

Rights in a State Of Exception. The Deadly Colonial Ethics of Voluntary Corporate Responsibility for Human Rights

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Abstract

It is widely accepted that voluntary corporate responsibility for human rights is a means of continuing “business-as-usual”. Corporate Social Responsibility (CSR) has been denounced as “whitewash”, with little effect in practice. I claim here that voluntary CSR is far *worse* than “whitewash”: it actively bolsters corporate impunity by rendering the violence of development illegible and equating resistance with irrationality or subversion. It thrives upon the state of exception that provides the permissive context of human rights violations. I make this argument by returning to the birthplace of corporate responsibility for human rights: BP’s Colombian oilfields, combining ethnographic research with trenchant critique of the colonial myths informing mainstream discussion of business and human rights. The UN has responded to the potential of voluntary CSR to detract from abuses by emphasising the importance of judicial remedy. What the analysis here reveals is how voluntary measures and provision for judicial remedy may work in opposite directions.

Key words

Corporate responsibility; human rights; impunity

Resumen

La responsabilidad social corporativa (RSC) ha sido acusada de ser una mera fachada. Aduzco aquí que es peor aún: refuerza activamente la impunidad empresarial, ya que rinde ininteligible la violencia del desarrollo y tilda toda resistencia de irracional o subversiva. Se alimenta de un estado de excepción que proporciona un contexto propicio a las violaciones de derechos humanos (DDHH). Regreso al origen de la responsabilidad corporativa respecto a los DDHH –los campos petrolíferos

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colombianos de BP–, para combinar la investigación etnográfica con una crítica a la mitología colonial que da forma al debate sobre empresas y DDHH. La ONU ha reconocido que la RSC voluntaria puede ocultar los abusos, subrayando la importancia del recurso judicial cuando las medidas voluntarias no alcanzan. No obstante, este artículo subraya que las medidas voluntarias y jurídicas pueden servir distintos fines.

Palabras claves

Responsabilidad empresarial; derechos humanos; impunidad

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1. Introduction

Sir Geoffrey Chandler, a retired Director of Shell International and founder of Amnesty International UK's Human Rights and Business Group, had little success when he first began to invite companies to discuss human rights at the beginning of the 1990s. Human rights "were for governments, not for companies" came the unanimous response (Chandler 2007). Just a few years later, corporate attitudes had undergone a remarkable about-face. By the turn of the twenty-first century, transnational corporations in every sector were signing up to human rights codes of conduct and parroting what was now common sense: recognising and respecting human rights was not only morally correct, it was also good business sense. In 1996, after a media scandal over its complicity in the prosecution and execution of leaders of the Movement for the Survival of the Ogoni People in the Niger Delta, Shell became the first corporation to accept Chandler's invitation. In early 1997, BP followed suit, establishing a process of dialogue with British international development NGOs after a similar outcry over a campaign of threats and selective killings against peasant leaders, environmental activists and trade unionists in Colombia. "Reputational disaster provided the stimulus", as Chandler put it. "Shell's experience in Nigeria and, later, BP's in Colombia provided us with a platform and a breakthrough" (Chandler 2007, p. 2).

It is now widely accepted that the emergence of voluntary corporate responsibility in the 1990's was a means of continuing "business as usual" and avoiding both litigation and the legal regulation advocated by many campaigners (see Shamir 2004a, 2004b, p. 676). Corporate responsibility has been widely denounced as "whitewash", a "mask" or a "myth", which has little effect in practice (Madeley 1999, Christian Aid 2004, Doane 2005, Frynas 2005). Campaigners, and more recently the United Nations, have responded by emphasising the importance of judicial remedy for violations, in addition to voluntary mechanisms to encourage corporations to respect and protect human rights (United Nations Office of the High Commissioner for Human Rights 2011, pp. 28-35). More recently, moves have been made toward a binding human rights mechanism for transnational corporations.¹ Corporations, so the argument goes, should pay due diligence to human rights of their own accord. They must, however, be held to account and make remedy to victims when they fail to do so.

In this article, I claim that voluntary corporate responsibility is far worse than "whitewash": it actively bolsters the impunity enjoyed by corporations complicit in human rights abuses. To denounce corporate "whitewash" is only to scratch the surface of appearances. It is to call attention to the ugly reality covered, but ultimately unaltered, by a veneer of rights talk. What this misses is the economic, legal and ethical framework within which corporations have come to recognise human rights – a framework that is fortified by voluntary corporate responsibility. The core contribution of this article is show how the discourse of corporate responsibility for human rights renders the violence of development illegible, normalises plunder and equates resistance with irrationality or subversion. Rather than mitigating against human rights abuse, it serves to justify the repression of Others who oppose "development" and "progress".

In order to make this case against voluntary corporate responsibility, it is necessary to say something about human rights. A number of scholars have argued that the discourse of human rights is colonial by nature. "[R]ights", cautions Walter Mignolo, "is a concept responding to imperial necessity" (Mignolo 2012, p. 49). Human rights rely upon a specific concept of the human that was an invention of modern colonialism: "the ideal of being Christian, the ideal man and – by the end of the Eighteenth century – the idea of citizen and of democracy" (Mignolo 2012, p. 48). From the time of the Conquest, international law – including ideas of "natural right"

¹ For a discussion, see Khoury and Whyte 2015.

and “just war” – was elaborated to justify the forced subjugation of indigenous peoples who did not accept the Catholic Church or enter into commerce on the terms of the *conquistadores* (see, for example, Anghie 2005, pp. 13-31). Yet histories of rights are also histories of struggle. “The foundational stages of human rights theory and history”, as José-Manuel Barreto reminds us, “are to be found not only in the Enlightenment, but even before that, in resistance to the display of the capacity for destruction of imperialism – the dark side or the other constitutive pillar of modernity” (Barreto 2012, p. 21).

In my own writing, I have approached human rights as concepts in struggle (see, in particular, Coleman 2015b). My work on this topic comes out of longstanding engagement with movements that use human rights in decolonial and anti-capitalist resistance.² From that perspective, I have emphasised that the politics of human rights depends upon what forms of violence are made visible and contested by demands for rights and –relatedly – on what sort of “human” is recognised as the subject of rights (e.g. Coleman 2015b, 1070-1072). Appeals to rights have a double valence. They can be linked to subversive strategies of resistance, or yoked to existing structures of power. With this in mind, what needs to be examined is *how* human rights became incorporated into voluntary corporate responsibility. Who were the humans recognised as subjects of human rights? How were human rights configured in terms of a particular set of problems, amenable to solutions that could be promoted by corporations? Crucially, how did this differ from the problems identified by social movements appealing to rights at companies’ sites of operation?

The standard account of corporate recognition of human rights as a response to protest is the product of a deeply colonial way of seeing. Transnational campaigns are presented as transmission belts for the struggles of dispossessed constituencies at companies’ sites of operation. Everything of significance (the protests, the media scandals) happens “here” (Europe and the US), on behalf of Others elsewhere. Human rights are approached as something abstract that a corporation can simply respect and protect. While some “here” disregard human rights or are co-opted into corporate agendas, cosmopolitan activists demand that corporations recognise the rights of those Others. Struggles at companies’ sites of operation are bracketed out. As a result, we miss the profound discontinuity between those struggles and the demands of transnational activists that corporations recognise “human rights”.

For activists at companies’ sites of operation, the demand is rarely that corporations simply respect human rights. Rather, it is the economic model itself that is called into question (Coleman 2015b, 1070-1072, Rojas-Páez 2017). Across much of the post-colonial world, the dominant mode of integration into global markets has been what is sometimes referred to as the “extractive-export model” – or *extractivismo* (extractivism) in Latin American critical thought. Extractivism encompasses not only oil extraction and large-scale mining, but the full gamut of industries that appropriate nature for the accumulation of capital (such as big dams generating hydroelectricity for other parts of the world, or agribusiness producing cash crops for export).³ In continuity with the export enclaves of the colonial era, the bulk of the profits of extractivism go to foreign investors. Local people are a source of hyper-exploitable labour or surplus populations to be displaced. Allegations of both corporate and state complicity in forced displacement and murder have become part and parcel of the extractive-export model. Across the Global South, activists contesting extractivism now constitute the majority of victims of selective assassination and forced ‘disappearance’ (see, for example, Rodríguez Garavito 2016). It is significant then that corporate responsibility for human rights was pioneered within the extractive sector.

² For a detailed reflection on the ethnographic engagement with resistance movements that informs this article, see Coleman 2015a.

³ For a discussion, see Grigera and Álvarez 2013.

The analysis here seeks to rectify the colonialism of standard accounts of corporate recognition of human rights by tracing the trajectory of peasant resistance against BP's Colombian oilfields in the late 1990s. This struggle was highly significant for the development of voluntary corporate responsibility. It was as a result of the negative publicity generated by the repression of these protests that BP became a leading proponent of the idea that companies should concern themselves with human rights. As I set out in the next section, BP's presence in Colombia from the mid-1990s was accompanied by ecological devastation, the socio-economic dispossession and marginalisation of the local population, and systematic killings and forced "disappearances". Peasant activists used a discourse of rights to contest the entirety of this scenario, increasingly pitching the idea of rights against the violence of "development" itself.

If we are to fully appreciate what was at stake in this resistance, it is vital to bust a myth that underpins mainstream discussion of business and human rights. As I make clear in the subsequent section of this article, the permissive context of widespread human rights abuse is not "lawlessness", state "weakness" or an absence of ethics (as the prevailing myth would have it), but the normalisation of states of exception. States of exception imply the *active* operation of state power to suspend normal rule of law, and its attendant rights and protections, in the name of "necessity" or "emergency". The normalisation of exception in the Global South has its origins in colonial rule and is inseparable from longstanding racialised narratives in which some lives matter more than others. Importantly, it is those conceived as obstacles to capitalist imperatives of development and growth who are prone to being targeted by exceptional measures.

The state of exception is also a useful concept for making sense of the legal underpinnings of contemporary extractivism. As I have discussed at length elsewhere (Coleman 2018), neoliberal globalisation has been accompanied by a radical shift in dominant understandings of the rule of law *away* from Enlightenment ideas of the citizen and of democracy. As transnational corporations become *de facto* legislators and international financial institutions condition aid upon domestic legal reform, a global constitutional structure has emerged in which law is less about protecting the rights of citizens (as per Enlightenment theories of a social contract), and more about protecting property rights and private contracts. The neoliberal vision of law effectively precludes the democratic right to pursue alternative forms of economy and society, as a result of both authoritarian repression and processes of law-making that bypass even minimally democratic legislatures. As such, the rule of law itself occupies a paradoxical threshold between legality and exception, since it authorises deadly economic policies that are – from the perspective of formally recognised rights – illegal.

With this in mind, I move on to consider BP's response to negative publicity over its activities in Colombia. Leaked email correspondence confirms suspicions that the agenda behind BP's engagement with British NGOs was to deflect attention from future allegations. It would be of little surprise to activists that, while BP championed human rights, people around the oilfields were receiving threats telling them not to "fuck with BP". However, to simply dismiss corporate responsibility as the co-optation of NGOs into corporate "whitewash" would be to overlook the active role of NGOs in crafting a discourse of business and human rights that serves to entrench the violence of development. In this discourse, corporations are approached as potentially ethical actors – albeit bumbling actors prone to making "mistakes". Violence is located elsewhere, with "uncivilised" local populations who fail to attain the standards of liberal moral citizenship. It is within these parameters that corporations are presumed to be capable of making up for a supposed "lack" of rule of law and of a sufficiently civilised society by voluntarily paying heed to human rights norms.

In the final section, I make the case that this colonial narrative does not simply represent a failure at the level of analysis. It does not merely overlook the neo-

colonial/neo-liberal state of exception that enables perpetrators to kill with impunity. On the contrary, voluntary corporate responsibility for human rights bolsters that state of exception. The existing economic model – and all its legal underpinnings – is the taken for granted backdrop against which rights are supposed to be recognised. Rights are mere add-ons, to be defined by corporations. What is at stake is a *privatisation of human rights*, entirely consistent with the neoliberal obliteration of citizenship rights and the redefinition of law outside of democratic contestation. This is, moreover, inseparable from the colonial imaginary that treats corporations as well-meaning ethical actors and local populations as the source of violence. People who appeal to the rights of citizenship in order to contest the extractivist model are politically non-existent. Contrary to the misconceptions of those who seek to complement voluntary corporate responsibility for human rights with legally-binding measures, voluntary corporate responsibility serves to entrench the exclusion of colonised populations from the protection of law.

2. Development / Violence

In the two decades after BP began oil exploration in the Eastern foothills of the Colombian Andes, approximately 2,500 people were “disappeared”.⁴ Oil extraction at the hands of a consortium led by BP was accompanied, in 1992, by the installation of the 16th Brigade of the army in the administrative department of Casanare, tasked with providing security to the oil companies. Within weeks of the Brigade’s arrival, right-wing paramilitaries linked to drug-traffickers and landowning oligarchs began to be seen entering army bases, generating fears that here, as elsewhere in Colombia, paramilitaries were being integrated into state strategies of population control.⁵ According to human rights defenders who documented the abuses, one per cent of the population around the oilfields had been killed by the time that BP withdrew from the region in 2011 (see Giraldo Moreno and Laverde 2009).

These figures are dramatic, yet they only begin to capture the devastation. As one community leader put it, after a decade and a half of living alongside the oilfields, “we are not just victims of human rights abuses, we are victims of development itself”.⁶ Selective killings and pre-emptive “disappearances” of those likely to contest the economic model are just the visible surface of the violence that Arturo Escobar describes as “constitutive of development” (see Escobar 2004, p. 16). This is a violence that has worked its effects in Casanare through the slow strangling of a way of life. It has left its trace in dried-up rivers, eroded farmland and roads, and the severance of the peasant population from their relationship with the land in pursuit of precarious employment opportunities in a region where social investment remains sparse.⁷

Reflections on the violence of development are often retrospective analyses, made after the experience is found impossible to assimilate to the fantasy, after the myth

⁴ According to human rights organizations, 1,500 people were reported as “disappeared” in the administrative department of Casanare during the period 1986-2007. However, researchers have calculated that another 1,029 ‘disappearances’ were not reported in this period, giving a total of 2,553 disappeared during that period. See Giraldo Moreno and Laverde 2009, p. 13.

⁵ Procuraduría General de la Nación, Fiscalía General de la Nación, Defensoría del Pueblo, Consejería Presidencial para los Derechos Humanos, Asociación Nacional de Usuarios Campesinos and Fundación Comité de Solidaridad con los Presos Políticos, *Informe de la Comisión Interinstitucional Sobre la Situación de Derechos Humanos en los Departamentos de Casanare y Arauca* (Bogotá, 1995), p.16.

⁶ Comments in a meeting with human rights defenders, Casanare, April 2007. These comments were made in response to the suggestion from human rights defenders that the population should ‘demand development’ from the state.

⁷ The 1986 report of the Administrative Department of National Statistics contains little information on Casanare, other than that the Department had one hospital, 10 health centres without beds, 12 health posts with just 147 beds available in the entire department, 263 primary schools with 560 teachers attended by 14,572 children and 24 secondary schools with 3,458 pupils (Jenny Pearce, 1998, *The Case of Casanare, Colombia*, unpublished research report for the Inter-Agency Group). A decade and a half later, there had been little change to this scenario (see Aeberhard *et al.* 2007, pp. 13-15).

becomes impossible to sustain.⁸ The struggles of many social movements are expressed – at least initially – as struggles *for* “development” (albeit for a different development): for better access to healthcare, decent jobs and so on. In the early days, many people in Casanare had given BP a cautious welcome. Social organizations – in particular activists linked to the national peasant association, ANUC,⁹ – had focused their efforts upon ensuring that the local population saw the benefits of the oil bonanza (interviews and conversations with activists in Casanare and displaced members of ANUC, 2007-2008). More than a decade later, I accompanied a representative of an NGO set up by peasant leaders displaced from Casanare in the 1990s during community human rights meetings. When he suggested to those who remained that they should “demand development”, he was met with strongly voiced critique from people who had long since distanced themselves from the use of that concept for framing struggle. Nevertheless, at the inception of these struggles against BP, development was re-appropriated in contestation of the economic model. Peasant organisations demanded development, but not as something abstract, to be defined in practice by global and national elites. They invoked development to contest what rural organizations across Colombia often describe as being “abandoned by the state”.

“Development” in these terms was closely articulated with a discourse of rights. It meant popular sovereignty over natural resources, as well as access to rights guaranteed on paper to all citizens. The new National Constitution of 1991 had recognized a plethora of rights, including rights to social security, stable employment, health, environmental protection, sustainable exploitation of natural resources and the repair of associated damage (Colombia’s Constitution of 1991, arts. 48, 49, 53, 79, and 80). Peasant demands for development and rights in Casanare were contradictory in this regard. These demands may have reinforced the authority of an often-murderous state, but they had little in common with the “rights-based” approaches that were coming to populate the international development scene at that time. “Rights-based development” reiterates the colonial assumptions of mainstream development discourse, framing poverty as the effect of exclusion and powerlessness. It draws a line between the expectations appropriate to “developed” and “underdeveloped” peoples, emphasising civil and political rights (participation, freedom of expression and so on) alongside “basic rights” such as access to food (see Suárez-Krabbe 2015, pp. 1001).

By demanding recognition of all the rights of citizenship, the peasant organizations set themselves in opposition to emergent ideas of “rights-based development” and its underlying colonial logic. They were not just asking for a little more participation, or better satisfaction of basic needs within the terms of the existing economic model. Instead, the demand for citizenship rights challenged these colonial dividing lines and exposed the contradictions between the existence of these rights on paper and the abandonment of the population in practice.

Eventually, the peasant organisations secured commitments from the local authorities for public investment of oil revenues. BP, meanwhile, agreed to undertake a series of works that included repair of environmental damage and the paving of roads eroded by the heavy traffic and shock waves from oil exploration. Yet neither the local authorities nor BP complied with these undertakings. The result was that people began to take a more militant stance, organizing a series of civic strikes that blocked some of Casanare’s main routes (interviews with three former leaders of ACDAINSO, 16 April and 30 July 2007, and two displaced leaders of ANUC, 17 and 18 April 2008). In January 1994, people in the hamlet of El Morro organized the first such strike. This took the form of a two-week roadblock that prevented equipment from reaching BP’s installations. The commander of the 16th Brigade declared the

⁸ For discussions of development as fantasy and myth, see Sachs 1992, pp.1-5 and Rist 2002, pp. 25-46.

⁹ Asociación Nacional de Usuarios Campesinos. Loosely translatable as *National Association of Peasant Smallholders*.

protest to have been organised by subversives. Several of those involved were subsequently killed, threatened or escaped attempts on their lives by paramilitaries. Others were imprisoned on charges of rebellion or had their houses raided by the authorities. Similar patterns of violence were repeated elsewhere. Numerous peasant leaders were killed, forcibly displaced and threatened. Eventually, even the strongest peasant organisation – the Casanare branch of ANUC – was destroyed (Procuraduría General de la Nación *et al.* 1995, p. 17; Gillard 1996, p. 16; interviews and conversations with former leaders of the El Morro Community Association, 2007-2008).

BP was heavily implicated in the repression. According to the 16th Brigade's commander of military intelligence, the company provided the army with photographs and film taken during meetings with activists. Several of those photographed were subsequently killed (interviews and conversations with displaced former leaders of ANUC and relatives of victims, April 2007-June 2008).¹⁰ BP had signed a £5.6million voluntary collaboration agreement with the Ministry of Defence for protection, as well as paying £60 million for its own special force.¹¹ It was also revealed that BP had employed the private security contractor Defence Systems Limited to provide "lethal" counter-insurgency training to the police (Gillard and Jones 1997). Socialist guerrillas of the National Liberation Army (Ejército de Liberación Nacional-ELN) had, since the mid-1980s, been running a campaign against foreign appropriation of oil revenues. In neighbouring Arauca, the ELN had forced Occidental Petroleum to give an annual sum to the church for social projects (see Pearce 2004, p. 6). BP was having none of that. In line with the US-designed counterinsurgency strategy of the Colombian armed forces, the focus of these counter-insurgency efforts was on "taking the water from the fish": undermining social support for the insurgency by targeting potential sympathisers.

In an interview with investigative journalist and author Gearóid Ó Loingsigh, the paramilitary commander Carlos Guzmán Daza (alias Salomón) stated that "all the oil companies" had given money to paramilitaries in Casanare. Salomón linked this directly to the suppression of resistance:

[W]hen peasants organized strikes or protested about any situation that they considered to be affected by oil companies, the paramilitaries went in to threaten the peasants. There is, or should be, a record of presidents of community associations who were killed or displaced because they opposed BP's policies in Casanare, and this was done by the *autodefensas* [paramilitaries]. And as I say, the paramilitaries never did anything for free. If they gave a service to someone, it is because this someone was financing or giving money or some bribe in exchange for threatening peasants, and people who opposed these policies. (Translated from Ó Loingsigh's transcript of the interview, 11 November 2007)

The arrival of the 16th Brigade in Casanare was a precursor to events that were to be repeated across the country. By the second half of the 1990s, paramilitaries operating in collaboration with state forces were taking over vast portions of the countryside, clearing the way for an array of extractive projects through massacres and selective killings. Numerous transnational corporations have faced allegations of direct complicity in the repression. Yet all this took place in the name of "development" and the removal of obstacles to "progress". "We are the ones who sleep least at night in order to protect you", a Sergeant of the 16th Brigade's 44th Battalion told those gathered at a human rights meeting I attended in April 2008, as he justified killings at the hands of his battalion on the basis of rumours that some of the population were 'left wing'" (Second Sergeant Ávila, comments to community human rights meeting, April 2008).

¹⁰ The evidence of the commander of military intelligence was recorded in a Colombian inter-institutional report: Procuraduría General de la Nación *et al.* 1995, p. 13. See also Michael Gillard's 1996 article breaking the story.

¹¹ This was in addition to a compulsory security payment of US\$1.25 per barrel (Harrison and Jones 1996a).

3. Neo-Colonial/Neo-Liberal States of Exception

We should not rush to the conclusion that this emphasis upon improving and protecting the life of the population is only a smokescreen for the sacrifice of some to the prosperity and greed of others. Instead, we need to interrogate the mutually reinforcing intersections between the protection of life and exposure to death, and to locate these intersections within the history of colonialism. Otherwise, we risk repeating the tacit operating assumptions of “neutral” humanitarian intervention, where armed violence is presented in terms of an absence (the absence of ethics, of the “rule of law”, or of a suitably strong state). Violence is perceived as the result of a sort of state of nature, where almost all humanistic intervention is to be welcomed for its potential to improve lives that would otherwise be – as Hobbes would have had it – “nasty, brutish and short”. The state cannot or will not protect or improve the lives of the population (the argument goes), so “we” – concerned members of the international community – must go in and do so, in the name of the cosmopolitan values of development and human rights. The focus is upon visible acts of violence, not the wider economic and legal backdrop, nor the moral discourses which sustain these acts. Violence and humanistic intervention are presumed to work in opposite directions.

Extreme violence is too often batted away, as something belonging outside of modernity, as the work of unintelligible Others that political and economic “modernization” is poised to overcome. Yet, to read extreme violence in terms of an absence (of law or of ethics), is to occlude the active role of both law and moral discourse in enabling people to be deprived of their rights. Contrary to popular myth, colonies were never ruled in “absolute lawlessness”. Nor does the capacity to dispose of human life reside at its core “in the exercise of a power outside of the law (*ab legibus solutus*)” (cf. Mbembe 2003, pp. 23-24). The Nasa indigenous people of Colombia speak of a colonial “death project” that persists in the present and which is inseparable, not only from “racism, capitalism, patriarchy and predatory behaviours against nature”, but also from development discourse and from the legal capacity to render people politically non-existent (Suárez-Krabbe 2015, pp. 3-4).

Giorgio Agamben famously highlighted the hypocrisy of knee-jerk bewilderment in the face of atrocity. “[I]t would be more honest and, above all, more useful”, he says, “to investigate carefully the juridical procedures and deployments of power by which human beings could be completely deprived of their rights and prerogatives that no act committed against them could appear any longer as a crime” (Agamben 1998, p. 171). The suspension of legal order does not occur within a legal vacuum or entail “weakness” of the state. Rather, the ability to suspend the law in the name of “necessity” is central to the operation of sovereign power. Normal law is suspended by exceptional decree, yet the state of exception that results has a legal source because the decree is issued by a sovereign authority. In the state of exception, people are cast out from the protection of law and divested of rights. They become “bare life”, mere animals, rather than subjects before the law. As such, they can be killed with impunity – without anyone being held to account for a crime (Agamben 1998, 2005). The state of exception is “illegal”, but nevertheless – as Agamben puts it – a “perfectly juridical and constitutional measure” (Agamben 2005, p. 28).

3.1. Neo-Colonial States of Exception

Agamben himself was hasty in claiming the concentration camp as both unique and archetypical of modernity. He overlooked the relationship between modernity and colonialism, as well as the role of capitalism in producing a class apartheid entwined from the start with colonial notions of race (see, for example, Federici 2004, Suárez-Krabbe 2015, chap. 3). Colonial rule, in what is now called Latin America and elsewhere, normalised the state of exception by drawing racialised dividing lines between “civilised” minorities protected by law and “uncivilised” majorities with no rights at all (see, e.g., Mamdani 1996, p. 16, Abello 2002, Mbembe 2003, pp. 11-

40). The boundaries between legitimate and illegitimate violence remained in constant flux after independence. The racism instilled by the Conquest “left an inheritance of guilt and a fear the old gods would return” (Franco 2013, p. 7). In the decades following independence, ideological disputes among the oligarchy frequently erupted into civil war and the seizure of power by rival political-military leaders.¹² Each new leader would instate a new juridical order, supported by dense structures of patronage and a restricted suffrage in which those awarded the vote were, in practice, clients rather than citizens (Abello 2002, pp. 21-23, Hylton 2006, pp. 53-58). Subsequent anxieties over modernization “transposed racism into a different key and turned the indigenous from an exploited labour force into a negative and undesirable mass” (Franco 2013, p. 8). The idea that society must be defended against an “enemy within” has long underpinned a culture of exception in Colombia (García Villegas 2001, p. 306).

The formal use of exceptional measures became predominant during *La Violencia* - a twelve-year period of civil war that began in 1948. Armed conflict between factions of the oligarchy subsequently subsided in the wake of a power-sharing deal. Meanwhile, however, the consolidation of insurgencies representing subaltern forces had reconfigured the terrain of struggle. So too had development entered the scene. In his inaugural speech of 20 January 1949, Harry Truman set out his vision of a “fair deal” for “freedom-loving peoples”, an essential component of which was solving the problems of “underdeveloped areas”. Later that year, Colombia was the site of the first ever mission of the International Bank for Reconstruction and Development aimed at formulating a general development programme for a country. This resulted in proposals for a “multitude of improvements and reforms” through careful planning and administration of resources. The application of technocratic rationality across the economic sphere was deemed necessary for a “salvation” that would make Colombia an “inspiring example” for the underdeveloped world (Escobar 2011, p. 24). Although leaders framed industrialization as a prerequisite for the consolidation of democracy, development in practice was inseparable from the growing international anti-Communist crusade that authorized extreme terror against dissidents and their potential supporters (Franco 2013, p. 2).

From the mid-1960’s, exceptional decrees were used repeatedly to repress protest by growing workers’ and student movements and to place restrictions on civil liberties and labour rights. In 1964, the communist guerrilla force of the FARC was formed amidst an already “genocidal” anti-communism (Hylton 2006, p. 57). The same year, the ELN was constituted under the influence of the Cuban revolution and the theology of liberation. In 1965, during a state of siege, Decree 3398 provided a legal basis for the formation of paramilitary groups on the grounds that the “defence of the nation” was a task for everyone (Human Rights Watch 1996). By the time unsuccessful peace negotiations with the guerrillas began in the early 1980’s, a culture of juridical exception had become normalised. The provisions of exceptional decrees had been incorporated into ordinary law (García Villegas 2001, p. 323). Decree 3398, for example, was absorbed into Law 48 of 1968.¹³ Systematic impunity had likewise become institutionalised as the result of a strategic failure to investigate abuses by state and para-state forces. This generated a state of *de facto* exception that facilitated the “dirty war” in defence of society and nation (Giraldo 1996, pp. 62-66, Santos and García Villegas 2001, pp. 73-74).

Colombia’s “economic opening” of the early 1990s cut into longstanding anxieties over modernity and its Others. The process that led to the 1991 Constitution was itself enabled by recourse to exceptional measures (Santos and García Villegas 2001, p. 329). Means were introduced to limit the duration of states of siege and the

¹² For a discussion, see Hylton 2006, pp. 53-55.

¹³ Law 48 remained in force until 1989, when the Supreme Court declared the arming of civilians unconstitutional.

suspension of fundamental rights and liberties was prohibited.¹⁴ However, exceptional measures of the previous years were once again integrated into permanent legislation, while impunity was further entrenched in the justice system (Giraldo 1996, pp. 61-62, Santos and García Villegas 2001, pp. 334-335, 349, Human Rights Watch 2002). A “faceless system of justice” was also established, allowing the accused to be tried whilst the identity of witnesses and judges remained secret (Giraldo 1996, pp. 48, 61-62; my translation). Law here is itself the vehicle of exceptional tactics: criminal law is a “tool of war” that invokes not the figure of the delinquent but that of the enemy (Santos and García Villegas 2001, p. 79, my translation; García Villegas 2001, p. 360). Numerous features of states of exception were thus to be found, with their origins disguised, within the new legal order touted as the “social rule of law”.

3.2. *Illegal rule of law*

The violence of development does not refer merely to the coercive repression endemic to that project in many parts of the world. The systemic violence that Escobar describes as “constitutive of development” (Escobar 2004, p. 16) is also directly enabled by ordinary rule of law. Although Colombia’s “economic opening” involved further entrenchment of exceptional measures within a legal order supposedly based upon recognition of extensive political, economic, social and cultural rights, the tensions between formally-recognised rights and other juridical measures did not end here. Colombia is also a good example of how, across the world, neoliberalisation has entailed reforms of domestic law which clash with the rights enshrined in national constitutions, enabling the plunder of labour power, services, territories and resources. The extensive rights provided for by the 1991 Constitution have been nullified in practice by laws enabling the privatization of services, the casualization of labour and foreign direct investment in natural resource extraction under the influence and pressure of international financial institutions and transnational corporations. I have discussed this elsewhere by reference to the example of legislation regulating labour and granting concessions to extractive companies. Both sets of legislation served to confiscate the labour rights and territorial rights simultaneously enshrined in the Constitution (Coleman 2018, pp. 13-14).

From the perspective of formally recognised rights, these laws themselves are illegal. The legislation authorising and regulating neoliberal “development” can also be thought of as occupying the threshold between law and exception. Indeed, we should not limit the concept of state of exception to questions of “security” or “emergency”. As David Whyte has suggested, the concept also “opens up a new way of thinking about the structure of *legal power*” and “reveals how sovereign authority is constantly negotiating and reconstructing the boundaries of the law” (Whyte 2010, p. 135). Neo-liberal states of exception are shaped *both* by active suspension of legal rights *and* the illegal rule of law shaped on a global level by international institutions and transnational corporations in their newfound role as legislators (Coleman 2018, pp. 16-20).

The normalisation of exception is combined with a situation in which the rights of corporations, of property and of contract effectively trump laws recognising the rights of human beings. Even in the Global North, neoliberalism has meant increased authoritarianism, with law redefined as a means of securing economic growth and incapable of limiting corporate actors (Bruff 2016, Coleman 2018). In the South, the legacies of colonialism and the armed repression of dissent have made this scenario particularly extreme. Those killed have, in general, been those deemed to represent

¹⁴ The figure of the *Estado de Sitio* (State of Siege) was replaced with that of the State of Internal Commotion, which was limited, in the first instance, to a duration of 90 days.

obstacles to progress, to development, to the life of the population itself (see Coleman 2007, pp. 204-219).

3.3. *Imaginative geographies of exception*

The violence authorised through states of exception is spatially asymmetric. In Colombia, it follows the pattern of territorial dispossession etched across the country by extractivism. It is intensified in areas that have traditionally been strongholds of the insurgencies. These patterns of violence have not only been shaped through appeal to the technocratic “necessity” of development and the every-present “threat” of insurgency. They have also been given form through a heavily racialised *moral* discourse. In national development discourse and – more recently – discourses of peacebuilding - everything happens in the name of the life of the population. Rural areas with high levels of poverty and armed conflict are charted as uncivilised terrains, scarred by the pathology of rebellion and occupied by childlike populations who need to be developed and protected (Coleman 2007).

In his work on Orientalism, Edward Said powerfully exposed how colonial imaginative geographies mark out a border in thought between “the West and the Rest”, the civilized and the savage (cf. Said 1995). As I have explored at length elsewhere, colonial imaginative geographies are also reproduced and mediated within national spaces. Colombian national development discourse marks out a patchwork of “savage” zones where the rights of citizenship are kept on hold (Coleman 2007, pp. 204-219). The effect is to sanitize an internal colonialism which implies the active suspension of normal rule of law. “Protection” implies targeting these populations with brutal counter-insurgency techniques, while “development” involves disavowal of the citizenship rights of these same populations. It is in the context of this state of exception, in which the promotion of life and the authorisation of death are intertwined, that we must understand corporate responsibility for human rights.

4. The Allocation of Humanity and Politics

4.1. *BP recognizes human rights*

The situation in Casanare became the subject of international attention in mid-1996, after a British journalist broke the story of BP’s links with the Colombian military (Gillard 1996). A loose grouping calling itself the “Coalition Against BP” began to organize public meetings and protest actions with the aim of keeping the issue in the public eye. BP appeared to flounder, denying the allegations and insisting that “subversives” were waging a smear campaign against the company (e.g. Mead quoted in Harrison 1996, Browne quoted in Ghazi and Hargreaves 1997, Seal 1997, Richard Newton *Business and Human Rights* speech at Amnesty International event Birmingham 1 November 1997). Then, in early 1997, the Catholic Institute for International Relations entered the fray with a diplomatically worded letter in a national newspaper. Its author recalled that, “within an hour of the letter being published, BP were on the phone saying that they wanted to talk” (interview with former member of the IAG, November 2007).

The result was what became known as the Inter-Agency Group, a coalition of UK-based NGOs comprising the Catholic Institute for International Relations, Save the Children Fund, Oxfam, Cafod and Christian Aid. Over the following two years, the group met several times with BP representatives, carried out short fact-finding visits to Casanare, commissioned independent research, and published two reports outlining their criticisms and recommendations to BP.¹⁵ BP, meanwhile, began to lead the way in propagating the idea that corporate responsibility for human rights was

¹⁵ BP had attempted a similar dialogue with Colombian NGOs, the Colombian Oil-workers’ Union and ANUC around a possible code of conduct. However, this process was short-lived as most of the groups involved were wary of the likely effects of such an engagement (interview with representative of Colombian NGO CENSAT Agua Viva, September 2007; interview with former ANUC leader, April 2008).

an integral part of companies' performance. In 2000, BP became one of the first signatories of the Voluntary Principles on Security and Human Rights for the extractive sector (Christiansen 2002, pp. 5-6, 14).¹⁶ The UN Special Representative on Business and Human Rights, John Ruggie, has praised BP's human rights training facility for the Colombian army, stating that the Voluntary Principles had been "implemented most extensively at the country level in Colombia" (UN Human Rights Council 2007, p. 17).

Leaked email correspondence from BP's Policy Director to a colleague in Colombia, prior to a visit from representatives of the Inter-Agency Group, makes clear what was at stake for BP in its engagement with NGOs:

Andres, Well done. I agree with your view that we would benefit by working more with Oxfam in Colombia. They have been a great help [sic] to us here and are getting closer to us all the time. Your visitors have a lot of influence in the development ngo community in the UK, and hence in how allegations against [us] are picked up or not. Good and closer relationships with Oxfam will be a significant factor in differentiating BP globally. We must consider the possibility of partnerships at country or regional or even global level. Such a partnership would do a huge amount for BP's reputation and be a competitive advantage which would be hard to erode. David¹⁷

After his 2007 visit to Colombia, John Ruggie applauded the "positive impact" of BP's human rights training programme on the "once notorious 16th Brigade" (Ruggie, quoted in Business & Human Rights Resource Centre 2009). Meanwhile, back in Casanare, the 16th Brigade was continuing to ensure its ongoing notoriety. Soldiers killed community leader Angel Camacho, just by BP's Cupiagua oilfield, the very month of Ruggie's visit. A report by Colombian human rights organizations recorded at least thirty extrajudicial executions at the hands of the 16th Brigade over the course of that year alone (Giraldo Moreno and Laverde 2009, p. 53). BP, however, was already a leading light among proponents of corporate ethics. Its community relations programme was now presented as a success story of "voluntary partnership with civil society organisations and government authorities in a joint effort to manage social issues and to contribute to sustainable development" (Pearce 2007, p. 261).

BP's erstwhile ethical advisors appeared not to notice evidence that the company was implicated in ongoing abuses. The events in El Morro that had first drawn international attention were repeated at the end of 2002, when another roadblock was organized in protest at ongoing ecological damage, hyper-exploitative employment conditions for local people and BP's continued failure to honour agreements with the community. Over the following months, leaders received threats telling them to "stop fucking with BP". In April 2004, Oswaldo Vargas, the treasurer of the community association that had coordinated the roadblock, was shot dead in front of his young son on his return from a meeting with BP. Five days later, Fasio Holguín, another leading member of the association, survived an assassination attempt. The following year, the president-elect of the El Morro Association of Community Action Groups was killed, alongside a friend, just a fortnight after he had survived an attempt on his life and asked the army for protection. Cartridges found at the scene of his murder revealed that the killers had used weapons inaccessible to the civilian population (conversations and interviews with survivors in El Morro, April and August 2007; see also Aeberhard *et al.* 2007, pp. 10-11). The result was – once again – the flight of many community leaders from El Morro and the disbanding of the El Morro Community Association. Prior to the threats, a representative of BP's community affairs department had declared that he was "tired" of the El Morro

¹⁶ See also various speeches by BP CEO John Browne: 1998a, 1998b.

¹⁷ David Rice, email sent on Thursday, 18 September 1997, 10:40am, to 'O'Reilly, John; Chase, Howard J; Barrera, Rita P; Torres, Javier A; Jimenez, Mauricio; Mead, Philip; Ortiz, Alonso; Umana, Fanny; Penate [sic], Andres M' and CC'ed to 'Webb, Doug (Colombia); Shuk, Ines; Cuellar, Alfonso'. Subject: 'RE: Human Rights [sic]. Oxfam, NGOs meeting'. Name of source withheld.

Community Association because they did not “let the company work”.¹⁸ That problem had now disappeared.

An obvious, but inadequate, response to this would be that corporate recognition of human rights is just a public relations exercise. In a fairly straightforward way, BP’s efforts to show its concern for human rights did serve to cover over abuses: they did affect whether allegations against the company were “picked up or not”. Nevertheless, corporate promotion of human rights does more than simply mask abuses beneath an ethical veneer. It works to shape understandings of ethics and of rights. Human rights cease to be tools of struggle and contestation. They are absorbed into parameters that reinforce the dividing lines between lives that count and lives that do not.

4.2. Epistemic imperialism

Peasant organizations in Casanare did not demand rights as the obedient, entrepreneurial citizens that national development discourse sought to incarnate. Demands for rights, as we have seen, were made in defence of a peasant class against the economic model. They highlighted the contradictions between the principle of a “social rule of law” enshrined in the Constitution and an approach to “development” that precluded access to formally-recognised citizenship rights. When international NGOs took up the cause of the rights of people in Casanare, the content of the peasants’ demands was emptied out. Rights became abstract values, to be added on to the existing state of affairs, within a virtual reality of development policy-speak.

At stake here was not simply co-optation. The Inter-Agency Group was far from unwilling to challenge BP and had intended to complement the more confrontational campaigning (interviews with IAG members November 2007 – February 2008). British academic Jenny Pearce visited Colombia alongside Inter-Agency Group members, with the aim of gathering independent evidence and holding BP to account for the allegations against them. She described how BP was confronted with this evidence at a meeting with high-ranking company personnel:

we not only told them that they could not claim ‘not to know’ what they army and paramilitary were doing, that we had evidence that the army was lifting roadblocks and letting paramilitaries through to target campesinos working on human rights, for instance, but also we had personally seen a member (a colonel I think) of the fifth brigade, a brigade accused of massive human rights violations, working in the offices of Defense Systems who provided BP with protection (...). As an outcome of that, Defense Systems lost the contract with BP and asked to see me on a later visit to Bogota and expressed their anger over what had happened for which they held me responsible. (Jenny Pearce, personal email 23 April 2016)

The report that Pearce prepared for the Inter-Agency Group was likewise firm in its criticism, stating that “BP chose not to know” what was going on “and listened instead to apparently ‘natural allies’ such as the armed forces and political elites”. She argued that charges of complicity were justified given BPs reluctance to acknowledge the closeness of their own security personnel to the armed forces and that intelligence operations amongst civilians were likely to result in killing. BP, she said, needed to understand that the guerrillas were “only one part of the problem of violence” in Colombia. Pearce underscored that this was “a problem that must be solved politically” and that “the civilian population live in greater terror from the paramilitary right and the army”.¹⁹ Nevertheless, the picture painted by the Inter-Agency Group in their public advice to BP was quite different. Former members of the Group said

¹⁸ Comments attributed to Jorge Guzmán, February 2003, cited in *Corporación Social para la Asesoría y la Capacitación Comunitaria (Cos-pacc), Caso contra la empresa transnacional British Petroleum*, submission to the People’s Permanent Tribunal, Colombia Session on Transnational Corporations and Crimes Against Humanity, Oil Sector Hearing, July 2007.

¹⁹ Jenny Pearce 1998, *The Case of Casanare, Colombia*, unpublished research report for the Inter-Agency Group, pp. 36-37.

that, as charities relying on donor support, they had felt unable to publicise Pearce's critique (interviews with IAG members, November 2007 – February 2008).

The Inter-Agency Group's own report was permeated with the colonial distinction between the reasonable, developed Self and the underdeveloped, irrational Other in need of experts to promote rights on their behalf. As much was assumed in its very title: *Good Intentions are Not Enough*. From the start, the report discounted the possibility that BP was complicit in armed repression, or that peasant organisations were being subdued so that oil extraction could proceed uncontested. Colombia was emptied of history and politics, with oil reduced to a "strategic resource" in an armed conflict. BP was positioned as a well-intentioned, if rather ineffective and misguided, "corporate citizen" (IAG 1999, 1, 4). The problem was, at root, Casanare's own weak "civil society", as the press summary of the report made clear:

Despite BP Amoco's efforts, the study shows that since it began working in Casanare, health, education and housing services to local poor communities have not significantly improved. Oil revenues have meanwhile boosted the region's per capita GDP above the Colombian average. BP Amoco has seriously underestimated the weaknesses in Casanare's civil society. Illegal armed groups have multiplied and Casanare's poor continue to suffer from escalating political violence and environmental problems. BP Amoco has a right to protect its staff and investment, but the potential exists for its own security arrangements to make matters worse. The IAG believes the company has underestimated the implications of its work in a region of conflict. (IAG 1999, p. 1)

The NGOs' recommendations included: that BP and sub-contractors "establish a code of conduct that addresses fundamental human rights laws and standards and is subject to independent and published audits"; that the company's development initiatives "include a specific poverty-alleviation aim"; "[t]hat BPXC's work to promote civil society is focused on transparent, systematic and ongoing consultations with all local stake holders" and that BP improved their analysis of the relationship between violence and oil wealth.

The Inter-Agency Group's own analysis of the relations between violence and oil wealth was, however, sorely lacking. They took for granted an orthodoxy on conflict and development constructed around the agendas of governance institutions in the post-Cold War era, which has been ceaselessly repeated by NGOs seeking to maintain influence or secure funding, often in the absence of any evidence (Duffield 2001, esp. chap. 5). This orthodoxy conjures up a series of "illegal armed actors", with neither face nor history: groupings of economic-rational individuals motivated by either "greed" or "grievance" (or both) and directed in their actions by cost-benefit analyses. "Natural resources" are cast in this narrative as merely "strategic" to their aims. Conflict is marked out as a particular sort of problem, amenable to solutions that favour the perpetuation of (neo)liberal approaches to development and "peacebuilding". This is the case despite a cacophony of critique from across the social sciences.²⁰ Such critiques are rarely debated. They are simply ignored within a professional technocracy where this orthodoxy is just "common sense". Here we enter the domain of simulation. The map precedes the territory (Baudrillard 1981/1994, p. 1). The terrain of conflict can be known in advance, prior to any interaction with the spaces in which those conflicts play out.

The idea that natural resources are merely "strategic" to financing armed conflict occludes the violence of the extractivist model. It also erases the politics of Colombia's paramilitary groups as state-backed (and often corporate-backed) proponents of that model. Since the Inter-Agency Group wrote their report, it has become commonplace to accept that development (badly done) has often heightened

²⁰ The framework has critiqued on various grounds: for confusing means of financing conflict from the motivations for taking up arms; for ignoring the complexities and contingencies of context and failing to understand the psychology of motivation or the formation of political identities; for conjuring away the problem of capitalism (which is premised upon violent practice of primitive accumulation); and for ignoring the history of warfare in the making of modern states. See, *inter alia*, Cramer 2006.

conflict. Critique of hardline neoliberalism has become routine in debates over peacebuilding and development. Yet even overt critics of neoliberal maxims of free trade and the application of economic reasoning to social activity continue to run on colonial ideological fuel: the task of ameliorating conflict is to be assumed through the supervisory benevolence of international institutions and NGOs. Conflicts might be influenced by global dynamics (illicit trade networks, neoliberal orthodoxy even), but their most significant aspects are “local”. The problem of conflict is framed against a backdrop of liberal “normality”. The civil peace is merely disrupted by illicit armed actors. Liberal capitalist democracy remains the end for which history was made.²¹

The narrative is endowed with obviousness only through its discontinuity with contexts in which (real, live) “armed actors” operate. It is not just that the politics of groups such as Colombia’s state-linked paramilitaries cannot be reduced to criminality or economic motivation. The armed struggles of insurgents likewise resist assimilation to notions of “grievance” framed *within* the terms of liberal individualism. Mobilizations against injustice – whether armed or unarmed – are often pitched against the totality of social relations producing that injustice. Such struggles demand an *unmasking of the concepts* through which relations of oppression or exploitation are rendered natural, legitimate or amenable to “quick-fix” solutions. Even critics of mainstream, top-down approaches to peace and development routinely fail to examine their own imposition of taken-for-granted conceptual frames. Guerrillas in Colombia are read in advance as, for example, those who simply “exploit the grievances of the oppressed” (Mac Ginty and Williams 2009, p. 28). Unburdened by history, out of time and context, they are but abstractions crafted from the categories of policy speak.

“Armed actors? They might as well replace us with actors!”, one senior member of the ELN remarked when our conversation one morning in a high security prison touched on this mainstream tradition of conflict analysis. “Their theoretical frames do not capture our reality, or that of the population” (interview, Palo Gordo Prison, 11 December 2007).

The point is not to obscure the violences perpetrated within armed struggle, or to romanticize those struggles. It is to recognize the extent to which these abstract categories precede any interaction with the lives of actual human beings. It is to underscore that “imperialism in representation reflects structural and institutionalized power relations” (Escobar 2011, p. 162).

From here, rights can be added on – as abstract values to be pursued within a simulated reality. BP was urged to address the impact of its operations by adopting a (voluntary) code of conduct based on recognised human rights standards. With regard to Economic and Social Rights, the IAG encouraged BP to promote “civil society” in order to help “the poor” overcome unsatisfied basic needs and the “dependence” that rendered them vulnerable to the impacts of violence and environmental damage (IAG 1999, pp. 2, 4-6, 7). Here too, we find one of those characteristic tropes of development policy-speak: an amorphous “poor”, whose neediness, ignorance and lack of agency generates a profusion of vulnerabilities, and who are in need of expert guidance to realize a better way of life (see Escobar 2011, esp. chap. 2). The NGOs offered their knowledge according to a long-established

²¹ An example can be found in a popular textbook chapter on *Poverty, profit and the political economy of violent conflict*: Mac Ginty and Williams (2009, chapter 1). The authors are putatively critical of conflict orthodoxy, noting for example the widespread tendency in literatures on political economy of conflict to confuse the ends and motivating factors of conflict with means of financing and surviving conflict. They point out that development can “contribute to conflict”, for example by displacing large numbers of people’ and “may materially disadvantage some groups, encouraging them to view their status in relation to other groups”. With regard to natural resources, they argue that *management* of natural resources – and perceptions of that management – is the key issue. However even at the critical end of the dominant paradigm, the very framework for interpreting conflict occludes the violence of the accumulation process and assumes implicitly that and problems are located in the South and that solutions are to be found within Western expertise.

tradition of “educative trusteeship” over colonized populations, which “aims to change behaviour and social organization according to a curriculum decided elsewhere” (Duffield 2007, p. 8). That curriculum set out a liberal vision of civil society, understood in terms of “autonomy from the state, self-organization, the capacity to evaluate the performance of local and national political structures and the ability to generate space for free debate and non-violent conflict over a multiplicity of social, cultural and political issues” (IAG 1999, pp. 3-4). By implication, the protests against BP were the work of organisations without the capacity for adequate evaluation and which did not represent a space of free debate or non-violence.

The autonomy, analytical competence and capacity for “free debate” of international NGOs is, by contrast, beyond question. This is the case despite their need to achieve donor support, despite the shaping of their expertise within a colonial regime of representation. A web of truth is woven in which experts are authorised to speak on behalf of “uncivil” others and to inculcate norms of behaviour consistent with modern capitalist relations. The language of professional expertise is powerful. Its parameters of legibility are ceaselessly reinforced by institutional practices. Anything that falls outside is neither legible nor credible.

“What about the existing civil society around the oilfields”, I ask one former Inter-Agency Group member in a Skype interview, attempting to speak her language. I almost hear her eyes rolling at the naivety of my question:

“Lara, there was no *civil society* around the oilfields.”

I hesitate for a moment, without words. Do I tell her about members of that insufficiently civil society with far more sophisticated analyses of the relations between violence and development than that of the British NGOs? Or what that commander of the ELN would have said about the conceptual and methodological limitations of the doctrine that treats oil as a “strategic resource”? Do I invest those accounts with authority as a result of my own institutionally-sanctioned expertise? I bite my tongue. I suspect neither of us will fare well when assessed against these norms of civility.

In any case, the parameters of debate had already been tested and found to be robust in what they excluded. It was not only aspects of Pearce’s report that were considered unpublishable. The Inter-Agency Group had also commissioned a study from a researcher employed by the Colombian Oilworkers’ Union, Pedro Galindo, which they refused to publicise in its entirety. Galindo had aimed to show, in his words, “how the oil industry represented the imposition of a culturally and economically alien model onto Casanare society and to put forward the idea that people in Casanare should be allowed to take responsibility for solutions to their own problems” (interview with Pedro Galindo, December 2007).

Galindo was savvy about the colonial politics of knowledge. “I was aware when the British NGOs approached me that I had a very different understanding of concepts that they took for granted, such as “civil society” and the distinction between “developed” and “underdeveloped” peoples”, he told me over coffee in Bogota. “However, I had hoped that it would be possible to produce a report that could prompt debate between the two perspectives, which might then generate more respectful attention to the struggles of the peasant organizations” (*Ibid.*).

No such debate took place. The Inter-Agency Group suppressed the report because it contained a discussion of how royalties were calculated so as to ensure what Galindo described as “maximum profits to the multinational and minimal benefits to the population” (*Ibid.*). This, the NGOs considered beyond their mandate, which was to address “civil and political rights and how income from royalties could generate sustainable development” (interview with member of IAG, November 2007). They did visit Colombia and attempt to ascertain the views of people there. However, the mandate to promote human betterment through general notions of development and human rights, within an otherwise unquestioned order, already established a frame

within which certain things could not even be expressed. The struggles of people in Casanare were already illegible, and thus naturally erased from view. Epistemic imperialism has powerful material effects.

4.3. *Civilizing society*

BP did go on to emphasise the promotion of civil society. In the mid-1990s, the oil companies in Casanare had already set up an NGO – the Fundación Amanecer (Dawn Foundation) – to “help position the oil industry as a generator of development” (interview with senior representative of the Fundación Amanecer, October 2007). We should not overstate the reach of such initiatives. Nor have they been particularly successful in improving people’s life-chances. Nevertheless, the Foundation’s work has made clear what is at stake in promoting “civil society”. Towards the end of 2007, while working on a research project with an NGO set up by displaced peasant farmers, I spent a day with the Foundation visiting some of their projects. Foundation representatives explained how their programmes were designed, “to develop peasants’ business capacities”, and create “an entrepreneurial culture”. They aimed to build “social capital” – for example through collective applications for micro-credit among groups of *socios* (stakeholders, or partners).²² As one employee put it, “we are trying to change the mentality in the Casanare countryside (...) from peasant to owner, producer, entrepreneur” (interview 23 October 2007). These stakeholder-partners are – like the armed actors in conflict orthodoxy – just a collection of economic-rational individuals who come together to pursue private goals. Where each individual is responsible for managing (inevitable) risks, the struggles of a peasant class fade into pursuit of the skills to mitigate those risks. BP meanwhile, is a “corporate citizen” – a “founding stakeholder”, a “partner for development” with the population (see, for example, Fundación Amanecer 1994-2004, BP 2011).

Here too, colonial representations of Self and Other intersected with class divisions. Peasants, for Foundation employees, were childlike subjects, in need of guiding hands to become fully mature and rational. “Here is where they hang their little hammocks”, the Foundation’s director commented as she showed me around an agricultural training camp as if it were a kindergarten. “This one is a bit of a naughty boy who doesn’t always do what we tell him”, she said of one farmer with a nuanced critique of the advice that he should sell his produce to a supermarket chain. This “beneficiary” gave an apt summary of the Foundation’s approach: “First BP destroyed the social fabric. Now they try to create a new one in their image” (conversation October 2007). Where peasants continued to mobilise around ongoing environmental damage and the killing of their neighbours, Foundation representatives turned up uninvited at meetings urging people to participate in their projects instead (something I witnessed on several occasions during a year of frequent visits to the region).

The yet-to-be-civilized, infantilized population is also comprehended as the source of violence, because of their inadequate levels of civility. In the words of BP’s Associate President, the company’s presence promised to help eliminate violence – “by improving the value of people so that they believed in the value of life” (Harrison 1996, p. 6). Those who resist are not only dismissed as not understanding what is good for them. They can also be labelled subversives from whom the population must be protected. The promotion of civil society merges with militarized counterinsurgency. Death is authorized to protect and improve life.

It was not only leaders of actual protests who were killed. Those identified as *probable* leaders of *possible* future resistance in areas targeted for oil-based “development” were pre-emptively mopped up and made to “disappear”. In January 2003, a few months before oil exploration began in the municipalities of Recetor and Chámeza,

²² This term can also be used to refer to business partners, but normally connotes the English term *stakeholder* in NGO usage.

paramilitaries took over the village of El Vegón and proceeded to summon and “disappear” more than sixty people. Their victims were those profiled as likely leaders of possible future protests: peasant leaders, university students, the local doctor, the schoolteacher (interviews with victims’ family members and other local residents, Recetor, 30 July 2007). It is no exaggeration to say that people have been killed so that they will demand no more than the corporate-NGO vision of civil society.

4.4. *Violent Others and bungling cosmopolitans*

Members of the Inter-Agency Group did acknowledge risks that the dialogue might be used to “rights-proof” BP’s operations. “We felt we had to do *something*”, one member explained. “If even a few lives were saved it was worth it”, said another. Perhaps, in the short term, some lives were saved by the termination of the contract with Defence Systems. What the British NGOs did not grasp was that the very form of its expertise already served to rights-proof violent dispossession. It did so by squeezing human rights to fit within the extractivist model.

The only advice the NGOs were prepared to make public was permeated with the unspoken but assumed distinction between the botched cosmopolitanism of corporate executives and the state of nature in which deprived and potentially dangerous “local populations” reside. The letter that prompted BP to initiate the dialogue assumed from the start that BP took its social responsibility “very seriously” (Collinson 1997). Inter-Agency group members emphasised that BP’s Policy Director (and author of the leaked email) was “very credible and liberal”, to the extent that he was even a member of Amnesty International. “I met [BP CEO] John Browne in person and he was genuinely open to being challenged”, said one NGO representative, who observed that BP personnel seemed to find the allegations “bewildering and offensive” and were willing to take on the NGOs views. “BP did move... They developed a sophisticated understanding of human rights” (interviews with IAG representatives, November 2007 – January 2008).

Sir Geoffrey Chandler explained his approach to corporate executives on behalf of Amnesty International UK in similar terms: “The best of them have their own principles and morality, and (...) are no more or less moral than ourselves” (Chandler 2007, p. 2). Reflected in these comments is a sense of responsibility emergent from superiority. Human rights as the “burden of the fittest”, as Spivak might have it (Spivak 2001, p. 190). Those Others, over there, could not reasonably have negotiated with success (or successfully negotiated with reasonableness?). “We” have the benefit of expertise. The white men in suits are, at heart, “our boys” – reasonable, decent, open to being challenged about their mistakes.

It was within these colonial parameters for locating violence and defining capacities for action that BP could credibly deny the allegations. The Colombian inter-institutional report that had sparked such a furore in the British press could be dismissed as “an *ad hoc* local thing” without even being read.²³ BP was just the victim of “greed” and resentment on the part of insurgents (see, for example, Fidler 1996, The Economist 1997, Raynor and Halstead 1997, Raynor 1997a, 1997b, Semana 1997). Michael Gillard, the journalist who broke the story, recalled how he too was a target of this line of argument:

[F]or BP it was helpful to try and undermine my journalism by suggesting I was orchestrating the campaign’s activities and that, in turn, one of Colombia’s guerrilla groups was pulling my strings. I was first alerted to this smear campaign in 1997 after talking to an oil journalist in Houston who’d been briefed by Roddy Kennedy, [then BP CEO] John Browne’s Chief Press Officer. I later heard through various sources that BP was smearing me as the ELN’s man in Europe. (Interview with Michael Gillard, 24 December 2007)

²³ These were the words of BP’s senior spokesperson in London, quoted in Harrison and Jones 1996b.

As Gillard put it, BP's response was "a classic strategy of creating a division between so-called 'reasonable' activists that they felt they could do business with and so-called 'unreasonable' ones, who were subtly labelled as 'militants and guerrilla sympathisers'".

The idea that the campaign was spawned from irrational or dangerous political agendas was a potential death sentence, not only in Colombia, but also for Colombians supporting the campaign in Britain. Asdrúbal Jiménez, an exiled lawyer, was also named as a member of the guerrilla (Raynor 1997b, Semana 1997). His compatriots were afraid to associate with him for fear of reprisals and his family were thrown into panic that his refugee status would be revoked (transcript of Manuel Vega's interview with Asdrúbal Jiménez, 30 June 2007).²⁴ Freddy Pulecio, an exiled leader of the Colombian Oilworkers' Union who had faced an attempt on his life in Colombia while he was working on the issue of BP, was named in the press as a subversive manipulating the campaign (Semana 1997). An exiled representative of ANUC was still afraid of reprisals more than ten years after learning that she had been named as a guerrilla in a draft document that BP had planned to publish before the Inter-Agency Group had convinced them that it would be inappropriate to do so (interview 28 February 2008).

Opponents of corporations are not always labelled subversives in ways that feed so directly into armed repression. However, as Dinah Rajak emphasises, it has become standard to label them "unethical". As more and more NGOs, lobby groups and even unions have been drawn into a burgeoning corporate-civil society network, campaigns against corporate abuses are routinely dismissed as uncivil, opportunistic, and as more interested in "throwing stones" than "making progress" (Rajak 2011, pp. 40, 57-58). Colonialism takes the form of a language of cosmopolitan common interest: human rights are not only good for humans but also good for corporations who are, by serendipity, perfectly-placed to transcend the irrationality and corruption of "local contexts". This is the task of what Chandler described as "the community of interest between responsible governments, good companies and NGOs" (Chandler 2007, p. 5). After all, at least the corporate-NGO nexus is "doing something", whatever companies' previous "mistakes". As David Rice, BP's Policy Director, put it, "we've learnt from our mistakes, not least because we've been challenged by NGOs" (Rice 2002, p. 135).

The notion of prior "mistakes" is, Rajak notes, part of the performance of corporate "citizenship". Confessions of past misconduct or errors of judgement pave the way for executives to set out new regimes of best practice developed in partnership with NGOs (Rajak 2011, pp. 35, 63). BP was a leader here. Denials of intentional wrongdoing were quickly tempered by the acknowledgement that BP had "made mistakes" by entering Casanare without a full understanding of the context (Browne 1998a). To err is human, and these were mistakes from which BP had "learnt" (Browne 1998b, Rice 2002, Balch 2004). The actions of "local" armed actors and blundering corporate executives might both result in death, but – in terms resonant with Himadeep Muppidi's discussion of media representations of Saddam Hussein and George W. Bush – "only one of them functions in the arena of humanity and politics (of bungling, learning, living, accommodating, getting along) while the Other is in the realm of nature and necessarily outside of politics and history" (Muppidi 2012, p. 40).

5. The Architecture of Impunity

The colonial imaginary investing corporate recognition of human rights is not merely symbolic (unfortunate but of little matter if lives are saved). It is a girder in the architecture of impunity. It reinforces the dividing lines between lives that count and those that can be killed without anyone being held to account. Corporations do not

²⁴ Jiménez had represented a different guerrilla group, the Maoist Popular Liberation Army, in peace negotiations with the Colombian government.

merely recognize “human rights”. They *allocate humanness* differentially – to some and not to others – through the practice of recognizing rights.

In the corporate code of conduct, the corporation gets to decide which rights are to be fostered (rather than guaranteed), and to what extent (Lipschutz 2005, p. 64). Even where rights do fall within the company’s direct control, as in the case of labour rights, the voluntary nature of the code of conduct means that sovereign decision over which rights should be protected and how rests with the company. The problem, however, is not just that fewer rights are recognized. The subject recognised as a holder of rights, already reduced under liberal modernity to the figure of the citizen, collapses into that of the “stakeholder” in corporate operations (see Coleman 2013, p. 182). Promotion of the rights of “stakeholders” entails, in its very formulation, the incontestable existence of those processes of capital accumulation (and consequent dispossession) within which the holders of privatized rights can have a “stake”. Contestation of the economic model in the name of the rights of stakeholders is logically impossible. It implies resisting a tautology.

The point here is, I repeat, not to romanticize the rights of citizenship. It is simply to point out that the formulation of citizenship rights as the basis of state power has an inherent openness, elasticity and contestability (see, *inter alia*, Lefort 1986, Rancière 2004, 2010). It opens up the possibility of struggle over who is included and on what terms. This is where citizenship rights are entirely distinct from the private allocation of rights to “stakeholders”. The recognition of “stakeholders” as the holders of rights opens no space for democratic contestation. The conceptual and legal matrix within which corporate recognition of rights takes place forecloses any possibility of struggle over what those rights might mean. The *soft* mechanisms of voluntary corporate responsibility exist within a framework of hard legislation that authorises plunder and dispossession and precludes anything other than a neoliberal economic model. The wider neo-colonial/neo-liberal state of exception remains intact.

The UN’s *Protect, Respect and Remedy* framework responded to the potential for corporate responsibility to detract from violations by emphasising the importance of judicial remedy as part of a package of measures that should complement voluntary corporate responsibility (UN Office of the High Commissioner for Human Rights 2011, pp. 28-35). What this misses, however, is that the very configuration of voluntary corporate responsibility thrives upon the states of exception that provide a permissive environment for abuses. What is more, by representing the corporation as good moral citizen and benefactor, the conceptual basis of voluntary corporate responsibility renders the violence of development illegible and fuels the idea that those who oppose development are irrational or subversive. Allegations of crimes fade into acknowledgement of all-too-human “mistakes”, reinforcing the status of far-off Others as less-than-human. Corporate recognition of human rights, set against prior “mistakes”, bolsters victims’ exclusion from human justice, as “bare life” excluded from the political community: those who can – in Agamben’s terms – “be killed without the commission of a homicide” (Agamben 1998, p. 139). By writing the economic model out of the domain of contestation, and by simultaneously affirming that model as open to being made ethical, recognition of the rights of corporate “stakeholders” rationalizes a situation in which anything can be done to those who occupy the position of Otherness in relation to “development” and “progress”.

It is not just that those who protest are framed within this narrative as irrational and dangerous. The very framework renders the everyday violences of development illegible as forms of harm for which anyone can be held to account. The erasure of a way of life, the destruction of land and the recasting of peasants as precarious worker-entrepreneurs are now “benefits” of development. Anything else is simply beyond the ambit of rationality. When people contest those processes, they have no rights at all. Human rights codes of conduct are not a buffer against socio-economic dispossession or armed repression. They are a further instance of dispossession, representing the enclosure of rights supposedly offered as guarantees to all.

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