



ENERGY IN THE AMERICAS: CRITICAL REFLECTIONS ON ENERGY AND HISTORY

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The Neoliberal Transformation of Colombia's Energy Sector and Some Implications for Democratization in the Post-conflict Period

Dermot O'Connor and Juan Pablo Bohórquez Montoya

Neoliberal reforms have been implemented across the Americas through new constitutionalist practices of political and economic restructuring designed to open peripheral economies to foreign investment. While neoliberal reforms have been implemented incrementally in various sectors of Colombia's economy since the early 1990s following the adoption of a new constitution,¹ reforms to the energy sector (oil, gas, coal, electricity) came relatively late in comparison to other Latin American countries (see Heidrich's chapter in this volume). And even as some countries such as Argentina, Mexico, and Peru have taken measures to protect energy commodities from market forces by treating them as common goods, Colombia has deepened its commitment to neoliberal restructuring. Since the early 2000s, multinational companies, many headquartered in Canada, are increasingly playing a role in the development of oil and gas extraction and pipeline construction projects in Colombia.² Meanwhile Colombian governments have partially privatized the national petroleum company,

Ecopetrol, invited foreign investment in hydroelectricity megaprojects, and cut royalty rates on the extraction of subsoil resources.

The ideological justifications for this investment and development strategy—ostensibly shared by Colombian lawmakers and international allies—is that foreign investment and trade provide solutions to conflict, inequality, and poverty.³ In theory, by liberalizing the energy sector, the Colombian state, international investors, and even local residents will all benefit from the privatization and expansion of energy production—through enhanced state revenues, profits, and trickle-down benefits in the form of local employment and investment. Neoliberal international governance discourse on energy development promotes the adoption of ethical norms by emphasizing best practices in corporate and social responsibility on the part of multinational corporations.⁴ However, such norms are based on free-market ideology that assumes energy resources should be commoditized as market goods. The neoliberal ideology also assumes that corporations will voluntarily act in responsible, ethical, and sustainable ways. Domestically, Colombia's legal codes, and even the Constitution itself, have been reformed in order to promote foreign investment and the commoditization of the energy sector.

Indigenous Peoples, Afro-Colombian communities, artisanal miners, peasant farmers, and residents of rural municipalities are now faced with the social and environmental impacts of large-scale energy resource development fuelled by private and public foreign investment.⁵ Mining megaprojects, hydroelectric dams, and extensive pipelines have been implemented by outsiders with the support of national government agencies that may not fully appreciate local or rural concerns.⁶ Despite the promise of economic growth that could accompany resource extraction, local economic and social development has been stunted, while energy zones have been plagued by political conflict, violence, and economic inequality.⁷ This has occurred despite provisions within Colombia's 1991 Constitution that provide some recognition of minority rights. The commitment to market ideology—involving rent-seeking by the state, power struggles by local elites, and profit-seeking on the part of foreign and domestic firms—has proven more powerful than the constitutional protections for human rights. The development strategy based on foreign-led economic growth in the energy and mining sectors now threatens to infringe upon the rights

of subaltern groups and the livelihoods of communities. The post-conflict moment presents opportunities for both peace and democratization of the economy including the energy sector, but without substantial reforms to the neoliberal order and the market-based energy development strategy, these opportunities may be lost.

In this chapter, we examine how new constitutional reforms have been implemented in Colombia to promote extractive resource development. We look at the consequences of these reforms and the ensuing expansion of energy production for Colombian social movements. We also examine the prospects for a more democratic and inclusive approach to energy production in the post-conflict period following the 2016 peace accord between the Colombian government and the FARC (the Revolutionary Armed Forces of Colombia). We begin with a brief conceptual discussion that situates energy policy within the broader political economy. We then describe how the new constitutionalism was used as a means to institute neoliberal reforms in Colombia, particularly in the energy sector, and its accompanying effects on rural peoples, including Indigenous and Afro-Colombian communities. We argue that, despite formal recognition of Indigenous and minority rights, new constitutionalist reforms implemented by the Colombian state have actually functioned to promote foreign-based resource accumulation to the exclusion of local communities through forced displacement, state-led violence, and political marginalization. The contradictory nature of the new constitutionalism has put economic development at odds with democracy. The chapter continues with a brief look at the emergence of popular demands for the democratization of the energy sector from Colombian social movements. We finish by asking if the opportunities opened up by the peace process will lead to more democratic inclusion in the energy sector.

Energy Commodities as Common, Market, or Political Goods

As Pablo Heidrich argues in his chapter in this volume, energy policy must be understood within the broader context of national development strategy. Instead of the one-dimensional axis of states versus markets present in much of the literature on resource nationalism, Heidrich proposes to

analyze a state's approach to energy policy along a continuum linking the wider development goals to the relative importance of the energy sector in the overall economy. As such, he proposes that within some states, energy policies reflect a view of "energy" (oil, electricity, gas, coal) as marketable commodities—that is, as market goods. In other cases, energy commodities are viewed as special types of products, and that energy must be developed to service the common good; or, alternatively, the energy sector and energy commodities are viewed as political goods that can support the elaboration of an alternative political and social order (or maintain the power of elites within the status quo). For Heidrich, the transition from a view of energy as a common good (ECG) to the view of energy as a market good (EMG) occurred in Colombia between 2002 and 2005. It was then that the Colombian state cut taxes and royalties to promote investment in its energy sector alongside partial privatization of Ecopetrol, the national oil company, along with state subsidies for the private construction of infrastructure to promote exports such as pipelines, terminals, and ports.

Heidrich's framework is useful in that it situates the energy sector within the broader developmental context of a given Latin American state. In that sense, the typology of energy strategies provides conceptual clarity to better analyze how and why a particular approach to energy policy may have occurred at a given time, in light of both ideological and material factors within the domestic context. Thus, it explains, in theory, how a state could liberalize some sectors where it lacks domestic capital endowments or experience, for example, or where there is strong demand internationally for a commodity. The framework also explains how a state could still buttress its control over another sector—say, electricity or natural gas—where the national utility is better served by retaining monopolies over production or where export markets for the particular commodity are constrained.

It is important to keep in mind, however, as our analysis of reforms in Colombia's energy sector suggests, that external forces including multinational corporations, powerful states, and multilateral organizations impose certain constraints on the range of possibilities in domestic development policy-making, including in the energy sector. These constraints shape how domestic forces—state agencies, private energy firms, and social movements—interact with one another in the propagation,

implementation, and contestation of energy policy. This interplay between the domestic and international, public and private, state and civil society has shaped the transformation of energy policy in Colombia. From the approach that characterized the era of import substitution industrialization (ISI) when the development strategy required energy as a common good (or at least a political good that served the interests of the state development status quo), following a series of neoliberal reforms, energy commodities are now viewed as market goods. This has prompted resistance and calls for a renewed focus on the environment and on political, cultural, and social rights. The energy sector has come to the fore in a broader process of political contestation that has coincided with the end of decades of conflict over land and resources. Now that a peace process is formally underway, it remains to be seen whether renewed calls for energy to be put in service of the common good will be submerged within the post-conflict order.

Neoliberalism, the New Constitutionalism, and Colombia's Fractured State

Economic crises and commodity price fluctuations in the 1970s led to a series of multilateral economic arrangements and free trade agreements collectively referred to as “neoliberalism,” which served to strengthen North-South economic ties within the western hemisphere. According to David Harvey, the 1970s represented a crisis of over-accumulation of capital by corporations. At the so-called periphery of the world economy, the profitability of capital was at risk if it could not find viable outlets for investment:

Low corporate tax regimes (set up to attract foreign investment), state-funded infrastructures, easy access to natural resources, a facilitative regulatory environment, a good business climate, all of these elements had to be supplied if the capital surpluses were to be profitably absorbed. If all of this meant that people had to be dispossessed of their assets and their birthrights then so be it. And this is what neoliberalization accomplished. Behind this, institutional

arrangements had to be constructed to facilitate global financial transactions and to guarantee their security. This required the deployment of hegemonic state powers backed by military, political and economic coercive force to secure the international financial regime. US imperial power backed—in collusion with Europe and Japan—the powers of the IMF, the WTO, the World Bank, the International Bank of Settlements and a range of other institutions that would regulate the global system to ensure an ever-expanding terrain of profitable absorption of the ever-increasing quantities of surplus capital produced.⁸

Neoliberalism would have drastic consequences for Colombia's agrarian working classes, peasant farmers, Indigenous Peoples, and Afro-Colombian communities. In the 1980s and '90s, Colombian social movements expressed their demands for land reforms and better wage and working conditions in a context of deepening armed conflict over land and territory and the consolidation of the power of paramilitary groups. The movement would be devastated by the very forces it sought to oppose. Political mobilization through left-wing political parties in the 1980s ended with the slaughter of the Colombian Left: four presidential candidates were assassinated, three thousand party activists were murdered, and tens of thousands of supporters of the Unión Patriótica were displaced, made to disappear, or killed.⁹

In 1991, representatives from various sectors of Colombian society deliberated within a National Constituent Assembly that proposed mechanisms to resolve the prolonged internal conflict. The process led to the passing of the 1991 Constitution, which contained the following elements: consolidation of the capitalist economic system; the democratic organization of society; limited constitutional power for the people; a rights-based social state that limited the capacity for state intervention in the economy; and guarantees of fundamental social, economic, and cultural rights.¹⁰ The consecration of a series of rights and guarantees was ostensibly aimed at the inclusion of Indigenous Peoples, Afro-Colombians, and women in the political system based on the concept of formal equality. While the 1991 Constitution formally recognized citizenship rights for

subaltern groups, they were never fully realized in the actual application of the law. During deliberations at the National Constituent Assembly, and already in the formulation of the constitutional norms, *campesino* demands were subsumed into those of other sectors, while the demands of Indigenous and Afro-Colombian communities were treated as separate themes, despite the shared interest in access to land, vulnerability to violence in resource-extraction zones, and the need for inclusion in economic development.

It must be noted that this constitutional model was founded on an implicit assumption that the restructuring of the Colombian economy would unfold according to neoliberal principles. The National Constituent Assembly took place at a time when the Colombian and wider Latin American economies were embroiled in greater political and economic interdependency with developed nations through globalization.¹¹ The 1991 Constitution formally enshrined the status of the capitalist economy and the rights of property owners. It was thus what Stephen Gill calls a case of “new constitutionalism” whereby neoliberal reforms designed to open the economy up to international integration are institutionalized within the constitutional and legal frameworks of the national state.¹² Indeed, it was not long after the 1991 Constitution was passed that waves of privatization began, a market-based land reform program was proposed, and reforms to enable foreign access to mining and mineral concessions were enacted,¹³ in part with assistance from Canadian legal experts and corporate mining interests.¹⁴

In 2003, after more than fifty years of operations as a state-owned oil producer and refiner—albeit one that relied heavily on partnerships with British, American, and Canadian firms for exploration, transportation, and marketing—Ecopetrol was restructured and re-established as a publicly traded corporation (although the state initially held 100 per cent of its shares). This was done in order to rationalize operations and enhance competitiveness internationally.¹⁵ After restructuring, Ecopetrol doubled production from 399,000 barrels of crude oil per day in 2007 to 755,400 barrels per day in 2014.¹⁶ Following price depressions in the oil sector in recent years, Ecopetrol has focused on sustaining operations, exploring for new deposits, and seeking international investors. In the petroleum industry, foreign direct investment in Colombia went from US\$135

million in 1994 to US\$5.4 billion in 2012. In the mining sector (including coal), foreign direct investment in 1994 was US\$638 million, but it went up to US\$3.01 billion by 2009.¹⁷ As the numbers show, new constitutional reforms in Colombia were effectively designed to institute a neoliberal restructuring of state and society while opening the country to foreign investment in mining and energy production.

The implications for Colombian citizens living within resource extraction zones have been profound and violent: large-scale land grabs and megaprojects have entailed the forced displacement of millions of rural people.¹⁸ In addition to violence and human rights violations, displaced persons have lost more than seven million hectares of property.¹⁹ These issues have been studied in the social scientific literature on the causes and conditions of the war in Colombia, the social movements that have participated in the peace process, and the impact of constitutional change on these social movements.²⁰ This context underlines the inherently violent nature of state-led attempts to promote neoliberal development in Colombia. But it also signals the contradictory nature of constitutional reforms that formally recognize minority rights but fail to prevent the violation of these rights in favour of foreign investment and the appropriation of profits in the national energy sector.

Neoliberal Reforms in Colombia's Energy Sector and Effects on Indigenous Territories

While neoliberal reforms have had wide-reaching implications for Colombian state and society, within the energy sector these reforms have brought foreign mining and energy companies into the traditional territories and domains of Indigenous Peoples, creating potential conflicts between state policy and development priorities, resource development, and minority rights.²¹ The terms “rural,” “*campesino*,” or “Indigenous” as used here refer to particular identity groups or sectors of Colombian society whose constituents collectively identify themselves as distinct in their way of life and culture, and who participate in subsistence or traditional economic activities and depend upon access to energy resources, water, and public lands for production and cultural reproduction. Thirty per cent of Colombia's population (or about sixteen million people) is based

in rural areas, many of whom are Indigenous or Afro-Colombian.²² Afro-Colombians number around eight million, and between 80 and 90 per cent of Afro-Colombians live in rural areas.²³ There are 658,000 Indigenous people in Colombia living on 754 reserves occupying 30 million hectares of land.²⁴ Of the remaining rural population, many peasants (*campesinos*) are of mixed ethnic ancestry, reflecting Colombia's European, Indigenous, and African heritage.

Collective access to land and control over traditional territories are fundamental for Indigenous and rural communities and the social movements and groups who represent them. As such, so are the laws and policies that regulate ownership and control of subsoil resources and the use, control, and transfer of title for both subsoil and surface access. Article 246 of the 1991 Constitution recognizes the rights of Indigenous Peoples to administrative and jurisdictional control over their traditional territories, and it includes language around the preservation of natural resources (article 330). Permission is granted to extract natural resources only on the condition that extractive activities do not infringe upon or violate the social, cultural, and economic integrity of Indigenous communities. The Colombian state's adherence in 1991 to the International Labour Organization's (ILO) Convention 169 of 1989 regarding the rights of Indigenous and Tribal Peoples appeared to strengthen the position of these groups within Colombian society. The convention established the obligation to prior consultation for any plans to modify, implement, or expedite administrative and legal measures concerning recognized Indigenous Peoples, and likewise, it required consultation prior to the approval of projects, exploratory activity, or mining or energy projects within their territories. As the convention has been implemented in Colombia, the right to participate in prior consultation is legally recognized for Indigenous and Afro-Colombian communities, but the same recognition is not extended to residents of rural communities who do not explicitly self-identify as Indigenous or Afro-Colombian.

Nevertheless, the state and multinational corporations have invoked other constitutional and legal provisions with the intent of implementing mining and energy projects in traditional Indigenous territories. There are a series of articles in the Colombian Constitution, in addition to various legal precedents, that contradict and serve to undermine the rights to

consultation. Private property (individual, corporate, and state-owned) is one of the foundations of the Constitution, while collective property (such as Indigenous territories) has secondary importance (article 58). Similarly, property and “other acquired rights” must yield to the public or social interest in cases of resource development, and this social interest refers generally to the plans and development objectives of the Colombian state (articles 80 and 150).

The state is considered in Colombian constitutional law to be the owner of the subsoil resources and non-renewable energy resources (article 332). This power is amplified in Law 685, passed in 2001 and known as the “Mining Code,” which stipulates that mineral resources both in the soil and subsoil are the property of the state, and declares that the mining industry is a public utility and in the public interest as per article 80 of the Constitution. While this might appear to give mineral resources the status of common goods, in effect it makes them political goods whereby the state can grant regulatory approval for large-scale, foreign-owned resource extraction over and against the protests or interests of surface occupants, whether these might be landowners, *campesinos*, or Indigenous community occupants. The political utility of these goods for political elites in Colombia depends on their status as market goods, consistent with neoliberal ideology.

The culmination of this series of laws and policies that have undermined the constitutional recognition of Indigenous rights is Presidential Directive No. 10 of 2013, known as “Guide for Prior Consultation.” This policy contradicts the provisions of the ILO’s Convention 169 by reducing the consultation process to a simple administrative act and authorizing the president to suspend the need for consent (from Afro-Colombian and Indigenous communities). The intent and effect of these legal and administrative measures has been to frame opposition and resistance to mining and energy projects as disputes of a normative nature. The potential confrontation between energy development and Indigenous rights reveals the contradiction between the neoliberal development project institutionalized in Colombia’s Constitution and popular demands to preserve and protect alternative ways of life and traditional economic activities.

State Development Planning in Indigenous Territories

In *Prosperidad para todos* (Prosperity for all), the national development plan released by President Juan Manuel Santos during his second term, one of the country's motors of economic growth is mining development and energy expansion.²⁵ This development strategy calls for the implementation of regulatory reforms to clarify the jurisdiction of various regulatory bodies, the establishment of a national agency to oversee energy and mining, and adherence to the highest technical, social, and environmental standards.²⁶ However, the emphasis on standards implies that the mining and the energy sector must be consistent with the international legal and institutional order as specified in various free trade agreements signed by the Colombian state and as outlined by the World Trade Organization's Agreements on Dispute Settlement, among others. These norms favour the rights of investors, reduce barriers to capital mobility, and tend to rely on voluntary commitments to standards of corporate and social responsibility. In other words, the energy development plan, while using language implying that energy development will be in the public interest, actually deepens commoditization of Colombian energy resources based on neoliberal ideological principles. Although the Colombian state has signed these agreements and ostensibly backs the neoliberal development model, this does not mean that there is societal consensus around the desirability or adequacy of this model. On the contrary, social and political conflict within Colombia and open opposition to neoliberal reforms have been expressed by social movements, particularly those representing Indigenous Peoples, Afro-Colombians, and small-scale agrarian producers in areas where resource development comes into conflict with traditional Indigenous land use, agricultural production, or wildlife reserves.

The neoliberal model is generated transnationally and appears to be imposed on Colombia from outside; however, neoliberal reforms have been adopted by the national state and applied locally in a context in which this state (or at least its political class) is often at odds over the direction of economic development with its subaltern populations. Since many of these sectors of society rely on access to and control over ancestral territories for their economic, social, and cultural survival, and due to the

large-scale requirements of space and resources for energy development, there is a great potential for localized conflict. Indeed, from the perspective of those who feel their way of life and territorial integrity is threatened by resource development, the adoption of neoliberal reforms designed to open up territories for mining and energy projects would appear to be a case of institutionalized accumulation by dispossession.²⁷

The National Indigenous Organization of Colombia (Organización Nacional Indígena de Colombia, or ONIC), in a working paper presented to the Agrarian Summit (Cumbre Agraria), reported that in the year 2012 there were 501 mineral titles granted within Indigenous reserves, 2,008 mineral title applications, and at least 419 areas made available for hydrocarbon extraction.²⁸ According to the ONIC, the government granted mineral titles to 242,317 hectares of land within Indigenous reserves—twenty-seven reserves had 50 per cent of their land under title, and fourteen reserves had all of their land titled for resource development. The result has been “the disintegration and displacement of the communities,” all of which has taken place without “consultation or consent of the Indigenous peoples and communities.”²⁹

It is worth looking in more depth at some examples. In the department of Guajira there is an ongoing dispute between state authorities and the Wayúu de Jamiche community over planned displacement of the community due to the operations of the Cerrejón coal mining company. The activities of this company, according to ONIC, have already caused the destruction and despoilment of natural resources upon which this Atlantic coastal community depends for its subsistence.³⁰ Traditional Indigenous land use has become impossible in the area as the landscape, once used for cultivation, habitation, and hunting, has been transformed by large-scale strip mining for coal. The mine has caused the forced displacement of the Waayúu and now threatens to destroy their cultural integrity, just as it has destroyed the flora and fauna in their traditional homeland.³¹

A similar situation has occurred for the U’wa as a result of the activities of Oxy (the Occidental Petroleum Company), whose exploratory activities and exploitation of oil and gas wells have been going on within U’wa traditional territory since 1992. The result has been significant destruction of natural resources and the attendant impacts to the community’s culture and way of life.³² The dispute has been taken to the Inter-American

Commission on Human Rights based on the U'wa claims that the norms of free and prior consultation were not followed, in violation of Colombian law and the ILO's Convention 169. Colombia's Constitutional Court sided with the U'wa position and ordered the Colombian state to carry out consultation according to national law and international treaties. Nevertheless, the state's Administrative Tribunal blocked the consultation process, siding with the executive preference to ignore consultation.

As these examples indicate, the way mining and energy projects have been implemented in Colombia implies a grave threat to the cultural, social, and economic integrity of Indigenous Peoples and their territories and violates existing constitutional rights and international treaties and norms. And yet the Colombian state has tended to use its legal and political power to side with energy firms in disputes. Indigenous Peoples, Afro-Colombians, and other rural communities have been obliged to defend themselves and their territories against real and potential infringements of rights through organized resistance. Political actions have included media campaigns in alternative forums, the use of websites, and alliances with international organizations such as *Vía Campesina*. Direct actions have also been taken; these include protests, action within the national and international legal system, strikes, and even announcements of plans for collective suicides to protest cultural and territorial destruction.³³

Even though the peace process to end more than fifty years of civil war is now underway, and the formal end to hostilities is likely to hold, international awareness of the ongoing social, cultural, and political conflict over resource development is still necessary. Unsettled issues over territorial rights could threaten the peace process, on the one hand. On the other, the concerns of subaltern communities could be submerged in the push for broader societal consensus around the neoliberal model. It is likely that with a formal end to hostilities, the pattern of development in the minerals and energy sectors will continue and foreign investment will grow.

The Colombian state, by adopting a development model based on externally oriented growth (energy as a market good), has transformed its function from protector of its national territory and guarantor of security to its citizens to that of protector of capital. The result has been the cession of aspects of its national sovereignty, particularly over territorial

jurisdiction and resource development, in favour of international norms that empower foreign capital by removing barriers to entry and access to resources, even in places once set aside for traditional Indigenous cultural and economic activities. Although neoliberal development has transformed the state's traditional functions, as Michael Mann points out, the state does not disappear, nor does it become obsolete—rather, it continues to promote the material conditions that underpin the social order but that look to initiate economic growth dependent on global economic integration rather than on the promotion of welfare.³⁴ The effects of the commoditization of energy are felt most powerfully in regional or local settings, but there is a gap between regulation, profit appropriation, and the experience of negative environmental, social, and cultural effects. As such, resistance to energy-development-related displacement falls outside the institutions and boundaries of formal democracy. In a state that enacts policies that violate the Constitution in accordance with the exigencies of neoliberal capitalism, in part through courting foreign investment in energy to support the established political order, domestic social movements, too, are forced to look outside and beyond the state for allies. These allies include international human rights organizations, international governance institutions, and academics. In other cases, they have included illegal armed groups, insurgents, or even drug traffickers, often to the detriment of local working people.

Part of the strategy to promote ethical approaches to mining within neoliberal thinking is to hold companies accountable to norms of corporate social responsibility (CSR) through measures such as voluntary compliance.³⁵ This discourse has predominated within international development circles, but its effectiveness is suspect. Writing in 2006, Scott Pearce examined the prospects for CSR on the part of Canadian firms in Colombia and concluded that

As it is now, Canadian oil investment in Colombia stands a high risk of contributing to human rights violations and fuelling armed conflict. Although some companies have made progress in the area of corporate social responsibility, given the nature of the conflict in Colombia it is difficult, and at times impossible, to pursue oil development with-

out contributing to human rights violations. That contribution occurs at three levels: revenue gained from oil investment is frequently diverted to either the guerrillas or the paramilitaries, and used to buy more arms and thereby escalate the conflict; oil development acts as a catalyst for intensified fighting between rival armed groups—and the rural communities that are the principal casualties in this war over resources are rarely given the chance to decide for themselves whether they approve of oil development in the first place; and foreign oil companies are complicit with a repressive security apparatus that targets communities and individuals considered to be standing in the way of development. Colombia's favourable investment climate—low taxes, low wages, privatization, easy access to land—has been won by silencing voices of dissent through violence and intimidation.³⁶

Clearly, during the armed conflict, foreign investment tended to aggravate conflict over territory and resources. However, in the post-conflict moment, there are possibilities for the democratization of energy and resource development. In concrete terms, this would involve more transparent and inclusive approaches to impact assessment and consultation, including opening up spaces for local participation in the development and regulatory process, ensuring respect for community/collective rights, providing access to expertise and information for communities, and committing to local self-determination over the broader process of resource development.³⁷ In the strongest possible terms, it would also imply that local and national governments and project proponents respect the right of Indigenous Peoples and other local communities to say no to resource development, in line with the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

Democratic approaches to natural resource development include a commitment to “free, prior and informed consent” for projects from local communities, community-based natural resource management, and even co-management of projects between communities and outside proponents.³⁸ These approaches take seriously the rights, identities, and

autonomy of local communities, as well as the potential for resource development that is inclusive, beneficial, and less destructive to the rights, culture, and ways of life of local residents and communities.

So where is the crux of the problem? Neoliberal approaches to CSR rely on the voluntary commitments of foreign firms to follow international norms. In a context where the state itself is lax in its enforcement of regulations around environmental and social protection, or where consultation is not required by law, energy firms have few incentives to participate in community-oriented development or to seek free, prior, and informed consent. Further, if the state is willing to authorize permits over and against local resistance, energy firms have little incentive to respond to the concerns of local people and would therefore be unlikely to halt development due to popular resistance. Voluntary norms of CSR are simply not enough; the national state must assert the rights of its citizens and ensure environmental, social, and cultural protections. In Colombia, the state demonstrated little commitment to democratic inclusion in the energy sector during the armed conflict. Rather, it sided with foreign investors and even paramilitaries to quash opposition. It appears that in the post-conflict order, state support for market-based neoliberal energy development will continue, and we can only hope that the violation of human rights and forced displacement will not.

This is not to say that it is inevitable that foreign investment in energy will aggravate violence and conflict in Colombia. To some degree, international attention on human rights in Colombia, the economic costs of the conflict, and the potential for greater economic development via energy commoditization and resource marketing probably contributed to the peace process in the last few years. This must be said with the caveat that, in some areas, the same focus on Colombian energy resources aggravated the local conditions for conflict in the first place. And these localized conflicts are likely to continue if the energy sector is not democratized. In this sense, the energy sector presents some possibilities and opportunities for more equitable and democratic forms of development. However, considering the marginalization and exclusion of subaltern groups by a state that uses energy commodities and foreign investment to further the political aims of the national elite, these opportunities are fraught with peril. The war might have ended but the neoliberal policies and new constitutional

reforms that propagated it, and arguably aggravated it, have not been substantially altered.

The Agrarian Summit: The Response/Proposal

While the armed conflict appears to be over, the social conflict between the Colombian state, subaltern groups, and resource development in the country has not been resolved. As such, the sustainability of the peace process could be threatened. Considering the fractured relationship between state and society, the incursion of multinational firms in Colombia's extractive industries deepens the gap between domestic politics and an increasingly transnational economy, exacerbating existing tensions between the state and marginalized groups. The effects felt by local people within traditional economies and cultural contexts include dislocation, political marginalization, and social, environmental, and productive upheaval.³⁹ Extractive resource-based development, imposed by outside forces in collusion with a contested domestic regime, has the potential to destroy existing social formations dependent on particular ecosystems and land tenure customs, resulting in the loss of locally situated knowledge and culture.⁴⁰

Colombian rural social movements—Indigenous Peoples, Afro-Colombians, and *campesinos*—have initiated a process of mobilization and an articulation of rights and interests known as the Cumbre-Agraria: Campesina, Étnica y Popular (Agrarian Summit: Peasant, Ethnic, and Popular). The movement has led two national strikes since 2013 and has formulated an organizational mandate and statement of objectives and demands. These are expressed around principles that affirm the autonomy of communities and call for new forms of self-governance to replace neoliberal development policies. This includes more concrete demands to reform existing legislation over territorial planning to empower Indigenous, Afro-Colombian, and *campesino* groups to shape governance and control the direction of energy development.⁴¹

The Agrarian Summit claims that none of the projects proposed within the territories of its constituent member groups, especially mining and energy projects, have been preceded by a process of prior consultation in any adequate sense.⁴² In many cases, no form of consultation with any local community representatives has taken place. Sometimes information

sessions are held to announce decisions that have already been made. In this way, the Colombian state regulates the activities of firms within the extractive sector operating in Indigenous territories through administrative actions and without popular consultation or consent, often in violation of norms, laws, and constitutional protections of the rights of local communities and Indigenous Peoples. Far too often the state is complicit in violent actions against local communities to implement large-scale resource-extraction projects.⁴³

In the face of this complex and dangerous tendency by the state to exploit power imbalances in the name of economic development and in violation of international norms and conventions, Colombian social movements are formulating public policy alternatives based on more inclusive participatory models of development. In addition, they are calling for the transformation of the decision-making processes in the energy sector based on a commitment to consultation and community engagement, heretofore absent from state practice.⁴⁴ In short, the Agrarian Summit demands that energy be viewed as a common good, and one that must be developed only with the informed consent of those who will live with the environmental, social, and cultural consequences of energy production. In this sense, the energy sector has become a contested terrain on which the future of Colombian democracy may be decided.

Through the Agrarian Summit, rural social movements are calling for a moratorium on resource development until the regulatory and consultation process is reformed.⁴⁵ A consequence of these demands would be the transformation of the property and territorial management regime with implications for land use, its regulation, and forms of transfer of rights, claims, and title. This would have direct implications for how resource and energy projects are approved, and it might alter the strategic calculus of those looking to invest in Colombian energy.

The political project of the Agrarian Summit is based on the idea that local communities in resource zones have the power and the right to define their own destiny and the future of the territories upon which they depend for their social, cultural, and economic activities. For cultures tied to subsistence from the local landscape and dependent upon the integrity of the soil, air, water, and forest, land cannot be reduced to the status of a commodity.⁴⁶ On the contrary, land is the source of life, it nourishes

vibrant cultures, and it is the guarantor of a community's future. The legal framework to support Indigenous claims to access and use land suitable for subsistence and traditional production—given the environmentally destructive nature of large-scale extractive projects—is a *sine qua non* for the survival of subaltern groups. The foundation of agrarian social movements in Colombia is the land itself. Their political project is therefore based on securing formal recognition of land rights in law, but also in practice. Enacting provisions to protect Indigenous, collective, and ancestral rights to land would imply a transformation in how land and property is viewed in Colombia, how laws are enforced, and how alternative modes of living are understood within the liberal capitalist order.

Effective legal enforcement of community rights would require the reorientation of the state's development policy toward the provision of common goods rather than private or individual accumulation. This reorientation could have potentially radical implications for the state and the place of property within the political and legal order.⁴⁷ Energy would again be viewed as a component of the common good, but not necessarily via state monopolies over ownership and decision-making. In other words, energy would be a political good destined to promote the democratization of the Colombian state and society. The Agrarian Summit, by disputing the social function of the state and its regulation of property within Colombia, is also calling into question the developmental model of the state within the new constitutional, neoliberal order. At the heart of its demands is a vision of rural space as a foundation for society and culture based on growth, cultivation, and environmental stewardship, which support various forms of life, modes of production, and cultural geographies. This is in stark contrast to a vision of the economy based on state-facilitated, multinational-led extraction and private appropriation of energy commodities, and the attendant environmental, social, and cultural destruction.

Democratic Energy Development?

The armistice is a positive development for the Colombian state, society, and international investors, but underlying tensions over territory, competing land uses, and disputes over the future of the energy sector have

not been fully resolved. Considering the fractured state–civil society relationship; the ongoing potential for human rights violations through extra-judicial political actions to promote and facilitate resource extraction; and the absence of the rule of law and enforcement of consultation norms, there is a real danger, despite the promises of the peace process, that the potential for social conflict in Colombia’s energy sector will remain. This is especially likely because the formal peace process will probably incite further foreign investment. There is thus a clear moral hazard for multinational corporations looking to invest in Colombia’s energy sector, despite, and in some senses because of, the formal peace process. The war is over, but the neoliberal orientation of the new constitutional order has not been fundamentally altered, and it is this order that will continue to draw foreign investors into the territory of Indigenous Peoples, Afro-Colombians, and traditional agricultural producers.

In this context, foreign investors, international human rights advocates, and Colombian social movements have opened some space for dialogue and alternative development initiatives that could have some benefits for local communities. However, without a fundamental modification of the state’s approach to consultation, regulation, and approvals, any further democratization of the energy sector will be stunted. Such a fundamental modification would require a shift from the view of energy as a market good toward a view of energy as a common good. However, in contrast to the period of ISI, the common good would not be conceived of as benefiting the state, but rather benefiting society, particularly those sectors that are most vulnerable.

NOTES

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 - 26 Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2010–2014*, 289.
 - 27 David Harvey, “The New Imperialism: Accumulation by Dispossession,” *Socialist Register*, no. 40 (2004): 63–87.
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