

# Increasing the Capacity for Corruption?: Law and Development in the Burgeoning Petro-State of São Tomé e Príncipe

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## INTRODUCTION: MORAL BLIND ALLEYS FOR LAW & DEVELOPMENT

São Tomé e Príncipe (STP), a tiny island-country described in the international press as “twin dots of land off Africa’s western coast,”<sup>1</sup> has received much international attention due to the discovery of crude oil in its territorial waters. Suspected since the 1970s, the oil fields have been an active site for oil development since the late 1990s, with a half-dozen companies engaged in the early stages of exploration.<sup>2</sup> This recent enthusiasm has created two sequential international dynamics. First, companies and foreign governments from around the globe have sought to capture the profits from São Tomean oil development. The Nigerian government, and American, Norwegian, South African, and Chinese companies, swept in and controlled the negotiations with the unsophisticated São Tomeans. These entities, especially the Nigerian government and an American oil company, extracted preferential contractual terms that the World Bank described as “unprecedented” in the amount of domestic resources given to a foreign entity.<sup>3</sup> In time, these international players came to dominate the São Tomean economic and foreign policy, even to the point of company executives functioning as intermediaries between the country and the United Nations.<sup>4</sup> Given STP’s lack of sophistication in almost all areas of government and diplomacy, the willingness of other entities—corporations and governments—to control São Tomean sovereignty presented a real potential for exploitation. Indeed, in a tragicomic

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1. Leslie Chang, *Taiwan’s Global Role May Be as Spoiler*, WALL ST. J., June 23, 1997, at B12B.

2. GERHARD SEIBERT, *COMRADES, CLIENTS AND COUSINS: COLONIALISM, SOCIALISM AND DEMOCRATIZATION IN SÃO TOMÉ AND PRÍNCIPE* 368–92 (2d ed. 2006).

3. Frynas et al., *infra* note 24, at 66–67.

4. *United Nations Visit Yields Maritime Moundaries [sic] for ERHC’s West African Oil & Gas Joint Venture*, PR NEWSWIRE, Dec. 17, 1997.

instance of exploitation of São Tomean vulnerability, Nigeria impounded and refused to release STP's entire navy—a single ship donated by the US government in 1970.<sup>5</sup> São Tomé was on the brink of losing much of its sovereign identity.

Second, in a phone call to famed “clinical economist”<sup>6</sup> Jeffrey Sachs, São Tomean President Fradique Menezes made a plea that led to the second wave of international attention: “we’ve found some oil,” Menezes said, “and the sharks are swimming around us now . . . I’d like some help to manage this properly.”<sup>7</sup> Sachs and others from the World Bank and the IMF responded to this plea. In part, the goal of these law and development interventions was to prevent the potentially devastating effects of post-oil discovery frequently referred to as the “resource curse,” including corruption, disrupted domestic markets, political instability, and even, paradoxically, economic decline.<sup>8</sup> Additionally, these efforts sought to ward off the “sharks” to ensure that STP could keep what was, under international law, rightfully its own.

On paper, the consequences of this intervention are impressive. In 2003 a team of scholars and practitioners from the Earth Institute helped STP develop the country's Oil Revenue Management Law (ORML), a law designed to increase transparency and accountability in the government's use of oil revenue, and to protect the country from the harsh consequences of what economists call the “resource curse,” or the frequent destabilization of an economy following a country's discovery of natural resources.<sup>9</sup> In February 2008, STP joined the Extractive Industries Transparency Initiative (EITI), a British-led international initiative that promotes transparency in oil-rich nations.<sup>10</sup> Besides coming to help STP fend off the Nigerian “sharks,” the ORML and EITI also sought to help ward off domestic corruption. If followed, both the ORML and the requirements of EITI would have delivered on the triple promise of protecting the state's economy from the vicissitudes of oil exports, allowing the São Tomean people to take advantage of oil profits, and shielding the people at large from governmental corruption. STP was primed to become the model for other developing countries who find themselves suddenly in control of vast resource wealth. Ideally, the progression would have been a smooth one: the resources were discovered, the country adopted

5. Michael M. Phillips, *A Boat Goes Missing, and Tiny São Tomé Has No Coast Guard,—Nigeria Admits Having Craft But Won't Give It Back; Mixing Oil and Geopolitics*, WALL ST. J. Jan. 2, 2003, at A1.

6. JEFFREY D. SACHS, *THE END OF POVERTY* (2005).

7. In a conversation recalled by Jeffrey Sachs, reported in Barry Meier & Jad Mouawad, *No Oil Yet, but Tiny African Isle Finds Dealings Just as Slippery*, N.Y. TIMES, Jul. 2, 2007, at 1.

8. Macartan Humphreys, Jeffrey D. Sachs & Joseph E. Stiglitz, *Introduction: What is the Problem with Natural Resource Wealth?*, in *ESCAPING THE RESOURCE CURSE* 1, 1–3 (2007).

9. The Earth Institute at Columbia University, São Tomé e Príncipe Advisory Project, available at <http://www.earth.columbia.edu/cgsd/STP/> (last visited May 17, 2008).

10. Extractive Industries Transparency Initiative, São Tomé e Príncipe, available at <http://eittransparency.org/SaoTomeAndPrincipe> (last visited May 17, 2008).

and enforced robust management and transparency laws, and the country would then inch toward prosperity.

STP's reality has been much different from that ideal. In the years since the National Assembly's unanimous adoption of the ORML in 2004, there have already been clear signs of governmental corruption.<sup>11</sup> This fact alone, however, is unsurprising. Indeed, the American drafters of the ORML knew quite well that their efforts might fail to prevent an increase in corruption that would naturally flow from the injection of new oil wealth. They did not assume that "the norms and mentality [would] necessarily change because wine ha[d] been put in new bottles."<sup>12</sup>

It is unclear, however, whether the drafters anticipated how the very act of their intervention would not only strengthen STP's ability to fend for itself against foreign governments and companies, but also coincidentally facilitate the STP government's ability to take advantage of the São Tomean resources vis-à-vis the general populace. This unintended side effect has appeared in two ways. First, international efforts have frequently included extensive training for São Tomean government officials, in matters ranging from administering government bureaucracy to creating an oil industry.<sup>13</sup> This training has increased the government's ability to administer—and, consequently, mal-administer—oil resources with greater efficacy and profitability than it could otherwise have done. Second, these international efforts provide legitimacy and stature vis-à-vis the "sharks" in the oil industry, those foreign governments and companies that would seek to profit from São Tomean oil at STP's expense. With international backing, São Tomean political elites have become more skilled at the negotiation table and have secured greater access to and control of their own oil resources.

One could respond that if international intervention leads to increased corruption, then the anti-corruption laws themselves need fixing. The problem with this argument, though, is that the ORML already represents the very best the world can offer for structuring transparency and oil management laws.<sup>14</sup> The law itself is not a source of weakness; it is the culture and society upon which the law has been placed. Greater technical expertise and international stature would not, by themselves, increase absolute corruption in STP. Instead, international transparency efforts interact with the pre-existing São Tomean history and culture in a way that predicts this increase in corruption. STP is, to use the construct from Thomas C. Heller, a "privatized state," or a state "treated

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11. See SEIBERT, *supra* note 2, at 388; Meier & Mouawad, *supra* note 7; Telephone Interview with Anonymous Senior Expert on STP (March 4, 2008) (describing conversation with São Tomean President regarding the latter's plans for self-enrichment upon reelection in 2006).

12. Joseph C. Bell & Teresa Maurea Faria, *Critical Issues for a Revenue Management Law*, in ESCAPING THE RESOURCE CURSE 286, 287 (2007).

13. SEIBERT, *supra* note 2, at 327–32.

14. See Humphreys et al., *supra* note 8; Bell & Faria, *supra* note 12.

as a firm with particular capacities” to gain access to the resources “that accompany the exercise of sovereignty.”<sup>15</sup> Adding to Heller’s construct, I show that not only does STP have a history of rent-seeking behavior,<sup>16</sup> but also that the country has not been very effective at it. STP is a firm-state, but not, historically, a very well-managed one. Consequently, providing the ineffective São Tomean firm-state with greater management skill and with greater opportunity for rent-seeking will increase that state’s potential for corruption. These interventions turn a feebly managed firm-state into a far more sophisticated one.

The increased corruption stems additionally from what J.P. Olivier de Sardan has called the “moral economy of corruption” that, he argues, exists in Africa.<sup>17</sup> STP, like many other countries, has a firmly embedded culture of conspicuous, seemingly irreversible corruption. This is the starting point for STP, both for when oil was discovered in 1997, and, more importantly for our present purposes, for the advent of international transparency initiatives that began in 2003.

These São Tomean historical realities form the backdrop for the law and development intervention at the outset of the twenty-first century. Because of the country’s long history as a corrupt, poorly managed “firm-state,” the intervention that spared the São Tomeans from the Nigerians and other predators provided a framework in which entrenched habits in politics and society could thrive. Intervention meant the previously low-level corruption would have its fullest expression.

One could argue that any development initiative that led to a more ably corrupt state should be deemed a failure and repudiated as such. William Easterly, an international development economist and former World Bank researcher, makes this argument. He has lambasted international development efforts for their futility in some cases and, much worse, the direct harm that they cause to the people and nations they aim to help.<sup>18</sup> In articulating the São Tomean dilemma, however, I do not join Easterly’s criticism. The São Tomean case has added richness. STP presents the international community not with a cut-and-dried excoriation of international development aid, but with a catch-22: either intervene and provide credibility and sophistication to a government with

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15. Thomas C. Heller, *African Transitions and the Resource Curse: An Alternative Perspective*, INST. ECON. AFF., Dec. 2006, at 27. I use the term “firm-state” to refer to the same concept as Heller’s “privatized state.”

16. Rent seeking exists when the government imposes some restriction or intervention in market-economies, creating income streams that arise from the restrictions themselves. See Anne O. Krueger, *The Political Economy of the Rent-Seeking Society*, 64 AM. ECON. REV. 291, 291 (1974).

17. J.P. Olivier de Sardan, *A Moral Economy of Corruption in Africa?*, J. MODERN AFR. STUD., Mar. 1999, at 25.

18. WILLIAM EASTERLY, *WHITE MAN’S BURDEN: WHY THE WEST’S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD* (2006).

a long history of corruption, or do not and watch the São Tomeans become subject to the exploitation and harassment of others.

Easterly's criticism of international development aid ignores the second half of this equation. The more accurate response to STP is to invoke the metaphor of a "moral blind alley," as used by philosopher Thomas Nagel. A moral blind alley is a situation where two mutually exclusive actions will both result in morally reprehensible outcomes.<sup>19</sup> In STP, international transparency efforts faced two alternatives. On the one hand, they could have left the São Tomeans to fend for themselves in dealing with their newfound oil wealth.<sup>20</sup> In that case, STP might either have become something of a colony to Nigeria, or a firm-state controlled not by São Tomean elites, but American, Norwegian, South African, Chinese, and other foreign oil companies. On the other hand, intervening—as these international institutions have done—will increase the São Tomean political elites' capacity for and practice of corruption. This is a moral blind alley, the resolution of which will depend on which outcome one finds least reprehensible.

This Article, then, makes three sequential arguments. First, the Article provides a detailed and original synthesis of the São Tomean experience, both in history and presently, with an emphasis on how the country grew into a firm-state within a moral economy of corruption. By adding the São Tomean example to Heller's paradigm of the "state as a firm," I show the role played by a state like STP, one willing to engage in corrupt rent-seeking, but unable to do so profitably because of ineffective administration. Second, I argue that law and development efforts like those in STP may, in spite of the very best in anti-corruption laws that the world can offer, make a state more successfully corrupt than was previously true. This occurs in part by the interaction of long-standing social and cultural habits in state government, and in part because of the new credibility that comes to a state backed by international players like the World Bank, the IMF, or Jeffrey Sachs. This leads to the third novel argument. Although law and development efforts may accelerate governmental corruption in places like São Tomé, a decision by the international community not to act may be even more costly. For this reason, this Article does not join Easterly and the chorus of condemnation for all law and development writ large. This dynamic leads to a Nagelian moral blind alley for the international community.

The argument here requires two caveats. First, as with all case studies, the reader should generalize with care. While I argue that international development efforts in STP increased the state's capacity for corruption, I make no such arguments for other instances of development aid and state recipients.

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19. Thomas Nagel, *War and Massacre*, PHIL. & PUB. AFF., Winter 1972, at 123.

20. While oil companies have yet to bring to market São Tomean oil, the country has already received tens of million of dollars in signing bonuses from oil companies. Even in the absence of actual crude, oil wealth has arrived on the islands. See SEIBERT, *supra* note 2, at 383–84.

This is largely because of STP's status as a firm-state with a moral economy of corruption. This is not always the case: countries like Botswana and Liberia, for example, may be of a wholly different variety. STP's uniqueness makes its case interesting, but also renders generalization difficult, though not impossible. Generalizations from the STP case should appropriately focus on (1) a history of a moral economy of corruption, (2) a status of a firm-state, and (3) the sudden advent of natural resource wealth.

Second, while there is some evidence that more sophisticated corruption has already occurred in STP,<sup>21</sup> my research methodology here does not allow for more conclusive fact-finding. Societies and economies are dynamic institutions: STP *could* change from its previous trajectory. Thus, this research is largely predictive and therefore falsifiable if and when future accounts corroborate or refute the predictions of corruption that I make.

The remainder of the Article describes and analyzes the many layers of the STP experience, the alternatives that the international community faced, and the nature of the consequent moral blind alley. Part I tells STP's story, presenting a detailed account of STP's history that illustrates how and why the country became a firm-state with a moral economy of corruption.<sup>22</sup> This corruption stems in part from the complex historical dynamic that stigmatizes STP's otherwise promising agricultural economy. Part I also illustrates STP's creativity in using its own sovereignty as a means for rent-seeking to replace the stigmatized agricultural sector. STP has accomplished this through both a type of seigniorage—such as printing stamps, passports, and flags of convenience—and through its law-making and diplomacy, from recognizing Taiwan as a nation to licensing X-rated telephone companies unable to operate in much of the developed world.

Part II describes the background of STP's foray into oil development, with its exploitation by Nigeria and various foreign companies. The status of STP following these interactions with exploitative partners illustrates the effect of non-intervention.

Part III describes the swift reaction from the international development community in defense of STP. This Part also argues that although the international development community intended to increase domestic transparency and economic safeguards against the "resource curse," the resulting increase in legitimacy and expertise actually enabled São Tomean government officials to increase their access to corruption. Part IV concludes by asking how these international efforts should be evaluated, given their arguable role in increasing domestic corruption. I dismiss two positions as

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21. See Investigation and Review, Second Bid Round, Joint Development Zone, Nigeria and São Tomé e Príncipe, Office of the Attorney General, São Tomé e Príncipe, Dec. 2, 2005, available at [http://www.earth.columbia.edu/cgsd/STP/documents/PGR\\_Report\\_English.pdf](http://www.earth.columbia.edu/cgsd/STP/documents/PGR_Report_English.pdf).

22. J.P. Olivier de Sardan, *A Moral Economy of Corruption in Africa?*, J. MODERN AFR. STUD., Mar. 1999, at 25.

extreme, one that denies a connection between international transparency and domestic corruption and the other that objects to international transparency initiatives as prejudicial to STP's national health. Instead, I argue that these international institutions found themselves in a Nagelian "moral blind alley," where action is both required and effectively immoral. Choosing the lesser evil, whatever that may be, is the only defensible solution.

#### PART I: BACKGROUND AND HISTORY: STP'S HISTORY AS A FIRM-STATE WITH A MORAL ECONOMY OF CORRUPTION

São Tomé e Príncipe is, in many respects, an "invented society."<sup>23</sup> The former Portuguese colony is populated today predominantly by the descendants of slaves from West Africa and white Portuguese colonists who, when the Portuguese had no use for the islands following the collapse of its sugar industry, governed themselves, owned slaves and other property, and otherwise enjoyed their status as free citizens. When the Portuguese returned in the late 18th century to use the colony for cocoa and coffee production, they expected these mixed-race descendants—known as the *forros*—to return to their dominated status as laborers in the plantations.

The *forros* refused to be relegated again to second-class citizenship. The result was a chronic labor shortage and increased racial tensions that marked the rest of the colonial period. Post-independence, the *forros*' revulsion from the work they viewed as beneath them led to two complementary dynamics: (1) corruption, as the citizens viewed administrative sinecures as their due, and (2) continued labor shortages. The promise of the islands' agricultural capacity was never realized, and the state became "unviable;" i.e., it never produced enough domestically to meet its population's own needs, eventually carrying the highest debt per GDP ratio of any country in the world.<sup>24</sup>

This Part describes the history of the islands, through its various governmental iterations, using this context of labor shortages and corruption as a lens. Whether under colonial, Marxist, or the current multi-party democratic regimes, the economic condition has remained essentially unchanged. The aversion to manual labor has crippled the agricultural sector, while the close ties that bind the political elites have reduced the promise of balance in a multi-party democracy. This combination of an inability to develop labor-intensive resources and the development of a state government well-versed in the moral economy of corruption sets the starting point for understanding the effects of international efforts to increase São Tomean transparency, and how those

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23. ISABEL CASTRO HENRIQUES, *SÃO TOMÉ E PRÍNCIPE: A INVENÇÃO DE UMA SOCIEDADE* (2000).

24. Jędrzej George Frynas, Geoffrey Wood & Ricardo M.S. Soares de Oliveira, *Business and Politics in São Tomé e Príncipe: From Cocoa Monoculture to Petro-State*, AFR. AFF., 2003 at 58.

efforts merely equipped an “unviable” state with better tools for corruption than were otherwise at its disposal.

*First Colonization – Sugar and Slaves*

STP became the world’s largest producer of sugarcane in the late sixteenth century.<sup>25</sup> Problems arose in maintaining the islands as a colony, however. The same climate that made the islands so attractive for the production of sugar, and later coffee and cocoa, also proved hostile to white colonists’ immune systems as tropical disease killed many of the Portuguese who came to populate the islands. As a result, the Portuguese government had difficulties inducing new white immigrants to settle the islands as colonialists, eventually relying on those then considered “degraded,” such as criminals, Jews, and young orphans.<sup>26</sup>

Even the “degraded” population was not sufficient to meet the Crown’s labor needs for the islands. Facing the need for a larger, more stable indigenous population, the Crown departed from its long discouragement of interracial marriage. In the late fifteenth century, King João II ordered that each white male be assigned a female slave for the purposes of enlarging the population.<sup>27</sup> This practice led to the creation of a separate ethnic group on the island, the *forros*. In a testament to the legitimacy of these relationships, King Manuel manumitted the offspring of these relationships in 1515, giving the *forros* the same rights as any other Portuguese citizen. The *forros* thus became the indigenous São Tomean population that the Crown had long sought.

The sugar boom did not last. By the middle of the seventeenth century, for a variety of factors including poor sugar quality in comparison to that of Brazil and Madeira, attacks from the French and Dutch on the islands, and poor management, the sugar industry declined from its peak of 4500 tons per year at the end of the sixteenth century, to 900 tons in 1610.<sup>28</sup> The landowners—almost exclusively white Portuguese—fled the islands and abandoned their plantations, heading largely to Brazil and Madeira to continue the sugar trade. With the Portuguese almost completely absent from the islands, the *forros* entered a period of extensive autonomy.

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25. TONY HODGES & MALYN NEWITT, *SÃO TOMÉ AND PRÍNCIPE: FROM PLANTATION COLONY TO MICROSTATE* 20 (1988).

26. Robert Garfield, *Public Christians, Secret Jews: Religion and Political Conflict on São Tomé Island in the Sixteenth and Seventeenth Centuries*, *SIXTEENTH CENTURY J.*, Winter 1990, at 645.

27. SEIBERT, *supra* note 2, at 27–28.

28. *Id.* at 30.

*The “Great Following”?*<sup>29</sup>

During this era, the *forros* took control of the *roças*, or cocoa plantations, and became some of the few non-white slaveholders of the era.<sup>30</sup> Because of the decline of the sugar trade in STP, the *forros* instead took over the islands’ slave trade. By the early 19th century, STP became one of the slave-trade capitals in the world. The *forros* enjoyed near independence from the Portuguese during this era, as the latter were engaged far more in the development of the Brazilian colonies. The *forros* thrived and developed a core identity as the commercial and social elite of the island.<sup>31</sup>

From the perspective of the Portuguese, this era has been described as the “the great following,” the era in which the whites had left the commercial ventures—now, nearly exclusively non-agricultural—to the *forros*.<sup>32</sup> It was an era that the São Tomeans have never forgotten. They viewed themselves then and now as a people apart, a group of African descent who owned land, managed their governmental affairs, became priests in the Catholic Church, and enjoyed near-equality with the few remaining white colonists.<sup>33</sup> Rather than an era of “fallowness,” this was an era of identity formation: to be São Tomean meant to be something more than a common laborer.

*Second Colonization: Coffee, Cocoa, and Recalcitrance*

This all changed during the period known as the second colonization. Finding the potential to use the islands as the agricultural source for new cash crops, the Portuguese returned to STP to plant coffee in 1787 and cocoa in 1822.<sup>34</sup> Rather than allow the *forros* to maintain their use of the land that they had bought, inherited, or taken after the abandonment of sugarcane, the Portuguese displaced the *forros* from their lands through purchase, fraud, and force.<sup>35</sup> While pre-1822, almost all of the land was in the hands of the *forros*, by 1898, Portuguese planters owned 90% of the islands’ arable land.<sup>36</sup> In some ways, the Portuguese strategy of capturing the land and turning it back to agricultural purposes worked. By 1910, São Tomean cocoa accounted for 15% of the world output.<sup>37</sup>

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29. HODGES, *supra* note 25, at 24.

30. Pablo B. Eyzaguirre, *The Independence of São Tomé e Príncipe and Agrarian Reform*, J. MODERN AFR. STUD., Dec. 1989, at 671–72.

31. The other groups on the island included the slaves from Western Africa and a small, insular group called the *angolares*, the descendants of allegedly shipwrecked escape Angolan slaves that met the islands’ domestic fishing needs.

32. HODGES, *supra* note 25, at 24.

33. SEIBERT, *supra* note 2, at 32.

34. *Id.* at 40.

35. *Id.* at 41.

36. *Id.*

37. HODGES, *supra* note 25, at 33.

As with sugarcane, the influx of wealth occasioned by coffee and cocoa did not last longer than a few decades. There are a variety of reasons that acted together to promote this decline. The perennial issue of short labor continued to dog the islands. This came in part because the *forros*, who had based their ethnic identity on their status as free citizens, refused to engage in what they considered slave labor. Indeed, reports from the time indicate that many *forros* preferred to starve rather than work on the lands they or their ancestors had owned.<sup>38</sup> Whether this is contemporaneous hyperbole or factual reporting is of secondary importance. It is more important to note that this sentiment was widespread and contributed to active recalcitrance toward Portuguese efforts to force labor on the plantations.

In addition to and perhaps because of the labor shortage, the cocoa plantations in STP were generally unprofitable. For example, the islands' average cocoa yields per hectare during the two decades before independence matched those of Ghana, even though Ghana had far fewer slaves, used techniques considered much more primitive, and had harsher weather conditions.<sup>39</sup> Taken alone, the problems of inefficient management and labor shortages were enough to wreck the cocoa trade.

The *coup de grâce* came, however, in a scandal that temporarily made São Tomé e Príncipe a household name in the early 20th century. In order to address the labor shortage problem, the colonial authority had enforced vagrancy laws against the *forro* population, such that any individual who could not show himself employed on a given day could be forced into labor on the plantations. Additionally, the colonial government had extensively recruited from its other African colonies, creating a class of contract laborer, or *serviçais*. However, the conditions to which these contract laborers were subjected were almost indistinguishable from slavery. Due to international pressure, predominantly from Britain, by the early 1910s, the Portuguese made large-scale changes to its labor system to improve the conditions of both contract laborers and the native *forros*.<sup>40</sup> However, this left the cocoa industry even further disabled. Further, once the British West Indies' cocoa plantations had developed, STP was no longer a major player in the cocoa trade.

The final event of note in the period of second colonization is known as the Batepá Massacre of 1953, wherein white landowners, at the explicit instruction of the colonial governor, massacred probably up to 1,000 *forros* in an effort to resolve the latter's labor recalcitrance.<sup>41</sup> Although the event was censored by the Portuguese regime under Portuguese dictator António de

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38. *Id.* at 44.

39. Frynas et al., *supra* note 24, at 55.

40. HODGES, *supra* note 25 at 38.

41. SEIBERT, *supra* note 2, at 64–88. The exact numbers of those massacred will almost certainly never be known. The estimates range from 20 (the contemporaneous account by the governor) to over 2000 (an account by a British researcher in 1960).

Oliveira Salazar, the massacre radicalized a significant portion of the *forro* elite, many of whom openly advocated São Tomean independence in the years that followed.

*Independence, Marxism, and the Transition to Multi-Party Democracy*

This agitation notwithstanding, the movement for independence from the Portuguese did not gain the salience seen in other Portuguese colonies, such as Angola, Mozambique, or Guinea-Bissau. Instead, São Tomean independence resulted directly from the efforts of Portuguese revolutionaries who eventually put off the Salazar-Caetano regime in 1974. The left-wing regime that replaced Salazar-Caetano was dedicated to the principle of African independence, and within six months of the fall of Salazar-Caetano, São Tomé was an independent entity. Since independence, the São Tomean government has functioned in two general periods. First, a one-party Marxist regime governed by elite members of the Movement for the Liberation of São Tomé e Príncipe (MLSTP), from 1974 – 1991.<sup>42</sup> Second, the state transitioned from Marxism to a multi-party democracy, the system that exists today.

During the Marxist era, the state followed a pattern seen in other African countries in the early stages of independence. Following independence, descendants of white Portuguese fled the island for fear of recriminations by the new *forro* government. Unfortunately for the new government, the white Portuguese were the primary landowners and their rapid departure meant there were few with adequate experience to administer the plantations. Consequently, the state nationalized the plantations in order to try to maintain its already small and unsteady piece of the cocoa market.<sup>43</sup>

This nationalization period, which lasted from 1975 to 1986 was a failure.<sup>44</sup> Those inclined to work the plantations did so adversely, farming subsections of the lands separate from the cocoa-focused plantations.<sup>45</sup> The majority of the population, however, deemed agricultural labor beneath their social status, even amidst regular governmental propaganda that the struggle for prosperity would only be won “with the machete, the claw, the hoe, [and] the hammer.”<sup>46</sup> Popular will overwhelmed government propaganda, however, and soon political pressures made it so that the “politically expedient solution [was] to swell the ranks of administrative and support staff, while suffering a shortage of actual hands in agriculture itself.”<sup>47</sup> For example, researchers estimated that in 1982 a full 40% of those employed to work the plantations

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42. In Portuguese, *Movimento para a Libertação de São Tomé e Príncipe*.

43. Eyzaguirre, *supra* note 30, at 675.

44. *Id.*

45. *Id.*

46. SEIBERT, *supra* note 2, at 157–59 (quoting Pinto da Costa in a speech to agricultural workers and civil servants).

47. Eyzaguirre, *supra* note 30, at 676.

worked in administrative positions. As a result, administrative costs far exceeded the plantations' output throughout this period.<sup>48</sup> Under such revulsion toward labor and expectation of governmental sinecures, the plantations could not produce enough exports to meet the needs of domestic consumption, let alone to create excess resources.<sup>49</sup> Market based reforms in the 1980s and 1990s attempted to increase productivity, but also largely failed.<sup>50</sup> The depth of association between the plantations and the heritage of slavery, and the past experience of land-ownership during the great falling, proved stronger than the market could overcome.

It is important to place the Marxist experience with agriculture in the broader context of São Tomean history. The poor management of its natural resources was not a Marxist innovation; indeed, STP had never really known anything different. And nationalized agriculture came less because of ideological commitment to common ownership than the practical necessity of needing to run the only source of São Tomean wealth. The government had few other options. At the time of independence, only five islanders had university degrees who could work at the administration of the plantations.<sup>51</sup> The government—qualified or not—controlled the plantations “almost by default.”<sup>52</sup>

The government, however, was not an effective agricultural administrator. The government's ineffective administration led to chronic deficits that eventually left São Tomé with no viable way to fund its national economy. Consequently, the government had to seek official development assistance (ODA) from other countries.

By the end of the 1980s—despite receiving ODA from the Soviet Union, East Germany, and other Communist countries—the leaders of STP recognized an inability to become economically self-sufficient, and sought the help of Western democracies in improving their economic situation.<sup>53</sup> As a condition of this assistance, the international community, led by the World Bank and the IMF, required that the Marxist government reform itself, allowing a market-based economy and multi-party elections. Following a period of transition, STP held elections in 1990, ahead of the collapse of the Soviet Union, becoming one of the first democracies in Africa.<sup>54</sup>

Since the state has begun its experiment with multi-party democracy, it has held five elections, two of which resulted in the defeat of the ruling party

48. *Id.* at 675.

49. Frynas et al., *supra* note 24, at 53–54.

50. Eyzaguirre, *supra* note 30 at 675. The Sao Tomean government sold many of the plantations to Portuguese and Franco-Belgian companies, but they too failed to increase production enough to balance the country's current accounts.

51. *Id.*

52. *Id.*

53. SEIBERT, *supra* note 2, at 183.

54. *Id.*

but no threat of civil upheaval.<sup>55</sup> Indeed, some on the international stage have called STP a “model emerging democracy.”<sup>56</sup> Nonetheless, such elections belie a very different political scenario. Rather than war against rivaling factions, as was the case in Angola, for example, political elites in STP simply realign after defeat—and indeed, after victory. For instance, nearly all the leaders of the major political parties are all former officials in the Marxist MLSTP. Also, the former president, Miguel Trovoada anointed the current president, Fradique Menezes, as his successor. But after Menezes victory, Miguel Trovoada endorsed his own son, Patrice, as Menezes’ major rival.<sup>57</sup> Beneath the image of a robust, multi-party democracy lies a political elite constantly in flux as its members shift alliances, thus giving the appearance of a multi-party democracy, but without that system’s essential character. It becomes something of a “hybrid democracy,” with a “gap between the appearance and actual practices of [a] formally democratic state[.]”<sup>58</sup> Other checks on the political elite, such as the military, are similarly disengaged. Even the two failed military coup attempts, in 1995 and 2003, were more military petitions of the government rather than threats of regime change.<sup>59</sup> This symbolic salute to democracy, required by the international community in order to receive economic aid, has only increased the stranglehold of corruption within government. Rather than adequately check the corrupt acts of one faction, “rival” factions openly participate in the corruption.

Today, STP’s economic situation remains dire. While the country’s official GDP has grown tremendously in the past few years—from \$45 million in 1995<sup>60</sup> to \$262.1 million in 2007<sup>61</sup>—signing bonuses from oil companies represent nearly all of the growth. Indeed, in the last five years, the country’s agricultural output has remained fairly stagnant.<sup>62</sup> Additionally, amidst surging, oil-related growth, inflation has picked up to 19.8% in 2007.<sup>63</sup> While

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55. *Id.* at 15–16.

56. Gerhard Seibert, *São Tomé e Príncipe: Military Coup as a Lesson?*, LUSOTOPIE, 1996 at 72 (quoting a U.S. State Department official condemning the coup of 1995 and praising the São Tomean government).

57. Frynas et al., *supra* note 24, at 74.

58. Heller, *supra* note 15, at 26.

59. Seibert, *supra* note 56, and Gerhard Seibert, *Coup d’état in São Tomé e Príncipe: Domestic Causes, the Role of Oil and Former ‘Buffalo’ Battalion Soldiers*, 1 (Institute for Security Studies Working Paper No. 81, 2003). To be sure, the coups generated plenty of attention. But commentators also noted that in neither case did the military threaten to take power, and daily life remained nearly undisturbed. If anything, the coups show the influence of the international community on STP’s domestic institutions rather than a system of checks and balances within the Sao Tomean government.

60. Frynas et al., *supra* note 24, citing Economist Intelligence Unit, Country Profile 2001—São Tomé & Príncipe, Guinea-Bissau, Cape Verde (EIU, London, 2001, public policy. 52 and 58

61. CIA WORLD FACTBOOK, SÃO TOMÉ AND PRÍNCIPE (2008), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/tp.html>.

62. INTERNATIONAL MONETARY FUND, DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE: SELECTED ISSUES AND STATISTICAL APPENDIX (2006) at 49 [hereinafter IMF].

63. IMF, *supra* note 62, at 66.

few in STP are among the world's most desperate—the UN even recently reported a decline in the country's infant mortality rates<sup>64</sup>—54% of the population lives below the global poverty line.<sup>65</sup> And the country remains, to use Frynas et al.'s term, “unviable,” in the sense that it cannot produce enough in exports to satisfy its own level of consumption.<sup>66</sup> This is true even with the influx of signing bonuses from oil companies since 2004. In 2008, for example, STP could only fund 20% of its own budget. The other 80% came mostly from bilateral aid from members of the international donor community.<sup>67</sup> Although this marks an improvement from 1997, when 97.3% of the budget came from foreign donations, it is still unsustainable.<sup>68</sup> As Gerhard Seibert, one of the leading scholars on STP, noted in 2006:

[L]iberal democracy has not resulted in a sound economic policy, a more efficient state administration and a flourishing market economy . . . . On the contrary, despite relatively large amounts of foreign aid and increasing donor activity in the country, there has been insufficient growth, while mass poverty and external debts have increased since 1991 . . . . [P]olitical behavior and institutional habits marked by political clientelism, nepotism, endemic corruption, the lack of accountability and transparency, and the weakness of the decision-making bodies have contributed considerably to this failure.<sup>69</sup>

This is the STP of the present. The introduction of oil resources begins with this context.

### *Creative, Ineffective Corruption*

STP's history to date has demonstrated that the country fits squarely within Thomas C. Heller's theoretical construct of the state as a firm.<sup>70</sup> Indeed, the Portuguese “invention” of STP was to be just that: a commercial venture that would bring wealth to its empire through the trade of commodities, be they sugar, coffee, cocoa, or slaves.

However, as Jędrzej George Frynas, Geoffrey Wood, and Ricardo M.S. Soares de Oliveira have noted, if STP were actually a private firm, “it would have probably long been declared insolvent.”<sup>71</sup> This “insolvency” comes not through lack of effort. Indeed, the São Tomean government has shown creativity to find activities from which the government can extract rents that

64. Donald G. McNeil, Jr., *Child Mortality at Record Low; Further Drop Seen*, N.Y. TIMES, Sept. 13, 2007 at A1.

65. CIA WORLD FACTBOOK, *supra* note 61.

66. Frynas et al., *supra* note 24, at 59.

67. *São Tomé and Príncipe: Libya Wants to Co-fund 2008 budget*, MACAUHUB, Apr 30, 2008, available at <http://www.macaclub.com.mo/en/news.php?ID=5287>.

68. Frynas et al. *supra* note 24, at 52.

69. SEIBERT, *supra* note 2, at 395.

70. Heller, *supra* note 15.

71. Frynas et al., *supra* note 24, at 60.

would not butt against the population's manifest revulsion for agricultural labor. Again, as in the earlier examples of other commodities, a combination of mismanagement and stiff competition kept those efforts—even the ongoing lucrative quid pro quo with Taiwan—from meeting the country's basic economic needs. Nevertheless, this has not stopped political elites from using the “trappings of sovereignty,” as Frynas et al. describe them, to their own benefit.<sup>72</sup>

Many of these efforts are creative, many of them corrupt, but all of them are insufficient to meet the country's consumption needs. These failed attempts demonstrate two important points for the future of STP. First, the government is extremely creative in pursuing novel ideas for rent-extraction available to it as a sovereign state. Here STP contributes to Heller's conceptual framework by adding a new kind of sovereign monopoly, the “trappings of sovereignty.” Second, the São Tomean government has never been particularly good at rent extraction, in part because its more creative efforts have not been very lucrative, and in part because they have lacked the business acumen that Heller describes of other rent-seeking firm-states. With the combination of a more lucrative resource—oil, for example—and more managerial sophistication provided by the international community, the potential for corruption is significant.

*Complicating Heller's Rubric: The Case of Ineffective and Creative  
Seigniorage*

To explore how international efforts toward increasing transparency might actually increase the state's capacity for corruption, I rely and build on Thomas C. Heller's theoretical construct of the “state as a firm.”<sup>73</sup> In his research, Heller describes elites within some state governments as seeking “to control the state as a commercial firm with a singular endowment for rent creation.”<sup>74</sup> Heller identifies several aspects of that endowment, including natural resource exploitation, franchising, licensing, joint participation in criminal activities, and the sovereign collection of official development assistance (ODA).<sup>75</sup> In this extraction of rents, Heller describes the elites as engaged in businesses subject to the same constraints and questions as any other businesses, including analysis of the “comparative net returns to alternative lines of operation, the costs of entry and maintaining market share, and industrial organisation and strategy.”<sup>76</sup>

São Tomean political elites have engaged—or attempted to engage—in

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72. *Id.*

73. Heller, *supra* note 15, at 24.

74. *Id.* at 28.

75. *Id.* at 28–29.

76. *Id.* at 28.

rent-seeking activities in the way that Heller describes. For example, in 1986, the government privatized the cocoa plantations, selling the land to Portuguese and Franco-Belgian companies.<sup>77</sup> But even in this situation, the elites showed themselves particularly short-sighted or inept at extracting the rents possible from such resources.<sup>78</sup>

By far, the most lucrative rent-extraction available to São Tomean political elites is official development assistance (ODA). In 1995, the government received \$84 million in ODA, nearly twice the country's GDP for that year. At the time, this made STP the largest recipient of ODA per capita.<sup>79</sup> But because the country's exports in cocoa rarely exceed \$3-4 million, the country has not been able to meet its basic needs since independence.<sup>80</sup> Consequently, prior to debt relief received through the Heavily Indebted Poor Countries Initiative (HIPC), STP bore the highest debt to GDP ratio of any country in the world.<sup>81</sup> Even under the most optimistic of oil revenue projections and under the HIPC, the country will likely stay deeply indebted for "decades."<sup>82</sup> Thus, while a large recipient of ODA, the São Tomean government has not administered the assistance effectively. Many of the problems that these loans and donations were meant to address, such as basic infrastructure, remain unsolved and unchanged. Nevertheless, ODA has had one consistent use: the lining of the pockets of those in and close to government.<sup>83</sup> The largest series of scandals involving ODA centered on the *Unidade de Gestão do Comércio Interno e Externo*, a fund set up in collaboration with donors to invest in STP's infrastructure. Several officials were caught siphoning funds from this account, in varying amounts, such as \$48,780 billed for one official's "cigarettes." Even after the discovery of such abuses, the account continues to "function as an illegal source of finance for people within, or close to, the government and the presidency."<sup>84</sup>

Heller describes this corrupt use of ODA as par for the course for a firm-state. With few exceptions, corruption and ODA go hand-in-hand in many deeply indebted former colonies in Africa. However, the political elites in STP

77. Eyzaguirre, *supra* note 30, at 676. To be fair, the privatization of the cocoa plantations was also done in order to increase their dismal output levels. Nevertheless, the deals themselves fit within the rent-seeking calculus that Heller describes.

78. *See id.* at 673.

79. SEIBERT, *supra* note 2, at 394. Though, as Seibert notes, this is also because infrastructure investments in small countries are "much more expensive in per capita terms than in larger countries."

80. IMF, *supra* note 62. *See also* Frynas et al., *supra* note 24, at 104.

81. Frynas et al., *supra* note 24, at 58.

82. H.E. Fradique Menezes, President, São Tomé e Príncipe, Creating a Stable Base for Transparency in São Tomé's Oil Sector, Address Before CSIS Conference, "Promoting Accountability and Transparency in Africa's Oil Sector" (March 30, 2004), available at <http://www.earthinstitute.columbia.edu/cgsd/events/menezes.htm>.

83. Seibert, *supra* note 2, at 289-93.

84. *Id.*

have been even more creative in their attention to rent-extraction, extending their activities beyond the framework Heller describes. Political elites have used the “trappings of sovereignty” to provide goods and services to private actors and foreign governments that only a state can provide. For example, in 2003, STP had provided flags of convenience—or opportunities for merchant ships to get “registered as shipshape while avoiding high taxes, high labour costs, and, critics say, too many questions”<sup>85</sup>—to thirty-nine freight ships, despite the fact that the country lacks a commercial deep-water port.<sup>86</sup> Additionally, STP has made commemorative Marilyn Monroe stamps;<sup>87</sup> allowed a safe-haven for X-rated telephone companies to route their services, given strict regulations of such services in other parts of the world;<sup>88</sup> and printed and advertised diplomatic passports to the highest bidder.<sup>89</sup> These sorts of activities can be viewed as a type of seigniorage.<sup>90</sup> The government seeks capital, whether for good or ill, and therefore uses its sovereign authority to “print” new capital in order to meet those needs. Rather than printing currency, as in seigniorage, the government in STP prints stamps, passports, and flags.

Unfortunately for the government, none of these markets is particularly lucrative,<sup>91</sup> and, as has been the pattern, the elites who managed them did so very poorly. STP’s participation in the competitive flags of convenience market was short-lived. Within a few years, its fleet of thirty-nine vessels dwindled to two, as Liberia and Panama began to offer better incentives to shipping companies.<sup>92</sup> Its X-rated telephone service has been crowded out by the more aggressive Guyana, which has engaged in the same business but with much greater success.<sup>93</sup> In short, the elites’ poor ability to take the long view

85. *Keeping the Country Afloat*, ECONOMIST, Aug. 25, 2007.

86. Frynas et al., *supra* note 24, at 58.

87. Christopher McDougall, *Despite Stamps, in São Tomé it’s ‘Marilyn Who?’*, ASSOCIATED PRESS, May 23, 1995.

88. Mike Mills, *Money flows into Poor Countries on X-Rated Phone Lines*, WASH. POST, Sept. 23, 1996, at A01.

89. Frynas et al., *supra* note 24, at 58. Frynas et al.’s source for the passports of convenience was an anonymous official. However, advertisements from The Economist known to Geoffrey Wood, Frynas’ co-author, confirm that São Tomé did provide this service through much of the 1990s. Email correspondence with Wood, on file with author.

90. Traditional seigniorage is the use of the government monopoly over the printing of money to artificially inflate its Treasury. It is also referred to as the “inflation tax.” See generally Alex Cukierman, Sebastian Edwards & Guido Tabellini, *Seigniorage and Political Instability*, 82 AM. ECON. REV. 537–38 (1982).

91. The government earned a little over \$100,000 for the stamps in 1995, and an impressive \$19.4 million in 1994 for the phone lines. Data is not available on the FOCs and diplomatic passports, but given the huge reliance on foreign aid, still today, to cover its annual budget, the money was probably siphoned through corruption or simply not very much to begin with. See McDougall, *supra* note 87; Mills, *supra* note 88.

92. CIA WORLD FACTBOOK, *supra* note 61; ECONOMIST, *supra* note 85. To be fair, STP was never really in league against Panama and Liberia. In 2007, Liberia had 2,511 ships registered, compared to Panama’s startling 7,357. Still, the country’s inability to keep its little fleet of 39 illustrates this point.

93. Mills, *supra* note 88.

and strategize as one would expect a state-firm to do have led to its bringing many goods and services to market only to see them fall quickly by the wayside.

The one mainstay in its use of the “trappings of sovereignty” has been the diplomatic recognition of Taiwan that STP has extended since 1997.<sup>94</sup> In return for this recognition, Taiwan has given an annual \$10 million to the government – more than 25% of STP’s GDP in the years before the signing bonuses for oil contracts.<sup>95</sup> The recognition might be characterized, charitably, as São Tomean effort to promote democracy in a far-flung corner of the world, given its status as an early African democracy. However, even at the time the São Tomean National Assembly accepted the move as “check-book diplomacy.”<sup>96</sup> Besides, the sheer value of the bargain to the São Tomean government makes parsing these explanations unnecessary. That STP has discovered a way, regardless of how it is explained, to use nothing more than its sovereignty to earn an annual \$10 million speaks to its willingness to exploit that essential resource in any way possible. And unlike other resources and efforts, mismanagement of this relationship would require an astonishing degree of diplomatic incompetence that even these political elites have not displayed.

STP’s situation thus adds new dimensions to Heller’s construct in at least two ways. First, in addition to those state monopolies that Heller describes, STP has made creative use of the “trappings of sovereignty” to extract rents beyond the most obvious of alternatives. Second, and far more significant, the state has done a poor job of fully extracting the rents available. For example, there were what Frynas et al. called “irregularities” in the sale of passports and flags of convenience.<sup>97</sup> Further, the government showed ineptitude at managing even traditional sources of tax and tariff revenue. For example, in 1995, the government collected only \$9,153 on official imports worth nearly \$7.6 million. However, if customs officials had managed their duties more effectively, more than \$3.5 million more would have been collected for state use. Thus, while Heller describes states as firms facing and responding to the same constraints and decisions as any other business, the STP example shows, a keen interest in rent-extraction, but a remarkable inability to fully realize the value of its monopolies. Consequently, both before but especially after the discovery of oil, the companies and governments who have interacted with STP commercially have received unprecedented access to rent extraction themselves, always at STP’s disadvantage.

This combination of creative willingness to seek rent-extraction

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94. Chang, *supra* note 1.

95. *Id.*

96. SEIBERT, *supra* note 2, at 275. The National Assembly approved the arrangement, but would not allow President Trovoada to claim any motivation other than money for the deal.

97. Frynas et al., *supra* note 24, at 58.

opportunities coupled with barriers of logistics and competence sets the stage for the effects of international transparency initiatives that smooth over logistical difficulties and increase institutional competence. A third ingredient, a willingness to seek rents corruptly, completes the picture of how international transparency initiatives can increase the state's absolute experience of corruption. We turn now to that ingredient.

*The "Moral Economy of Corruption" in STP*

For the most part, rent-extraction does not require, by definition, the corruption of the government. Indeed, some of its activities are wholly above board and transparent, most notably its *quid pro quo* with Taiwan.<sup>98</sup> Nevertheless, other sources confirm that STP has been marked by excessive corruption throughout its history, from its colonization to the present.<sup>99</sup> In 2007, Transparency International ranked STP 24 out of 52 nations in the African region, and 118 in the world.<sup>100</sup> Both coups, in 1995 and in 2003, cited corruption as their primary complaints.<sup>101</sup> Indeed, Seibert describes corruption as one of the leitmotifs of any São Tomean government or opposition; while in opposition, politicians denounce the corruption, and while in office, they practice it.<sup>102</sup> If corruption is, as Nye defined it, "behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains," then many government officials in STP have made careers out of corrupt practices.<sup>103</sup>

As J.P. Olivier de Sardan articulates, however, there is more to corruption than this straight-forward definition suggests. In societies where corruption is both "conspicuous and generalized," it becomes not a deviation from the public role, but the fulfillment of that role. It is, to use Sardan's term, part of the society's "moral economy" and must be understood within a broader "corruption complex" that emphasizes its "routine nature, the stigmatisation . . . despite the absence of effective sanctions, its apparent irreversibility, the absence of correlation with regime types, and its legitimacy to its perpetrators."<sup>104</sup> The members of the military who attempted the coups in 1995 and 2003 did so not to rid the country and government of corruption, but because they felt that they had been left out of the potential gains that

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98. See Chang, *supra* note 1.

99. For a detailed analysis of the near countless corruption scandals in STP since 1991, see SEIBERT, *supra* note 2, at 286–306.

100. TRANSPARENCY INTERNATIONAL, 2007 CORRUPTION PERCEPTIONS INDEX, REGIONAL HIGHLIGHTS: AFRICA (2007).

101. Seibert, *Military Coup as a Lesson?*, *supra* note 56..

102. SEIBERT, *supra* note 2, at 293.

103. J.S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, AM. POL. SCI. REV., June 1967, at 419.

104. J.P. Olivier de Sardan, *A Moral Economy of Corruption in Africa?*, J. MODERN AFR. STUD., Mar. 1999, at 25.

government service should have extended to them.<sup>105</sup> The complaint, then, was not against governmental corruption on principle, but against the exclusion of the military from the administration of new government windfalls. Others have made similar observations. One member of a team that helped the National Assembly draft STP's ORML described a post-ratification conversation with a member of the Assembly. The Assemblyman, who had voted for the law, still felt entitled to an extra portion of the revenue, the law notwithstanding. He described this entitlement in personal terms, asking why he should watch his family go without when he works so diligently in his official capacity.<sup>106</sup> The point is simple. The line between what is and is not corrupt is not the nature of the practice itself, but "the context and . . . the position of the actors involved."<sup>107</sup> In other words, "corruption is someone else."<sup>108</sup> Sardan's theory fits STP well. In each of the corruption scandals of the 1990s and 2000s, the accused quickly resorted to recriminations, citing their own innocence while bemoaning the corruption of the accusers.<sup>109</sup>

Even with all the accusations of corruption within the government, there is rarely any greater consequence for the accused than a cursory investigation.<sup>110</sup> Sardan anticipates this. In the moral economy of corruption, there is space for the vociferous objection to corrupt practices so long as that objection remains at the level of rhetoric.<sup>111</sup> This is further reinforced by the nature of the political elite in STP. Because of STP's size, and the dynamic of politics described above, the major players in domestic politics are all closely related, whether by blood, marriage, or professional association.<sup>112</sup> Contrary to what some have claimed, this network of kinship does not mean that less corruption will occur.<sup>113</sup> It means that the fruits of corruption will be spread more liberally amongst a larger subsection of elites, even amidst frequent calls for

105. Siebert, *Military Coup as a Lesson?*, *supra* note 56.

106. Interview with anonymous international aid worker who worked closely with the National Assembly. Notes on file with author.

107. Sardan, *supra* note 104, at 34.

108. *Id.*

109. SEIBERT, *supra* note 2, at 286–306.

110. The exception that proves the rule was the brief tenure of Adelino Pereira as Attorney General. Pereira investigated corruption frequently, petitioned the National Assembly to bring charges against the targets of his investigation, and published reports submitted to the highest levels of the donor community, the main basis of support for any Sao Tomean government. However, when his investigations included a powerful finance minister was dismissed from government. See Investigation and Review, Second Bid Round, Joint Development Zone, Nigeria and São Tomé e Príncipe, Office of the Attorney General, São Tomé e Príncipe, Dec. 2, 2005, available at [http://www.earth.columbia.edu/cgsd/STP/documents/PGR\\_Report\\_English.pdf](http://www.earth.columbia.edu/cgsd/STP/documents/PGR_Report_English.pdf).

111. Sardan, *supra* note 104, at 25.

112. Siebert, *supra* note 2, at 286–306.

113. See Frynas et al., *supra* note 24, at 77 (quoting P. Chabal, *The Prospects for Democracy in Lusophone Africa*, PORTUGUESE STUD. 12 (1996)). Chabal argues that a tight kinship system like that in STP would limit a sub-section from gaining corrupt advantages over the broader whole. Frynas et al. and Siebert demonstrate that, if applicable to other kinship groups, this is not the case in STP.

investigation and reform.<sup>114</sup> STP has become, in the words of the former president, “a country where corruption spreads and enjoys impunity, hatred is a virtue, political power is exercised without consensual rules, and prosperity is sought through illicit actions and activities.”<sup>115</sup>

Due to the chronic labor shortages that have plagued the islands, the São Tomean government has had to be creative in order to extract rents from the other trappings of sovereignty. These creative efforts—from offering passports and flags of convenience to licensing X-rated telephone services—have rarely returned much money. This is due in no small part to mismanagement of these resources. Unlike the state-firms that Heller describes, the political elites in STP have only had successes in rent-extraction when the requirements for that extraction is almost nil, e.g., the diplomatic relationship with Taiwan.

In addition to this creativity, we have also seen that a culture of rampant corruption exists in STP that can be described within Sardan’s “moral economy of corruption.” In this setting, political elites of all stripes simultaneously deride corruption when out of power, but embrace it when in powerful governmental positions. Given the frequent turn-over in São Tomean governments, this phenomenon allows for near-universal corruption in the ranks of the political elites. Part of this moral economy, however, is that while widely derided, the corruption is rarely punished. To date, only a handful of indictments have come down for political corruption, none of which has resulted in a conviction.<sup>116</sup>

The lessons learned from this background are this: when the law and development efforts came on the scene in the early 2000s, the STP before them—whether they knew it or not—showed a willingness to seek rents, a general degree of mismanagement in doing so, and a moral economy of corruption, suggests that the discovery of a highly valuable state resource will further increase the state’s capacity for corruption. All the firm-state needs is (1) more access to valuable resources, and (2) better administrative competence. Both would come as a result of the discovery of oil.

## PART II: OIL AND “SHARKS” IN SÃO TOMEAN WATERS

The discovery of oil in STP’s territorial waters brought STP the attention of the world in a way that it had not seen since the forced labor scandal of the early 20th century. True to earlier rent-extraction habits, the government exhibited either a stunning short-sightedness, or more likely, a general lack of sophistication in dealing with the economic potential of these resources. Consequently, a variety of international players, including a small but

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114. SEIBERT, *supra* note 2, at 245.

115. Address of Manuel Pinto da Costa, São Tomé, 24 August 1997, quoted in SEIBERT, *supra* note 2, at 3.

116. SEIBERT, *supra* note 2, at 290–93.

politically connected American oil firm, a Norwegian oil exploration company, and the Nigerian government succeeded in extracting terms from the São Tomean government that have almost universally been regarded by experts as unprecedented in their unfairness to the São Tomeans.<sup>117</sup> After many in the international community were harshly critical of these deals, the STP government sought help in fending off what the current São Tomean president referred to as “sharks.”<sup>118</sup> The international community responded with programs that added legitimacy, security, and technical expertise to the São Tomean government. This help rendered them much more formidable vis-à-vis those “sharks” who had hoped to continue dominating STP in their burgeoning oil exploration.

I argue here that while international assistance focused on increasing transparency and accountability within STP’s domestic institutions, the real effect will be a new São Tomean government that is more adept at capturing oil rents. Just as the government showed a willingness to accept market reform in return for economic aid in the 1990s, here the government is willing to accept a greater cost in rent-extraction in return for better access to those rents. And as in the case of the 1990s, I argue that this raised cost—the cost of transparency—will ultimately prove ineffective at deterring governmental corruption.

#### *Oil History: The Exploitation of STP*

STP’s oil potential has been explored since at least the 1960s,<sup>119</sup> though not in earnest until the late 1990s.<sup>120</sup> In 1997, a South African investor with some knowledge of the Gulf of Guinea’s oil potential met with government officials and secured the rights of exploration on behalf of an American company, the Environmental Remediation Holding Company (ERHC). Because almost no one in STP had any kind of experience with the oil sector, ERHC had no problem securing unprecedentedly favorable terms from the government, including ownership of four blocks of its choice, claims on future oil taxation, and no required signing bonus.<sup>121</sup> The IMF has estimated that, if the terms stand, ERHC and its successors will be entitled to almost \$1.5 billion in future income streams.<sup>122</sup> In return, ERHC has paid only \$5 million,<sup>123</sup> and has no obligation to perform any service other than to conduct a feasibility study and raise additional funds for the development of the nation’s new oil

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117. Frynas et al., *supra* note 24, at 12

118. Meier & Mouawad, *supra* note 7.

119. Frynas et al., *supra* note 24, at 60; Seibert, *supra* note 2, at 368.

120. For the most detailed analysis of STP’s oil history, see SEIBERT, *supra* note 2, at 368 n.205.

121. Frynas et al., *supra* note 24, at 66.

122. *Id.* at 67 n.66.

123. SEIBERT, *supra* note 2, at 368-70.

sector.<sup>124</sup>

As part of this effort to promote and manage STP's oil sector, ERHC usurped some of STP's sovereignty, in part by setting meetings with American diplomats and preparing President Miguel Trovoada's 1998 visit to the UN.<sup>125</sup> The fact that ERHC, itself a near-bankrupt bit player in the oil industry with no experience in deep-sea drilling,<sup>126</sup> could secure such favorable terms and usurp part of the government's sovereignty underscores both the São Toméans lack of sophistication and the extent of their corruption. For, as was later discovered, ERHC secured its position of privilege through the use of bribes engineered through Patrice Trovoada.<sup>127</sup> Trovoada is the current Prime Minister and son of former STP President Miguel Trovoada, President at the time of the ERHC deal.<sup>128</sup>

ERHC was not the only foreign entity interested in taking advantage of STP's inexperience; the Nigerian government did so as well, with perhaps even more money at stake, and an even greater differential of power. Following the discovery of oil potential in 1997, STP filed its maritime border claims with the UN's Law of the Sea Commission (UNLSC). Since some of those border claims were at odds with those of STP's neighbors, the UNLSC encouraged negotiation between the countries to resolve any disputes. Negotiations with Gabon and Equatorial Guinea began in 1998, and were resolved within the year based on a principle of equidistance between the islands and the mainland countries' own borders.<sup>129</sup>

Nigeria, however, proved far more obdurate. Because the principle of equidistance would give tiny STP so many potential oil blocks, Nigeria insisted on a far greater share than would generally be its due. STP could not afford a protracted legal battle, however, so the São Toméan government quickly capitulated to terms exceedingly favorable to the Nigerians.<sup>130</sup> Under their 2000 deal, Nigeria and STP would together administer a "Joint Development Zone" that comprised nearly 28,000 km<sup>2</sup> of area, much of which likely belonged within STP's Exclusive Economic Zone.<sup>131</sup> Further, the split in

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124. *Id.*

125. *United Nations Visit Yields Maritime Boundaries [sic] for ERHC's West African Oil & Gas Joint Venture*, PR NEWSWIRE, Dec. 17, 1997.

126. Hurst Groves, *Offshore Oil and Gas Resources: Economics, Politics and the Rule of Law in the Nigeria-São Tomé e Príncipe Joint Development Zone*, J. OF INT'L AFF., Fall-Winter 2005, at 81.

127. *Id.* See also Investigation and Review, Second Bid Round, Joint Development Zone, Nigeria and São Tomé e Príncipe, Office of the Attorney General, São Tomé e Príncipe, Dec. 2, 2005, available at [http://www.earth.columbia.edu/cgsd/STP/documents/PGR\\_Report\\_English.pdf](http://www.earth.columbia.edu/cgsd/STP/documents/PGR_Report_English.pdf) [hereinafter Second Bid Round].

128. *Id.*; see also Second Bid Round, *supra* note 125.

129. The principle of equidistance dictates that countries disputing sea boundaries will place the boundary at the mid-point between the two countries' land borders.

130. SEIBERT, *supra* note 2, at 370-72.

131. SEIBERT, *supra* note 2, at 370-72.

revenues would not be equitable; Nigeria would keep 60% of all such revenues, leaving 40% to STP.<sup>132</sup> Nigeria justified its insistence on a JDZ due to its experience as one of Africa's largest oil exporters, and STP's status as a neophyte in the industry. However, a similar deal struck between Australia and East Timor, justified for similar reasons, reveals the Nigerians' intent as disingenuous at best.<sup>133</sup> Under the Timor Sea Treaty, the Australian government agreed to jointly administer a Joint Petroleum Development Area, but would accept only 10% of the revenues, leaving 90% for East Timor.<sup>134</sup>

The administration of the JDZ, under the Joint Development Authority (JDA), also revealed Nigerian bias in approving companies for exploration. The bank account that was to be established to receive the initial signature bonuses was never created, allowing that money to change hands without transparency.<sup>135</sup> Nigerian representatives in the JDA were themselves shareholders of some of the companies bidding for blocks in the JDZ.<sup>136</sup> Further, the Nigerians engaged in intimidation tactics during follow-up negotiations, including forcing a special advisor to the São Tomean President, one of the few from the São Tomean delegation well versed in international oil law, to leave the negotiation table.<sup>137</sup> Nigeria even confiscated the one functioning ship in STP's Coast Guard and refused to return it until the smaller country reimbursed Nigeria for the repairs the Nigerians supposedly made to the ship.<sup>138</sup> By all accounts, the Nigerians have been an exploitative, bullying partner throughout the last decade of interaction.

The list of exploitative involvement continues and includes almost every country or organization that interacted with STP from 1997 – 2003. The Norwegian seismic data company Petroleum Geo-Services (PGS) received first development rights to any oil blocks it explores, giving the company “the uncommon double role of seismic service company and oil exploration company.”<sup>139</sup> The American government has also been implicated in exploiting the São Tomeans. William Jefferson, the U.S. Congressman from

132. SEIBERT, *supra* note 2, at 373.

133. The findings of the Timor Sea Treaty purport to be “conscious of the importance of promoting East Timor’s economic development,” and thereafter set terms favorable to the Timoreans. See Timor Sea Treaty, E. Timor-Australia, Apr. 2003, chapeau.

134. *Id.*, art. IV

135. Unofficial translation of the 19 May 2005 Report of São Tomé’s National Assembly’s Petroleum Affairs Commission, cited in Groves *supra* note 126, at 88.

136. *Id.* at 89.

137. *Id.* at 88.

138. Michael Phillips, *A Boat Goes Missing, and Tiny São Tomé Has No Coast Guard*, WALL ST. J. Jan. 2, 2003, at A1.

139. SEIBERT *supra* note 2, at 375. In its defense, PGS claims that it was given first opportunity to *bid* on those blocks, but no guarantee that it would secure exploration rights. However, PGS sold its interests in STP to a partner, Equator, who asserts that the original terms did not include the need to bid for the right of exploration, but simply gave PGS the blocks outright. See Erik Hagen, *Play for Oil: PGS on São Tomé e Príncipe*, NORWATCH, Oct. 20, 2006, [http://www.norwatch.no/filer/PGS\\_in\\_Sao\\_Tome.pdf](http://www.norwatch.no/filer/PGS_in_Sao_Tome.pdf).

Louisiana well-known for hiding almost \$100,000 of cash in his home freezer, allegedly helped foreign companies—including ERHC—gain access to STP’s bidding process.<sup>140</sup>

STP’s early experiences as a potential oil exporter revealed a level of amateurishness that other, more savvy nations and companies could—and did—easily exploit. Many in the international community—such as scholars,<sup>141</sup> expatriates,<sup>142</sup> and the IMF<sup>143</sup>—viewed STP’s handling of these negotiations as fundamentally flawed and deeply harmful to the nation’s economic interests. Following the election of Fradique Menezes as President, the STP government sought help from many in the international community to undo the harm done by ERHC, Nigeria, PGS, and others, while also protecting the small country from other such threats.

### *International Response*

STP received assistance from a variety of sources, including the World Bank,<sup>144</sup> the IMF, the Extractive Industries Transparency Initiative (EITI), American law firms working on a pro bono basis, Jeffrey Sachs and Columbia University’s Earth Institute, not to mention bilateral aid from the U.S., Libya, France, and many others.<sup>145</sup> By all accounts, the response worked to keep the “sharks” at bay. Nigerians accepted several conditions of transparency that STP had adopted at the IMF’s behest, and the subsequent bidding round allowed Exxon/Mobil to win exploration rights for portions of three blocks. Exxon/Mobil’s participation here is significant. A company of that stature and experience in deep-sea drilling resolved the concern that ERHC and PGS, themselves smaller companies with almost no experience in deep-sea oil exploration, would dominate the extraction process in STP’s EEZ and in the JDZ. Further, the terms to which Exxon/Mobil agreed were far more favorable to STP than previous agreements that gave oil companies rights to several blocks for signature bonuses of only \$1 million each.<sup>146</sup>

The international community has shown a great deal of interest in STP and the way it will—and should—handle its status as an eventual oil exporter, and where STP has sought assistance, members of the community have given it, often the very best the world can offer. But that assistance is generally conditional on São Tomean commitments to increase domestic transparency.

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140. Meier & Mouawad, *supra* note 7.

141. Frynas et al., *supra* note 24.

142. In 2002, a group of São Tomean migrants in Portugal published *Coisa Publica II*, an open letter that was highly critical of the deals. In SEIBERT, *supra* note 2, at 276.

143. IMF report, cited in SEIBERT, *supra* note 2, at 376.

144. WORLD BANK, COUNTRY BRIEF: SÃO TOMÉ AND PRÍNCIPE (2009), <http://web.worldbank.org/> (click on “Countries” tab, then click on “São Tomé e Príncipe” and then “Country Brief”).

145. MacauHub, *supra* note 67.

146. For an extended discussion, see SEIBERT, *supra* note 2, at 377–83.

As I argue in the next Part, that condition is readily accepted, if promptly ignored, as well worth the cost of increased status and power on the world stage.

### PART III: LAW & DEVELOPMENT, INCREASING SÃO TOMEAN CORRUPTION

There is no reason to think that São Tomé's interest in international help has to do with an inherent interest in increasing domestic transparency in the country's new oil sector. Transparency, in the form of the Oil Revenue Management Law, came as a condition of the service they did seek – help in administering their newfound oil deposits in a way that would redound most fully to their benefit. Instead, I argue that the São Tomean government sought help for two reasons: (1) to fend off the “sharks” that outgunned and outmaneuvered the island country, and (2) to increase its administrative capacity, which had failed to allow the government to capture to the level of profits that a more efficiently administered firm-state could muster. That they readily accepted the appearance of conditions of this assistance should come as no surprise. The government had done the same in abandoning Soviet-style development in the late 1980s and early 1990s, and as in that case, the conditions here will largely be followed in name only.

#### *Oil Revenue Management Law (ORML)*

One of the many international organizations that answered STP's call for help was Columbia University's Earth Institute, led by the international development economist Jeffrey Sachs.<sup>147</sup> Initially, it might appear that the ORML that grew from this call for help ignores STP's main motivation in seeking help in the first place, as the law focuses on domestic transparency and economic health, rather than on strengthening STP at the negotiation table. But the law and other efforts do something much greater. They provide international cachet and transparency to the negotiations process. Because STP invited more scrutiny to itself from the international stage, other companies and governments can no longer lead STP officials to dark rooms to make deals on grossly unequal terms.

The law itself is well-researched and well-written and covers many of the concerns of the “resource curse.” In order to avoid Dutch disease,<sup>148</sup> the oil

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147. Sachs, an economist, did not write the law. Joseph C. Bell, a noted Washington attorney, and his team deserve this credit. See Meier & Mouawad, *supra* note 7; Bell & Faria, *supra* note 12, at 286.

148. The Dutch disease is one element of the “resource curse,” wherein an economy that newly exports valuable natural resources resulting in the strengthening of the home currency at the expense of other domestic industry. It is named the “Dutch” disease after the Dutch discovery of natural gas led to a strong Dutch guilder and a correspondingly weakened Dutch economy. See generally Christine Ebrahim-zadeh, *Dutch Disease: Too Much Wealth Managed Unwisely*, 40 FIN

revenues will be held in foreign denominated currencies in off-shore accounts, currently in the New York Federal Reserve.<sup>149</sup> To combat the potential use of oil revenues to diminish reliance on sources of more politically accountable income, the revenues cannot finance the annual budget.<sup>150</sup> Further, to mitigate the threats of corruption, any withdrawal from the account must be signed by four government officials, including the President and the Prime Minister.<sup>151</sup> If followed, the law should provide safeguards against economic ruin and political corruption.

The law is certainly intended to create this accountability, but its effect will be quite different. The law forms a part of the panoply of other international aid that has the effect of shifting power away from organizations like the ERHC and Nigeria, and toward the São Tomean government. The starkest example of this may be that of STP courting of U.S. naval base on the islands to protect STP, says President Menezes, from “those that are ambitious and are looking to come to the country when oil is extracted from our waters.”<sup>152</sup> This protection comes at a price, and that price is the acceptance of laws like the Oil Management Revenue Law. But as Heller points out, even these efforts may prove temporary formalistic speed bumps on the state-firm’s previous trajectory:

[O]rganisational theory suggests that organisations with core missions (for example, privatised states aimed at rent creation and distribution) rarely abandon these identities when faced with external pressures to adjust to systemic norms and conduct. Rather, the management of such organisations deploys a series of formalistic structures that interact with the external monitor to create the appearance of conformity without actually adapting the organisation to alien demands.<sup>153</sup>

Although Heller is here discussing the conditions of increasing market democracy, the same applies to STP’s adoption of transparency initiatives. It formalistically adopts such strictures, but still retains near-exclusive control over the revenue such that, through a mechanism such as a budgetary sleight of hand, the law can be subverted.

The drafters of the oil law acknowledge this potential for futility. Joseph Bell, one of the principal drafters of the law, writes that “[t]ransparency cannot ensure the responsible use of resource revenues.”<sup>154</sup> What the drafters hope, however, is that the law will avoid excessive complexity, make use of clear

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& DEV 50 (Mar 2003), available at <http://www.imf.org/external/pubs/ft/fandd/2003/03/eBra.htm> (last visited Oct 6, 2009).

149. Bell & Faria, *supra* note 12, at 289.

150. *Id.* at 294–95.

151. *Id.* at 290.

152. President Menezes, as quoted in *U.S. Naval Base to Protect São Tomé Oil*, BBC NEWS, Aug 22, 2002, available at <http://news.bbc.co.uk/2/hi/business/2210571.stm>.

153. Heller, *supra* note 15, at 30.

154. Bell & Faria, *supra* note 12, at 288.

oversight and bright-line rules, and be sufficiently “adapted to the needs, institutions, and legal framework of the country” such that the law will increase the costs of corruption for the government to the point that the incentive for corruption no longer exists.<sup>155</sup> However, this optimism may be unwarranted. As Heller describes, “resource rents do not normally induce a change in institutional evolution as much as they improve the ability of states to remain with the installed base of governance they had when resources rents were added to the picture.”<sup>156</sup> While a robust oil law can do much, it cannot combat a culture of corruption that has existed since the colonial era.

Even though the ambitions of international organizations—like the Earth Institute, but including the World Bank and the IMF—to change the São Tomean culture will likely go unrealized, their involvement also may not be neutral—these efforts’ sheer existence may fortify the country in a way that increases its corruptive capacity. International aid that develops legislation, support STP in investigations of past negotiations, and provides technical assistance in building a domestic oil industry provide two crucial services to the STP government. First, they increase the stature and legitimacy of the local government in the eyes of those “sharks,” seeking to capture profits from STP’s oil. Indeed, the government’s initial enthusiasm for the law came because an affiliation with Jeffrey Sachs and Columbia University could improve the São Tomean government’s image.<sup>157</sup>

Second, these international efforts increase the government’s ability to extract rents from its resources in a way that the government has never done. After the increase in training and sophistication associated with the international interventions in STP’s budding oil industry, the São Tomeans will likely not be so willing to exchange for pennies today their dollars of tomorrow. Gone are the days when ERHC can acquire permanent rights to oil blocks without offering signing bonuses. Thanks to the international community, STP is now too sophisticated for that.

Taken alone, the strengthening of the domestic oil industry in STP is an intended consequence of increasing transparency in oil revenue management. The international community has a strong interest in strengthening STP such that foreign entities cannot take, through hook or crook, what rightfully belongs to the São Tomean people. “However, the issue here is whether strengthening the São Tomean government will give the people what belongs to them, or simply trade the identity of the crook.” As we have seen, STP bears a culture of corruption that will allow government officials to eagerly take advantage of any resource rents it can find. The society was invented to provide rent-extraction under poorly managed situations, where corruption reigned supreme.

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155. *Id.* at 287.

156. Heller, *supra* note 15, at 31.

157. SEIBERT, *supra* note 2, at 387.

Now, given the discovery of oil, the continuation of that propensity is almost certainly assured.

As the period from 1997–2003 indicates, this propensity alone is not enough to guarantee the level of sophisticated rent-seeking that Heller describes. During this time, São Tomean officials repeatedly sought rents from the potential for oil, but only captured a small fraction of possible profit. They were outmaneuvered by more sophisticated opponents. As discussed, after seeing the consequences of this power differential, the government reached out to the international community in order to receive training, legitimacy, and even security<sup>158</sup> in order not only to avoid the “resource curse,” but to avoid squandering the opportunity for wealth that such a curse entailed. The fact that so much of the aid was conditional and directed toward domestic institutional transparency, rather than international transparency, was simply part of the price that the government had to pay. Just as in the case of accepting market reforms in the 1990s to receive loans and other foreign aid, STP permitted domestic transparency initiatives in exchange for an increase in clout against companies and governments like Nigeria, ERHC, PGS, and others similarly interested in exploiting STP’s oil reserves.

However, attributing STP’s interest in greater power to extract rents from its oil reserves is not to say that the STP government cared nothing for the effects of the corruption on its economy and society. As President Menezes pleaded in a public speech in Washington, “[h]elp us turn our backs once and for all on the world of secrecy, backroom interest peddling, and under-the-table deals. Corruption is the enemy of both free markets and democracy.”<sup>159</sup> We need not doubt his sincerity in order to add complexity to his motivation. In the moral economy of corruption in STP, seeking this transparency and freedom from the corruption of others, is wholly consistent with increasing one’s own capacity to extract rent from national resources.

President Menezes hints at this understanding elsewhere in the same speech both by pointing out the corruption in companies and governments, and by asking for those in the international community to respect STP’s sovereignty. He says that “for every corrupt government official or government, there is another private sector individual or company facilitating [sic] off-the-books payments or anti-competitive, under-the-table methods of winning business.”<sup>160</sup> Further, he notes, almost as a warning, “[w]hile we want and need your help, we must build our country in our own best interests, and we ask that you respect our God-given right to do that.”<sup>161</sup> In this way, STP seeks to minimize the corruption of others while maximizing its control over its

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158. *U.S. Naval Base to Protect São Tomé Oil*, BBC NEWS, Aug 22, 2002, available at <http://news.bbc.co.uk/2/hi/business/2210571.stm>.

159. Menezes, *supra* note 82.

160. *Id.*

161. *Id.*

own sovereign resources.

#### PART IV: CONCLUSION: A MORAL BLIND ALLEY

This Article contributes in two ways. First, it responds to Heller's conception of the state as a firm by identifying more ways in which a state can use its sovereignty to extract rents—seen through STP's quid pro quo with Taiwan, and its less lucrative but more creative issuances of flags of convenience, diplomatic passports, phone licenses for sex lines, and commemorative stamps. The Article also adds an extra layer to the state-firm conception by finding space for states willing to extract rents from its resources, but not sophisticated enough to do it effectively, whether because of bullying commercial partners or internal mismanagement. Throughout STP's history as something of a poorly managed invented society, there are reoccurring themes of enthusiasm for corruption, but an inability to carry it out as profitably as possible.

Second, and most significantly, I have argued that STP illustrates how international transparency initiatives can actually increase the absolute level of domestic corruption by transferring power away from sophisticated rent-seeking international players back to rent-seeking domestic political elites. This occurs because the international community provides security, training, and especially legitimacy to the domestic political players that they did not have prior to the international efforts. The added legitimacy keeps the "sharks" at bay, increasing the state's negotiation power in extracting rents that require cooperation from international partners. The added expertise allows the state to manage its own rent-extraction with higher efficiency. The fact that much of that assistance, from security to training, lawmaking to legitimacy, is conditioned on domestic reform only increases the costs of that rent-seeking. While it is theoretically possible to imagine a situation where the costs associated with that conditionality price out the potential for corruption, such is not the case for unviable states like STP, where almost any windfall from new oil resources represents an increased opportunity for rent-seeking beyond what is already available. Given the moral economy of corruption that exists in STP—where corruption is routine, openly condemned, conspicuously practiced, and seemingly irreversible—elites' management goals will be more to increase rent-extraction than to shore up a more stable, liberal democracy. And yet, the tools provided by the international community can be and are as easily used for those corrupt ends as any other tool the international organizations intended.

Bell and Faria, two of the lawyers who worked on the São Tomean law, acknowledge that the legal structure that they left in place is not foolproof and

is, in fact, quite fragile.<sup>162</sup> If the law and other transparency efforts succeed in creating efficient and transparent management of oil revenues, then they will be a model for other countries. However, these efforts' failure will not be neutral. By intervening at all, Columbia University and other reputable international organizations left STP much stronger than it was prior to the intervention. These efforts have effectively put more power into the hands of the domestic political elite with greater consequences. Given that reality, it becomes important to evaluate the worth of these efforts in the first place.

There are three potential scenarios for such evaluation. First, there is the scenario of success. The international efforts will protect the domestic institutions from corruption while simultaneously sending a message to international players that STP will be a more equal partner in oil development. Consequently, corruption will decrease, the economic benefits of oil will materialize, and STP will use its new-found natural resource to escape poverty. In this scenario, these efforts should be applauded and duplicated to the greatest extent possible.

Second, there is the scenario of failure. The international efforts will fall victim to a classic bait-and-switch; the São Tomean political elite know that the international community will not stop foreign corruption in order to help domestic corruption, so the elites agree to adopt a series of measures that it has no intention of honoring. Consequently, the ability for the political elites to corrupt themselves will increase, and the panoply of social ills associated with corruption will occur as the São Tomean government takes full advantage of its enhanced expertise and international standing to misappropriate its oil wealth. Poverty will increase, democratic institutions will weaken, and market liberalism will flounder. Under this scenario, we should condemn these international efforts for what they are, namely, wrong-headed and short-sighted idealistic efforts that hurt the very impoverished people they are designed to help.

The third scenario borrows language from the philosopher Thomas Nagel. It is the scenario of the moral blind alley.<sup>163</sup> Social forces beyond the international community's immediate control have created a situation where two contradictory alternatives are both morally problematic. In this scenario, leaving STP to the "sharks" of Nigeria and ERHC would potentially allow STP to lose its sovereign identity to Nigerian oil colonists and international oil companies. This is impermissible. On the other hand, intervening and strengthening STP's oil industry and credibility against Nigeria and ERHC will result in an STP more corrupt than ever before, transparency laws notwithstanding. This is also impermissible. In this scenario, one's evaluation of international efforts will hinge on choosing the lesser of these two evils:

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162. Bell & Faria, *supra* note 12, at 287.

163. See generally Nagel, *supra* note 19.

either allow Nigeria and ERHC to exercise control over STP's sovereign resources, or strengthen the São Tomean elites and thereby increase the frequency and extent of their corrupt behavior.

The first option is inconsistent with the current events in STP. Evidence suggests that the international transparency requirements from EITI and the ORML have been brushed aside in order to satisfy political exigencies.<sup>164</sup> The culture of corruption that exists in STP was not changed by joining EITI, or by passing the ORML. This is unsurprising; one does not change a country because, in the expression of the oil law drafters, "wine has been put in new bottles."<sup>165</sup> In other words, as the drafters of the oil law acknowledged, wholesale change does not occur simply because centuries of cultural trends are brought under a new, sophisticated legal regime transplanted from the West.

The second option, too, is a more extreme position than this Article supports. The international community did succeed in raising the cost of corruption through its efforts. At the very least, the government will have to work hard to subvert its new obligations, or will have to explicitly abandon them. Such a move would certainly increase scrutiny and create backlash. Corruption, of course, can be hidden in the "mysteries of the budget and the intricacies of the state contracting and procurement processes where the main body of waste and investment misallocation occurs."<sup>166</sup> However, that is still certainly more difficult. Additionally, leaving STP's oil reserves to be ravaged by foreign entities would create a dangerous precedent for other micro-states and their ambitious, larger neighbors. In this sense, the international efforts cannot be described as open-and-shut failures. There is still hope for some net positive outcome in the long-term, and the efforts rectified an injustice in the short-term.

Instead, the international organizations found themselves in a moral blind alley. Acting to strengthen STP and its governing elites will almost certainly increase the absolute level of corruption, whether measured in dollar amounts, number of officials affected, or scope of the corrupted behavior. The future may yield surprises, but if the past is any indicator, then the São Tomean moral economy of corruption will prevail and subvert the transparency efforts as creatively—and now, with more sophistication—as ever. But not acting would allow Nigeria to effectively re-colonize STP or oil companies to exercise STP's sovereign duties, for example. Resolving this dilemma depends on one's view of the negative consequences of both scenarios. For many, the effective death of the state is generally less palatable than the extension of corruption. Regardless of the resolution, these moral blind alleys require that we confront a

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164. SEIBERT, *supra* note 2, at 386–87. For example, Menezes appointed an ERHC shareholder to the Joint Ministerial Council that oversees the bidding for the JDZ's remaining blocks. This is in direct violation of the law.

165. Bell & Faria, *supra* note 12, at 287.

166. Heller, *supra* note 15, at 30.

very stark view of the world, and of the consequences of even well-intentioned international anti-corruption measures.

This Article has told a story and made two arguments. The story is of São Tomé e Príncipe, a country invented by the Portuguese as a commercial venture that now faces the transition from “unviable state” to “petro-state.”<sup>167</sup> In that transition, this firm-state, with its culture of a moral economy of corruption, has sought international assistance in building its administrative state and shoring up its international credibility in order to gain more control over São Tomean oil reserves. International development institutions have delivered; STP now has both an increasingly developed administrative state, and more credibility in international oil negotiations.

The Article’s first argument is this: while these international organizations intended, in part, to *decrease* the level of corruption in STP, they will have exactly the opposite effect. Political elites in STP will use their newfound administrative expertise for its long-standing mission of rent-extraction. And it will use its increased credibility to capture a larger piece of the resource pie vis-à-vis international competitors than it otherwise could have done. Nonetheless, the second argument is more reassuring for law and development efforts. Any condemnation of these efforts is an implicit endorsement of inaction. In STP, that inaction would have led to the continued pilfering of São Tomean resources, and potentially the de facto loss of São Tomean sovereignty. Thus, any attack of law and development efforts in STP must account for this other morally dubious course of action. That dilemma is the crux of the moral blind alley that STP and potentially other development cases present.

That is not to say that there is not a third way, a way that corruption can be contained and sovereignty reestablished. Such a path may exist. If it does, it has yet to surface in STP.

This research also leaves additional questions. Foremost among them is the need to watch STP’s development, particularly in terms of how the government makes use of what expertise and prominence it has received since international intervention in its administration of oil. Also, questions about how these international interventions affect the function of multi-party democracy are central to understanding the consequences of the interventions themselves. Finally, it will be important to watch how players in the international community respond to this and other instances of moral blind alleys, be they in oil transparency or any other area. Here, the STP example leaves as many questions as it does answers.

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167. Frynas et al., *supra* note 24.

