externalities as long as alienable property rights in all physical assets are defined and assigned to some private individual or firm. Thus, the solution to these problems lies not in telling firms to maximize something other than profits, but in defining and then assigning to some private entity the alienable decision rights necessary to eliminate the externalities. In any case, resolving externality and monopoly problems, as I will discuss later, is the legitimate domain of the government in its rule-setting function.²³

And there lies the rub, whether or not you agree with Jensen on the appropriateness of assigning private rights to the commons: the balance of sovereignty does not allow governments to set such fair prices, at least in some circumstances, such as those faced by Jamaica. Thus, the situation is comparable to that which Friedman faces: if the governmental system of defining and assigning rights by which externalities can be resolved is placed under threat, maximizing firm value may not equate with maximizing social value.

Jensen might reply that I am taking too narrow a view, by considering social welfare in one country alone. What was lost in productivity to Jamaica in 1974-6 appears to have been gained by Guinea.²⁴ In some cases, such global offsetting argument may hold true; it hardly does so in this situation. From 1958, the Republic of Guinea had been in the hands of a particularly repressive and unproductive Marxist dictator, Sékou Touré.

Bauxite was mined under national partnership and taxation agreements very similar to Jamaica's, and development of the sort that Jensen values was to wait for economic liberalization in 1978.²⁵ Yet, Guinea's wages and quality of life today continue to lie far below what Jamaica's were at that time, remaining near the very lowest of levels of the globe, with the state recently attracting United Nations attention as one in acute "crisis."²⁶ It is likely that the aluminum companies, rather than improving social welfare, were engaging in an economic race for the bottom. Though the effects of international divestment are less devastating in many countries with developed economies than they were for Jamaica, in the varied international context that multinational companies navigate, the setbacks to development that the companies' decisions may present are genuine, practical ones.

Especially large corporations and multinationals, then, have a responsibility to the people of the nations within which they operate. The traditional division of national labor -- that the people's government should look after the people and serve their wishes, and that the captains of industry should look to the market, and follow its dictates -- must be considered an oversimplification in a world where capital idling and capital flight are going concerns. I should note that this view is not in any way an extension of the stakeholder theory of corporate ownership that Jensen, for example, responds to in his article. The argument here concerns fundamental political sovereignty in light of the expanded political opportunity provided by industry, and by the social place of the corporation. If we hold that the responsibility of government in our age is to provide social services, then the responsibility of corporations to allow for the possibility for those services is also entailed.

If the balance of sovereignty argument holds, then it is the responsibility of large national and multinational corporations to enter into discussion with legitimate national leaders, to promote growth and limit contraction in ways that will reasonably coordinate with the social programs of those leaders. This is not only the case for extreme situations

of economic and political instability, such as the Jamaica example considered above: it concerns the economic development of all countries.

4. Corporate responsibility and common goods

The doctrine of public trust is a principle of English common law, suggesting that limited public resources are considered to be held in trust for the good of the people of the entire nation. It has recently been significant to the law of the United States, beginning with arguments authored by Joseph Sax in 1970.²⁷ The doctrine has generally been used to promote arguments in environmental conservation law, and has been extended to cover a right to a healthful environment, and also to specifically include discussion of different needs and environmental demands for indigenous groups, thus reaching into the topic of indigenous rights.²⁸ The balance of sovereignty argument may be interpreted to suggest that corporations should have the responsibility to adopt a principle of action similar to the public trust doctrine.

The root importance of the public trust doctrine is that governing bodies have a responsibility, as a trustee, to serve the people as a whole concerning resources in which they have a reasonable interest. Sax analyzes the precedent for such a reasonable interest into three distinct areas:

First, that certain interests -- like the air and the sea -- have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership. Second, that they partake so much of the bounty of nature, rather than of individual enterprise, that they should be made freely available to the entire citizenry without regard to economic status. And finally, that it is a principle purpose of government to promote the interests of the general public rather than to redistribute public goods from broad public uses to restricted private benefit.

The government of Jamaica might have considered the second or third area above, with regard to bauxite fees. Sax continues:

The indices of a trust problem do not lie merely in the fact that public property is being reallocated to a different use or even that some element of subsidy is involved, but rather in the absence of

substantial evidence that some compensating public benefit is being achieved thereby. It is this latter fact that operates as a signal to the court that the public interest is under threat.

Manley's government, then, might appropriately consider a past government to have failed as a trustee of the people in their negotiation of taxes that would not rise with aluminum prices or inflation.

Jamaica's concern, then, is with a past government's failures, but the balance of sovereignty argument may extend the scope of application for public trust to wholly new areas, by drawing our attention to reasonable responsibilities for corporations. The doctrine would be extended in two respects. First, it may be the responsibility of the corporation itself to stand as a trustee, by reason of its responsibility as sovereign. As Sax argues, and as recent legal use of the public trust doctrine indicates, the doctrine is employed especially in civil suit to restore or compensate an error of judgment by the trustee. Thus, legal prosecution of the corporation would be for breach of its duty as trustee, and no separate trustee, in the form of a government body, need be referred to in a legal suit. Second, the public trust doctrine concerns responsibility of the corporation to the people of the state, and its coverage reaches beyond the area of limited resources usually covered in environmental law. The corporation ought to consider the public perspective with respect to the use of all public resources that fall within public trust -- that is, approximately, under Sax's guidelines above. Though there may appear to be no near-term danger of exhausting bauxite reserves in Jamaica, for example, the aluminum companies may be seen to have a duty to utilize this public resource for the public good, just as much as other resources that must be rationed. The responsibility of sovereignty, then, actually stretches the public trust argument beyond conservation law, to encompass all common goods. The corporation, like the government, must consider whether use of public resources is, generally, advantageous use or disadvantageous misuse of resources from the perspective of public good. By this extension, the responsibilities of

corporations to the public trust will parallel the demand that corporate activity is to be coordinated with the designs of legitimate national leaders.

Conclusion

We live the life that we do partly by the grace of productivity. Captains of industry will acknowledge the possibilities that they create; they ought also shoulder the responsibilities that they bring upon themselves in creating those possibilities. Though smaller corporations will have little individual impact on the national level, their impact might be proportionally greater on a more local level, depending upon the nature and geographic concentration of their activities. Consequently, the above responsibilities for consultation and for action will have their local correlates for businesses of regional significance. The responsibility of large businesses cannot be ignored on local, national and international levels, and the responsibility of small businesses also ought not be ignored on the local level.

¹ Garrett Hardin, "The Tragedy of the Commons," *Science*, 162 (1968): 1243-48. Reprinted in Garrett Hardin and John Baden, eds., *Managing the Commons* (San Francisco: W. H. Freeman, 1977). Quotation, 22.

² Hardin, 26.

³ Peter Singer, *One World: The Ethics of Globalization* (New Haven: Yale University Press, 2002). Singer mentions Hardin's work at p.28; the quotation is at p.20.

⁴ In the United States, this principle is recognized in the Foreign Sovereign Immunities Act (1976). 28 U.S.C. ss. 1602-11 (1994), amended by 28 ss. 1603-1611 (Supp. III 1997). Note also a very controversial American incursion into foreign sovereignty that has been used recently in prosecution of Cuba, known as The Effects Doctrine. That doctrine maintains that U.S. law may be interpreted extraterritorially, even where not clearly specified as extraterritorial in its drafting, where effects of conduct have effects within US territory.

⁵ See *Hard Cases: Bringing Human Rights Violators to Justice* (Versoix: International Council on Human Rights Policy, 1999). Available at <http://www.ichrp.org/cgi-bin/show?what=project&id=201>.

⁶ ‘Universal assent’ is more often construed with some latitude as “usage... gradually ripening into a rule of international law... by the general assent of civilized nations;” key has been the Paquette Habana case, 175 U.S 677, 678 (1900), from which the quotation is taken.

⁷ *Hard Cases*, 4-5. This is a general pattern of argument recognized by the United Nations; deviations are countenanced in the laws of some nations.

⁸ Singer, 32 ff.

⁹ A thoughtful collection of historical case studies of traditional colonialism viewed from an economic perspective may be found in Daniel Litvin, *Empires of Profit: Commerce, Conquest and Corporate Responsibility* (New York: Texere, 2003).

¹⁰ Jürgen Habermas, “Kant’s Idea of Perpetual Peace,” in Habermas, *The Inclusion of the Other* (Cambridge, MA: MIT Press, 1998): 174.

¹¹ Amartya K. Sen, *Development as Freedom* (USA: Anchor, 1999).

¹² *Minerals Yearbook Area Reports*, Vol. 3 (Washington: U.S. Bureau of Mines, 1977): 1141. Available at <http://libtext.library.wisc.edu/EcoNatRes/Search.html>.

¹³ See the well-documented history in Manuel Velasquez, “International Business Ethics: The aluminum companies in Jamaica,” (*Business Ethics Quarterly* 5, 1995): 865–870.

¹⁴ Michael Manley, *Jamaica: Struggle in the Periphery* (London: Third World Media Ltd., 1982): 98-103.

¹⁵ Anthony J. Payne, *Politics in Jamaica* (New York: St. Martin's Press, 1988): 39-40.

¹⁶ See "Jamaica" sections, 1974-7, in *Minerals Yearbook Area Reports*, Vol.3. (Washington: U.S. Bureau of Mines, 1977). Available at <http://libtext.library.wisc.edu/EcoNatRes/Search.html>.

¹⁷ See the assessment in Payne, pp. 53-4. Bauxite production dropped to 2/3 of its previous level in 1975, and began a slow climb to surpass 1974 levels in 1989. See details in *Minerals Yearbook Area Reports*, Vol. 3 (Washington: U.S. Bureau of Mines, 1977): 1068; *Minerals yearbook mineral industries of Latin America and Canada 1992*.

(Washington: U.S. Bureau of Mines, 1992): 292. Available at <http://libtext.library.wisc.edu/EcoNatRes/Search.html>.

¹⁸ See Manley, 46ff.

¹⁹ Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago, 1962): 133. See also Friedman, "The Social Responsibility of Business Is To Increase Its Profits," (*New York Times Magazine*, September 13, 1970): 122-6.

²⁰ See Rose D. Friedman and Milton Friedman, *Free to Choose* (New York: Avon, 1987).

²¹ See Amartya K. Sen, *Development as Freedom*, and Jean Drèze and Amartya K. Sen, *India: Development and Participation* (New Delhi: Oxford, 2002).

²² Michael Jensen, "Value Maximization, Stakeholder Theory, and the Corporate Objective Function," (*Journal of Applied Corporate Finance*, Fall 2001): 8-21. Reprinted (*Business Ethics Quarterly*, 12, No. 1, January, 2002), and available online at http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=9.

²³ Jensen, 11-12.

²⁴ Payne, 53, and details for Jamaica and Guinea, 1974-77, in *Minerals Yearbook Area Reports*, Vol.3. (Washington: U.S. Bureau of Mines, 1974-7). Available at <http://libtext.library.wisc.edu/EcoNatRes/Search.html>.

²⁵ See the contemporary report in Claude Rivière, *Guinea: The Mobilization of a People* (Ithaca: Cornell University Press, 1977): 183-8, and *Minerals Yearbook*.

²⁶ See comparative statistics, including the Human Development Index, provided by the United Nations Development Program at <http://hdr.undp.org/reports/global/2002/en/indicator/indicator.cfm?File=index.html>. See

also, "UN appeals for 'modest' \$3bn to help 21 countries ruined by conflict and disaster," (*The Guardian*, November 19, 2003). Available at <http://www.guardian.co.uk/international/story/0,3604,1088140,00.html>.

²⁷ Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention," 68 Mich. L. Rev. 471 (1970). See also Sax, *Defending the Environment: A strategy for citizen action* (New York: Knopf, 1971). Quotations from Sax are *Defending the Environment*, 165. A recent discussion of Sax's legacy may be found in a special issue on "Joseph Sax and the Public Trust," (*Issues in Legal Scholarship* 4, Berkeley Electronic Press, October 2003, <http://www.bepress.com/ils/iss4/>).

²⁸ John Alan Cohan, "Environmental Rights of Indigenous Peoples under the Alien Tort Claims Act, the Public Trust Doctrine and corporate ethics, and Environmental Dispute Resolution," (*UCLA Journal of Environmental Law and Policy*, 20, #2, 2001/2002): 133-185.