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BOLIVIA, BATTERIES, AND BUREAUCRACY

Alexander S. Farr*

I. BACKGROUND ON BOLIVIA AND LITHIUM

A little over seventy years ago, Saudi Arabia was a poor, undeveloped nation without an international presence or any significant influence.¹ After discovering it was sitting on over one quarter of the world's total oil reserves, the nation vaulted to a wealthy and powerful position that earned it substantial control and influence over international oil policy.² Looking halfway across the world to the small landlocked nation of Bolivia, it is difficult to see a relevant comparison, much less to suggest that Bolivia could be the next Saudi Arabia.³ The comparison is appropriate, however, as Bolivia possesses the world's largest supply of lithium reserves beneath the crust of its Salar de Uyuni salt flats—an estimated 5.4 million tons of the eleven million known tons of lithium in the world.⁴

This paper focuses first on what makes lithium such a potentially valuable resource, considers the challenges Bolivia faces as it positions itself to reap the most out of its strategic resource, and looks at how the nation's history of resource exploitation at the hands of imperialist nations and transnational corporations could color its development. It will then assess Bolivia's history of nationalization through the lens of the most recent 2006 nationalization of its hydrocarbon industry and how Bolivia advances redefined resource ownership and indigenous rights under its new constitution. Finally, the paper will consider the developmental successes and societal pitfalls that Saudi Arabia experienced while developing its oil reserves in order to develop suggestions and warnings for how Bolivia should proceed with exploiting its newfound wealth.

Three main conclusions arise from this analysis. First, in order to succeed as a major producer of lithium, Bolivia requires outside investment

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1. See DARYL CHAMPION, *THE PARADOXICAL KINGDOM* 9 (2003).

2. See *id.*

3. Simon Romero, *In Bolivia, Untapped Bounty Meets Nationalism*, NY TIMES, Feb. 3, 2009, http://www.nytimes.com/2009/02/03/world/americas/03lithium.html?pagewanted=2&_r=.

4. Anna Hopper, *Recharging Bolivia: Evo Morales' Lithium Dilemma*, HARVARD INT'L REV., Summer 2009, available at <http://www.entrepreneur.com/tradejournals/article/205506308.html>.

by foreign transnational corporations. To entice such corporations to make significant investments, the Bolivian government must distance itself from the recent trend of nationalization. Bolivia can still ensure that it has a place at the table in controlling the industry and reaping profits from it through a system of participation (gradual repurchase of lithium production assets), much like Saudi Arabia did with Saudi Aramco. Second, Bolivia would also be well-served to protect the lithium market by establishing a joint organization with other lithium producers, similar to OPEC. Finally, to avoid the problems stemming from a welfare state, rather than allowing profits from the lithium industry to accrue in government coffers before being redistributed to citizens in the form of hand-outs, Bolivia should allow all profits to be directly distributed to its citizens and then rely on normal taxation for its own monetary needs. By taking these steps, Bolivia has the potential to succeed much like Saudi Arabia while avoiding some of the pitfalls that remain in Saudi Arabian society today.

A. WHAT IS THE POTENTIAL IMPORTANCE OF LITHIUM?

Today, almost every laptop, cell phone, GPS, iPod, or other modern electronic device utilizes a lithium-ion battery.⁵ In fact, the "United States Geological Survey (USGS) [said that] one quarter of the lithium mined last year was used solely for lithium ion (LiIon) batteries, which operate portable electronic devices."⁶ The reason that the lightweight metal is preferred for such technology is that "at an elemental level, lithium's atomic radius is smaller, and in turn metallic lithium is more electro-negative, and boils at a lower temperature than any other metal," all of which makes for batteries that "weigh less, take up less space, and last longer than alkaline batteries."⁷ In fact, the primary reason lithium-ion batteries "are considered revolutionary [is] because . . . [they] can hold a charge for eight times longer than alkaline versions."⁸ But application in consumer-electronics is only the start, for those in the automotive industry have their eye on the metal for the future of electric car technology because "it weighs less than nickel, which is also used in batteries, [which] would allow electric cars to store more energy and be driven longer distances."⁹ With such advantages in mind, the U.S. gov-

5. Andrew Del-Colle, *Lithium is Key to Powering a New Generation of Automobiles*, COLUMBIA MISSOURIAN, Aug. 26, 2009, <http://www.columbiamissourian.com/stories/2009/08/26/lithium/>.

6. Megan McAdams, *A Grey Goldmine: Recent Developments in Lithium Extraction in Bolivia and Alternative Energy Projects*, COUNCIL ON HEMISPHERIC AFFAIRS, Nov. 17, 2009, <http://www.coha.org/a-grey-goldmine-recent-developments-in-lithium-extraction-in-bolivia-and-alternative-energy-projects/>.

7. April Howard, *The Battle Over Bolivia's Lithium And The Future of Energy*, TOWARD FREEDOM, May 6, 2009, <http://towardfreedom.com/home/content/view/1582/64/> [hereinafter *Battle*].

8. April Howard, *Salt of The Earth: Bolivia Extracts Its Lithium, Environment Be Damned*, IN THESE TIMES, May 6, 2009, http://www.inthesetimes.com/article/4360/salt_of_the_earth/ [hereinafter *Salt of the Earth*].

9. Romero, *supra* note 3.

ernment has been actively pushing for research and development in the sector—“[w]hile on the campaign trail, President Obama promised that by 2015, there would be one million plug-in hybrids and electric vehicles on U.S. roads, and, once in office, he allocated billions of economic stimulus package dollars toward battery technology and manufacturing.”¹⁰

If such potential advances in the application of lithium technology were to become a reality, it would “undoubtedly increase the demand for electric vehicles which [would] require a large amount of lithium in the next few years” whereby those with lithium reserves would stand to benefit significantly, not unlike Saudi Arabia whose wealth can be indirectly attributed to the prevalence of the internal combustion engine over the past century.¹¹ With an eye on the future, Bolivia “is currently working to assess, produce, and manufacture lithium products that correspond with the rising global demand for clean energy vehicles.”¹² But there are detractors who argue that to extract “enough lithium to meet even ten percent of global automotive demand would cause irreversible and widespread [environmental] damage,”¹³ and that “LiIon propulsion is incompatible with the notion of the ‘Green Car.’”¹⁴

Other promising developments in the uses of the metal include updating the national energy grid utilizing technology currently being researched by IBM, who “recently announced an ambitious project to develop lithium-air batteries, which hold considerably more charge than their lithium-ion cohorts, both for transportation and for powering the national energy grid.”¹⁵ While standard lithium-ion batteries can produce around 585 watt-hours of output, lithium-air batteries are significantly more powerful with the potential to produce up to 5,000 watt-hours.¹⁶ Such projects and expectations suggest that lithium truly will become a crucial material for the future of global energy use and storage and that the lithium market will undoubtedly continue to grow.¹⁷ In order to reap the benefits of its abundance of the material, Bolivia will have to take a hard look at its policies and development strategy.

B. BOLIVIA’S LITHIUM RESERVES

Despite its natural resource wealth, Bolivia remains one of the poorest nations in South America,¹⁸ lacking even the “basics like adequate health care and extensive infrastructure.”¹⁹ This deficiency proves problematic

10. *Battle*, *supra* note 7.

11. McAdams, *supra* note 6.

12. *Id.*

13. *The Trouble With Lithium 2: Under The Microscope*, MERIDIAN INT’L RESEARCH, May 29, 2008, available at http://www.meridian-int-res.com/Projects/Lithium_Microscope.pdf.

14. *Id.* at 1.

15. McAdams, *supra* note 6.

16. *Id.*

17. See Del-Colle, *supra* note 5.

18. *Id.*

19. Hopper, *supra* note 4.

for the nation whose lithium reserves are located deep in the remotest part of the country thereby requiring it “to drastically strengthen [its] industrial and transportation infrastructure in order to fully take advantage of the country’s lithium reserves [and] in order to meet the recent demands for eco-friendly cars.”²⁰ Furthermore, Bolivian President Evo Morales is determined to avoid a repeat of the historic exploitation of the nation’s resources by outside forces and is therefore looking for ways to keep control of the extraction, processing, and production of lithium products on Bolivian soil.²¹ The former Mining Minister Mariobo Moreno cautioned in an interview that the Bolivian government “must resist globalizing ‘instruments like transnational corporations and economic and international political pressure.’”²² In fact, “in the 1990s, proposals to sell the lithium reserves to the American Lithium Corporation were dropped after massive protests decried the benefits given to the company.”²³

But if President Morales wants to develop the infrastructure necessary to begin processing lithium on a large scale, he does not have the luxury of choosing many alternatives outside private sector financing and investment.²⁴ With his predicament in mind, he is seeking collaboration from transnational corporate investors who will help Bolivia develop a full-scale lithium production process, starting with a small pilot plant out in the Salar de Uyuni.²⁵ The pilot project is crucial to the development of a more extensive industry since “[p]roducing lithium carbonate, even on a relatively small scale, would lend more credibility to the government’s grand plans for Bolivia to become a global supplier of lithium.”²⁶ The goal is for the project to evolve into a large-scale plant capable of producing twenty to thirty thousand metric tons of lithium carbonate a year (about one-third of the current world supply being produced)²⁷ and also refine the extracted resource into batteries to profit from a fully integrated process.²⁸ Such an outcome now seems attainable given the recent announcement by COMIBOL (the national mining company) that Bolivian scientists discovered a “formula for producing high-quality lithium carbonate” thereby allowing the nation to produce lithium without outside expertise.

If Bolivia truly intends to break into the market as a major global supplier and compete with those who already supply the world’s lithium, it has to act fast—currently Chile, Argentina, and Tibet supply the majority

20. Press Release, Council on Hemispheric Affairs, *Lucky Bolivia And The Future of Lithium* (Feb. 20, 2009), available at <http://www.scoop.co.nz/stories/WO0902/S00340.htm> [hereinafter *Lucky Bolivia*].

21. See Del-Colle, *supra* note 5.

22. *Battle*, *supra* note 7.

23. *Salt of the Earth*, *supra* note 8.

24. See *Lucky Bolivia*, *supra* note 20.

25. See *id.*

26. McAdams, *supra* note 6.

27. *Id.*

28. See *Salt of the Earth*, *supra* note 8.

of lithium to the market²⁹ with the United States now importing predominantly from the South American nations.³⁰ Furthermore, Mexico recently uncovered its own significant deposit of the metal; thus Bolivia is under pressure to get its own industrialized processes running.³¹ If and when Bolivia begins to catch up to its neighbors in the trade, it might even consider entering into an agreement similar to OPEC with the other lithium producing nations in order to protect supply and pricing of the material.³² The bulk of the responsibility lies with President Morales for “[o]nly if he can quickly find the right balance between his people’s needs and international demand will he successfully be able to recover his country’s economy.”³³

II. THE MOTIVES BEHIND NATIONALIZATION

As the potential lithium economy develops in Bolivia, outside investors are tepidly contemplating the idea of full-scale investment given the nation’s history of nationalizing the natural resources industry; “[T]o date, Bolivia has nationalized its natural resources four times including the 2006 nationalization, and of the four, three have involved the hydrocarbon sector.”³⁴ To be precise, Bolivia nationalized the tin industry in 1952, oil in 1937 and 1969, and most recently it nationalized the full hydrocarbons sector in President Morales’ 2006 decree following his election.³⁵ The reason that private investors are afraid is that “nationalization is generally defined as the transfer of private resources into the hands of the public through the expropriation [takeover] of the assets of private owners or investors.”³⁶ Aside from pure governmental takeover, Bolivia’s history, particularly within the last twenty years, is rife with examples in which the Bolivian people protested so vociferously that they drove various private corporations out of the nation—in the 1990s, an American lithium mining company (Lithco) was ousted,³⁷ in 2000, the Water Wars protesting privatization of the nation’s water supply ended up driving a subsidiary of Bechtel out, and in 2003, the Gas Wars led to violent protests which propagated the latest nationalization of the hydrocarbons

29. McAdams, *supra* note 6.

30. Jenny Mandel, *USGS’s Lithium Find Means Little For Mythical Shortfall*, N.Y. TIMES, June 21, 2010, <http://www.nytimes.com/gwire/2010/06/21/21greenwire-usgss-lithium-find-means-little-for-mythical-s-62051.html>.

31. See McAdams, *supra* note 6.

32. See Del-Colle, *supra* note 5.

33. Hopper, *supra* note 4.

34. Caroline Jova, *Nationalization in Bolivia: Curse or Blessing?*, 2 (Latin American and Caribbean Ctr. (LACC) Working Paper Series, Paper No. 12, Aug. 2006), http://lacc.fiu.edu/research_publications/working_papers/WPS_012.pdf.

35. Sidney Weintraub, *Issues in International Political Economy: Bolivia’s Natural Gas Nationalization*, (Ctr. for Strategic and Int’l Studies (CSIS), No. 77, May 2006), <http://csis.org/publication/issues-international-political-economy-boliviass-natural-gas-nationalization>.

36. Jova, *supra* note 34, at 1.

37. Interview by Jane Bornemeier with Simon Romero, Reporter, N.Y. Times (Feb. 5, 2009), available at http://myenglishtimes.blogspot.com/2009/02/blog-post_05.html.

sector.³⁸

A. COLONIAL EXPLOITATION OF BOLIVIA

The aggressive nationalization responses by the people and government of Bolivia can best be explained by the country's "500-year history of exploitation" at the hands of outsiders.³⁹ Bolivia was once one of the greatest sources of silver and other minerals, with a mining industry that lined the pockets of imperialist Spain for 250 years beginning in 1545.⁴⁰ The mining operations extracted some of "[t]he most important natural resources found in Bolivian soil . . . metals such as gold, silver, tin, cadmium, tungsten, iron, lead and antimony."⁴¹ In fact, in addition to leaving mountains stripped of all their natural value, the extensive extraction of metals using mercury amalgamation left an environmental and health disaster behind.⁴² Over the course of the mining operations, "[a]round two billion ounces of silver were extracted from . . . [Potosi's] Cerro Rico (Rich Mountain) during the Spanish colonial era."⁴³

Scarcely any of the profits from the intensive Spanish silver mining ever remained in the city around the Cerro Rico site⁴⁴ and as one Bolivian commentator put it, "[l]ike other colonized peoples, the indigenous and later *mestizo* peoples of the region saw the profits from their labor and land go to the first world, initially through monarchies, then through corporations that stole their natural resources, captured their governments, and created local *mestizo* elites to do their bidding."⁴⁵

Furthermore, the social impact on the region was profound: "[t]he silver and tin mining city of Potosí, Bolivia—in the 1600s richer and larger than Paris—is now the capital of the poorest province in the poorest country in South America."⁴⁶ During the 250 years of Spanish colonial rule, "the Spanish crown organized a migration [system] of forced labour [sic] to the mines of Potosi which [had] . . . disruptive effects on the indigenous

38. Kavitha Chekuru, *Bolivia Has The Right: Nationalizing the Hydrocarbon Industry*, ABROAD VIEW, <http://www.abroadview.org/latinamerica/chekuru.htm> (last visited Oct. 11, 2010).

39. *Id.*

40. Susumu Ogawa & Hiroyuki Kobayashi, *Potosi Mining Development And The Cause of Cultural Collapse in Bolivia*, 37 INT'L ARCHIVES OF THE PHOTOGRAMMETRY, REMOTE SENSING, & SPATIAL INFO. SCIS. B8, at 143, 2008, available at http://www.isprs.org/proceedings/XXXVII/congress/8_pdf/1_WG-VIII-1/25.pdf (P.R.C.).

41. M. ALEXANDRA CONTRERAS OCHOA ET AL., REVOLUTIONARY POLITICS: BOLIVIA'S NEW NATURAL RESOURCES POLICY 83 (2009), available at http://www.cedla.uva.nl/50_publications/pdf/other_publications/cmp/bolivia_gas.pdf.

42. Ogawa & Kobayashi, *supra* note 40.

43. Amalia Barron, *Potosi's Silver Tears*, UNESCO COURIER, Mar. 2000, http://www.unesco.org/courier/2000_03/uk/dici/txt1.htm.

44. See Chekuru, *supra* note 38.

45. Nancy Romer, *Bolivia: Latin America's Experiment in Grassroots Democracy*, 11 NEW POLITICS 44, Winter 2008, available at <http://ww3.wpunj.edu/~newpol/issue44/Romer44.htm>.

46. *Battle*, *supra* note 7.

communities from which they were recruited.”⁴⁷ The labor system required that “every seven years, for a period of four months, all males between 18 and 50 were ordered to work in the mines.”⁴⁸ Those forced laborers suffered under harsh conditions, rarely seeing the light of day, and as a result, “[e]ighty per cent of the male population of the 16 provinces . . . died in these conditions.”⁴⁹ The mining continues to this day in unsafe and environmentally hazardous conditions “with miners effectively signing away at least their health, if not their lives, as they enter the mines for income they desperately need.”⁵⁰ The desperation of those remaining in the region is profound: “[m]ost of the city’s population of around 120,000 are Quechua Indians, who live by scratching at what is left in the old mines . . . [without] access to modern technology . . . [or] social security protection.”⁵¹

B. TRANSNATIONAL CORPORATIONS AND EXPLOITATION

After colonial imperialism came transnational corporations hoping to extract wealth from the natural resources of backwards and underdeveloped South American countries, including Bolivia. Such corporations were predominantly engaged in extractive rather than developmental industries and they brought little benefit to the native populations: “Extractive industries are those economic activities that hinge around the withdrawal of a natural resource while making no effort to replace that resource: either because the resource is non-renewable (hard rock minerals, hydrocarbons etc.) or because the agent doing the extraction is simply uninterested in replacing the resource.”⁵²

Transnational corporations possess significant governance power (and the ability to abuse it) over the economies and people in poor, underdeveloped nations like Bolivia because they have the ability to “produce goods and services that can earn foreign exchange and create extra jobs.”⁵³ Furthermore, such companies created a noticeable divide between the “haves” and “have-nots” in Bolivian society by rewarding those who advanced their cause (namely government officials) at the expense of the poor majority.⁵⁴ In fact, such corporations have the advantage of sheer size, resources, and contacts with governing authorities that give them “the capacity to sponsor candidates in local and regional elec-

47. Enrique Tandeter, *Forced And Free Labour in Late Colonial Potosi*, 93 *PAST & PRESENT* 98, Nov. 1981.

48. Barron, *supra* note 43.

49. *Id.*

50. McAdams, *supra* note 6.

51. Barron, *supra* note 43.

52. Anthony J. Bebbington et al., *Extraction Inequalities And Territories in Bolivia*, Delivered at the 2009 Congress of the Latin American Studies Ass’n (LASA), June 11-14, 2009, at 3, available at http://www.sed.manchester.ac.uk/research/andes/publications/reports/Bebbingtonetal_LASA_Apr2009_000.pdf.

53. JOHN MADELEY, *BIG BUSINESS POOR PEOPLES: THE IMPACT OF TRANSNATIONAL CORPORATIONS ON THE WORLD’S POOR* 4 (1999).

54. See Bebbington, *supra* note 52, at 7.

tions . . . to assume a dominant presence in the local media, and to . . . become a sort of puppeteer in a regional political economy.”⁵⁵

Thus, the poor (constituting about 1.5 billion people in Africa, Asia, and Latin America) tend to have little say in how their country is run.⁵⁶ Transnational corporations, whose goods and services typically are targeted at those with expendable purchasing power, indirectly increase the inequality within host countries because the poor are unable to express their needs in the marketplace and cannot even obtain the basics essential to their livelihood.⁵⁷ Adding insult to injury is the fact that such corporations, particularly those involved in extraction of natural resources, are prone to flaunting environmental concerns and labor protections while employing the poor and indigenous who have little other choice than to pillage and lay waste to their own land in an attempt to maintain their impoverished existence.⁵⁸

External forces, however, are not the only ones to blame for inequality and general lack of development—“occupied” nations themselves tend to perpetuate their position by remaining dependent upon natural resource wealth and “rent seeking” (passive income) behavior instead of redistributing the wealth and investing it in development of other industries and human capital.⁵⁹ In Bolivia, privatization of the main industries led the nation to “a loss of sovereignty,” which turned it into a “servant of big capital” thereby intensifying the “exploitation of [the country’s] national resources in order to increase corporate profits.”⁶⁰ Because of a historic lack of transparency in contracts between the government and large corporations, it is easy for Bolivian citizens to assume they are being cheated out of their resources and to unapologetically protest and urge the government to overthrow its legal obligations.⁶¹

Now, against the backdrop of centuries of exploitation, the Bolivian people are turning to their newfound wealth in lithium reserves with hope:

To many Bolivians, the potential of lithium wealth represents a symbolic remuneration for 500 years of natural resource looting by foreign corporations. Bolivian political analyst and former vice-minister of mining, Pedro Mariobo Moreno, calls for the “state monopoly of all the riches of the Salar of Uyuni . . . to avoid the third massive

55. *Id.*

56. MADELEY, *supra* note 53, at 6.

57. *Id.* at 9.

58. See Maria McFarland Sanchez-Moreno & Tracy Higgins, *No Recourse: Transnational Corporations And The Protection of Economic, Social, And Cultural Rights in Bolivia*, 27 FORDHAM INT’L L.J. 1663, 1668 (2004).

59. Barbara Hogenboom & Alex E. Fernandez Jilberto, *The Political Economy of Latin America’s Extractive Industries: The State And Shifting Political Regimes*, Delivered at the 2009 Congress of the Latin American Studies Association (LASA), June 11-14, 2009, at 14, available at http://www.cedla.uva.nl/10_about/PDF_files_about/Hogenboom/LASA_2009.pdf.

60. OSCAR OLIVERA, ¡COCHABAMBA! WATER WAR IN BOLIVIA 14 (2004).

61. See Joseph E. Stiglitz, *Who Owns Bolivia?*, PROJECT SYNDICATE, July 5, 2006, <http://www.project-syndicate.org/commentary/stiglitz71>.

sacking of our natural resources, after silver and tin.”⁶²

In an interview with the New York Times, Saúl Villegas, head of a division in COMIBOL that oversees lithium extraction, dismissed privatization of lithium production, claiming: “The previous imperialist model of exploitation of our natural resources will never be repeated in Bolivia,” and regarding potential outside investment, he said: “[m]aybe there could be the possibility of foreigners accepted as minority partners, or better yet, as our clients.”⁶³ Furthermore, Marcelo Castro, who is the engineer overseeing the construction of the small lithium plant in the Salar de Uyuni region, seemed guardedly hopeful for Bolivia’s future when he commented to National Public Radio that “the flow of natural resources out of Bolivia left us poor, backwards, underdeveloped, and dependent. Only the success of this plant can guarantee that profits will be reinvested in our country. If not, we’ll end up the same as before.”⁶⁴ Therefore, it seems that Bolivia’s lithium industry could be the country’s prime opportunity to make up for years of lost time and economic advancement, but it also means that a significant burden rests on the shoulders of President Morales and his government to bring success to their country.

III. NATIONALIZATION OF HYDROCARBONS AND BEYOND

A. POLICIES BEHIND THE 2006 NATIONALIZATION

With an understanding of the context in which Bolivia has nationalized many of its resource sectors in the past, the 2006 nationalization of hydrocarbons under Supreme Decree No. 28701 is more readily appreciated.⁶⁵ Specifically, the decree required the major oil companies operating in Bolivia (Petrobrás, Repsol, and Total) to relinquish control of their field operations to the country’s national oil company, YPFB, and to sustain an increase in taxes on their profits to a total of eighty-two percent or to leave the country.⁶⁶ This action effectively turned the tables on the transnational corporations because policy decisions and profits now rested primarily in the hands of the Bolivian government. The strong assertion of authority over hydrocarbons is permeating to the new lithium sector as well; “Morales is committed to ensuring that his people reap the benefits of their natural resources. Nationalization of the lithium industry is one option which [he] is considering in order to reach his goal.”⁶⁷

62. *Salt of the Earth*, *supra* note 8.

63. Romero, *supra* note 3.

64. Interview by Annie Murphy with Marcelo Castro, Engineer, in Salar de Uyuni desert, Bol. (May 11, 2009), *available at* http://marketplace.publicradio.org/display/web/2009/05/11/pm_bolivia_lithium/#.

65. See Raquel Gutierrez & Dunia Mokrani, *Bolivia: Nationalization Without Expropriation?*, GLOBAL POLITICIAN, June 20, 2006, <http://www.globalpolitician.com/21898-bolivia>.

66. Weintraub, *supra* note 35.

67. Hopper, *supra* note 4.

In fact, Morales has a rather ambitious agenda as he is determined to prevent foreign companies from extracting lithium and leaving with the profits. Instead, his aspirations include full-scale production of lithium-ion batteries and possibly even electric cars on Bolivian soil.⁶⁸ His hope is that such an extensive industry (from extraction to production of finished products) could create numerous employment opportunities for the Bolivian people who would finally become the primary beneficiaries of their country's resource wealth.⁶⁹ There is typically a conflict between the extractive industries and the resource-rich country in which they operate over where such resources should be further processed; the multinational firms prefer to process minerals back in the industrialized West, while the developing countries prefer to expand local processing activities and reap the economic benefits of doing so.⁷⁰ The primary motivators for multinationals to process minerals back home is the fact that they already possess the necessary refining installations there, the developing host country usually has poor infrastructure unable to support processing activities without a significant financial investment, and, in some cases, the enormous political, economic, and social risks involved with committing investment capital to the country outweigh the potential benefits.⁷¹

Despite Morales' agenda and his dedication to nationalization, the reality is that in order for him to develop his country's infrastructure and technology required for a successful lithium industry, he must turn to private foreign corporate investors for help.⁷² Even given the completion of the small government-owned lithium plant currently under construction, for Bolivian production to reach profitable and influential levels, the country will require substantially more development and investment.⁷³ Bolivian economist, Juan Carlos Zuleta, stated that, "[t]here has to be some private investment. Not only because we are a poor country, and we don't have enough financial resources, but more important is that we don't have the technology."⁷⁴ Although the large reserves have caught the attention and solicitations of large foreign companies and automakers like Japan's Mitsubishi,⁷⁵ many others may be hesitant for fear that after they commit a significant investment and provide infrastructural development Morales will simply nationalize the industry as he did with hydrocarbons and expropriate their assets.⁷⁶

68. *Id.*

69. McAdams, *supra* note 6.

70. TRANSNATIONAL CORPORATIONS AND THE EXPLOITATION OF NATURAL RESOURCES 94 (Bruce McKern & John H. Dunning, eds., 1993).

71. *Id.* at 100-101.

72. *See* McAdams, *supra* note 6.

73. *See* Romero, *supra* note 3.

74. Interview by Annie Murphy with Juan Carlos Zuleta, *Economist*, Bol. (May 11, 2009), available at http://marketplace.publicradio.org/display/web/2009/05/11/pm_bolivia_lithium/#.

75. *Id.*

76. *See* Hopper, *supra* note 4.

Foreign corporations have good reason to worry about investing in Bolivia; one of Morales' motivations behind nationalizing the hydrocarbons sector in 2006 was the fact that "foreign investors received too much in gas-sale profits based on the hydrocarbons law in place at the time."⁷⁷ Even if such corporations were to partner with the Bolivian government, they risk having the government take over their operations arbitrarily upon a determination that they are benefitting too much from the relationship. Such fears explain why so many "private sector experts agree that even the best-executed nationalization plans carry risks."⁷⁸ Among them, R. Fleischer of the Center for Strategic and International Studies in Washington believes that once a country begins a policy of nationalization, foreign investors are quickly scared off.⁷⁹

Carlos Alberto López, a former energy minister and consultant with Cambridge Energy Research Associates, shares his less enthusiastic sentiment about Bolivia's potential in stating, "Foreign companies are afraid to deal with a government that confiscates assets and rips up contracts . . . Bolivia's-ideological face does not square with business and commercial realities. I doubt lithium's potential will be realized in the short or medium term."⁸⁰ He further notes that following the nationalization of the oil and gas industry, "foreign investment evaporated, production fell, and the state-owned energy company, YPFB, became mired in corruption," all of which he contends hurts Bolivia's trustworthiness in the eyes of potential investors.⁸¹ Part of the problem stems from the fact that YPFB was a de-capitalized company (thus unable to finance its activities); in order to capitalize it to gain the resources necessary to take absolute control of the hydrocarbons industry, Bolivia had to de-capitalize foreign companies by increasing the appropriation of revenues from the hydrocarbons industry that go to the state. This capitalization, in turn, discouraged foreign investment in the nation.⁸²

One counterargument to the negative assertions above is the fact that Bolivia's actions reflect an emerging if not prevalent regional attitude rather than an isolated choice by the country: "around the world, developing countries are throwing off colonial overlords and nationalizing in-

77. Carin Zissis, *Bolivia's Nationalization of Oil and Gas*, BACKGROUNDER, May 12, 2006, <http://www.cfr.org/publication/10682/>.

78. Jaroslaw Anders, *Latin American Nationalization Trend Seen Hindering Progress*, USINFO, Jan. 16, 2007, <http://www.america.gov/st/washfile-english/2007/January/20070116154839zjsredna0.6983454.html>.

79. *Id.*

80. Rory Carroll & Andres Schipani, *Multinationals Eye Up Lithium Reserves Beneath Bolivia's Salt Flats*, GUARDIAN, June 17, 2009, <http://www.guardian.co.uk/world/2009/jun/17/bolivia-lithium-reserves-electric-cars>.

81. *Id.*

82. See Roberto Chacon de Albuquerque, *The Disappropriation of Foreign Companies Involved in The Exploration, Exploitation And Commercialization of Hydrocarbons in Bolivia*, 14 L. & BUS. REV. AM. 21, 23 (2008).

dustries to return some of the profits to the citizens.”⁸³ The systemic move to nationalize could leave foreign investors with little choice but to enter relationships with headstrong but resource-rich countries:

And this time, the leaders of these countries are not about to see their resources go straight into the hands of the Americans. Venezuela nationalized its oil, and other countries on the continent have been not-so-quietly expelling companies who exploited them through deals made with puppet dictators or through coercion.⁸⁴

Perhaps Bolivia’s turn to nationalization is less about “getting back” at foreign corporations than it is about asserting control over the country’s remaining natural resources in order to “promote much needed development” and economic growth.⁸⁵ Bolivia could be taking these steps now when the country has the rare opportunity and ability to learn to stand on its own and claim its position at the league tables of powerful resource-rich nations by strengthening and protecting its national sovereignty through the “recuperation of a certain decision-making autonomy of the Bolivian state, which in the previous administrations was completely subordinated to outside interests and designs.”⁸⁶

Despite Bolivia’s Constitution claiming all hydrocarbons as property of the state, prior weaker administrations bent to the will of the International Monetary Fund (IMF) and granted various concessions to U.S. and European oil and gas corporations in the mid-1990s.⁸⁷ Rather than help the country advance, such concessions failed to relieve the Bolivian people’s severe poverty, and thus Morales’ choice to nationalize reflects a growing awareness in the importance of corporate social responsibility—if the companies fail to take into account and mitigate the impact of their actions, they will be forcibly removed.⁸⁸ At the very least, even if all positive reasons are discounted, “hydrocarbons are in high demand and this might help disguise or at least mitigate the severity of the negative message Bolivia has sent to foreign investors, and tempt new investment to test the waters.”⁸⁹

From President Morales’ perspective, not only were his actions intended to help his people, but they were necessary for political survival—his predecessors were pushed out of office over the issue of nationaliza-

83. Eyck Freymann, *A New Day in South America*, HUFFINGTON POST, Apr. 19, 2009, http://www.huffingtonpost.com/eyck-freymann/a-new-day-in-south-america_b_188717.html.

84. *Id.*

85. See Nadia Martinez, *Bolivia’s Nationalization: Understanding The Process And Gauging the Results*, INST. POL’Y STUDIES, Aug. 2007, <http://www.wola.org/bolivia/IPS%20Nationalization%2008.07.pdf>.

86. Gutierrez & Mokrani, *supra* note 65.

87. Martinez, *supra* note 85.

88. *Id.*

89. Jova, *supra* note 34, at 17.

tion.⁹⁰ Thus, in issuing Supreme Decree No. 28701, President Morales intended to annul the “transnational contracts that had been put into place under President Sanchez de Lozada’s capitalization process of the late 90s.”⁹¹ Furthermore, Morales, unlike prior administrations, actually has ambitious and specific plans for the use of his country’s resource profits, primarily 1) reinvesting in job creation to begin to raise the country out of extreme poverty and 2) educating his citizens to best position and strengthen them and future generations of Bolivians.⁹²

B. LEGALITY OF THE 2006 NATIONALIZATION

In terms of the legality of Bolivia’s annulment of contracts, the 2006 nationalization was touted as “nationalization without expropriation,” meaning that the country was not depriving the foreign corporations of any actual property right and in fact left the corporations in place as operators of the facilities.⁹³ This action falls squarely within one of three traditional theories of appropriation: 1) state monopoly and appropriation of all revenues through a state-owned company (*i.e.* Saudi Aramco); 2) coexistence between private companies (whose revenues are taxed by the state) and a state-owned company (like Bolivia’s 2006 nationalization); and 3) exploration and exploitation of the natural resources only by private companies but with hefty state-imposed taxes and royalties on their revenues (the U.S. method).⁹⁴ Bolivia’s primary argument is that the foreign corporations never owned any property rights as to the hydrocarbons to begin with and therefore no purchase transaction was required to legally transfer assets from the corporations to the state:

It might seem incredible to many that national resources were . . . transferred from the public to the private sector without any type of sale, but this is exactly what happened. There was no sale, so *now there is no expropriation*. If one reviews the press and the laws passed during 1995 and 1996 in Bolivia it is clear that this was the peculiar mechanism of privatization devised in that country to transfer public wealth, national resources, and the state investment accumulated in the thirty years prior to 1990 directly to the private sector. [emphasis added]⁹⁵

Aside from what appears to be a “lack of consideration” argument, the public refusal to honor government contracts also stems from a feeling of unfair dealing and fraud because the government, without the legally required approval from Congress, agreed to long-term fixed price capitalization contracts without stipulating how and when taxes were to be paid

90. See Raul Zibechi, *After Bolivia’s Gas Nationalization—Toward a New Regional Map*, GLOBAL POLITICIAN, June 2, 2006, <http://www.globalpolitician.com/21827-bolivia>.

91. Jova, *supra* note 34, at 5.

92. OCHOA, *supra* note 41, at 91-92.

93. Jova, *supra* note 34, at 6.

94. Albuquerque, *supra* note 82, at 23-24.

95. Gutierrez & Mokrani, *supra* note 65.

by foreign corporations.⁹⁶ Bolivia settled on the option of nullifying contracts, saying they are against constitutional provisions that require prior congressional approval as an alternative to the more expensive option of buying out the foreign corporations under an eminent domain theory of taking their property for public use or the less certain option of closely scouring the contracts to find an unmet condition upon which to base a rescission.⁹⁷ In addition to arguing that without congressional approval the privatization contracts were void, a third assertion is that such contracts, even if approved, directly contradicted the language of article 139 of the constitution, stating that hydrocarbons are the property of the state, and therefore could not be legally privatized.⁹⁸

Given the multitude of historic, social, and legal reasons for nationalizing, what remains clear is the fact that Bolivia is determined to take a stand and make up for centuries of abuse and repression at the hands of internal and external forces. This mentality has already colored the discussions surrounding lithium extraction and development, but it also seems likely that the Bolivian people are cautiously willing to accept foreign partners so long as their due share is secured. Without the support of the Bolivian people, foreign corporations will lose their potential to develop one of the greatest sources of lithium for the future, and without the trust and investment of foreign corporations, the Bolivian people will remain underdeveloped and poverty-stricken.

IV. THE NEW BOLIVIAN CONSTITUTION

A. THE INDIGENOUS POPULATION GETS ITS DUE

The election of President Evo Morales is significant not only because of his unprecedented dedication to walking a hard line internationally, but because of his unique status of being the first indigenous president in Bolivia's history.⁹⁹ One of the primary campaign promises that vaulted him to the position was a promise to reform the country's constitution in order to bring greater social and political rights to the country's indigenous majority.¹⁰⁰ And reform he did: "Morales staged an historic referendum in February 2009 that called for land redistribution of the holdings of the country's powerful European-descended minority in favor of its indigenous majority."¹⁰¹ The most crucial aspect of this reform is that it grants control over natural resources existing within indigenous territories to the people living there.¹⁰² The significance of such control is that it allows indigenous populations to govern the types of concessions they

96. See Jova, *supra* note 34, at 12.

97. See Albuquerque, *supra* note 82, at 27-29.

98. Jova, *supra* note 34, at 12.

99. Freymann, *supra* note 83.

100. Spencer Spratley, *Canadian Perspective: America's Pursues Ongoing Interference in Latin America*, WORLD PRESS NETWORK, June 11, 2008, <http://worldpress-network.net/forum/viewtopic.php?f=2&t=273>.

101. Lucky Bolivia, *supra* note 20.

102. Hogenboom & Jilberto, *supra* note 59, at 11.

will give for resource extraction, if at all.¹⁰³ While such changes did not earn Morales the hearts of the country's largely European elite, his intentions were to compensate the indigenous majority for the various encroachments and injustices they suffered over the country's history.¹⁰⁴ Those encroachments by transnational corporations and the country's elites left the indigenous population displaced and impoverished.¹⁰⁵

In recognition of the country's diverse population, the new constitution declares Bolivia as "pluri-national" in order to acknowledge the presence of over thirty different indigenous nations.¹⁰⁶ In addition to such recognition, the constitution goes further by creating a new Congress that specifically reserves a number of seats for the indigenous groups thereby giving them unprecedented official representation and say in the government.¹⁰⁷ Such changes, while drastic for the non-indigenous population, are not surprising given that "Bolivia's *campesino*, indigenous and original peoples (*pueblos originarios*) make up 60 percent of the country's 8.8 million population."¹⁰⁸ Furthermore, recognizing indigenous rights within the country parallels a global trend.

The Bolivian Constitution cements some of the rights outlined in the 2007 U.N. Declaration on the Rights of Indigenous Peoples, which supports indigenous self-government and self-determination. Article 289 of the constitution stipulates, "Rural indigenous autonomy consists of self-government and the exercise of self-determination for rural indigenous nations and native peoples who share territory, culture, history, language, and unique forms of juridical, political, social, and economic organization."¹⁰⁹

The new provisions even allow the indigenous groups to create their own statutes for their autonomous territories (provided they comport with the other laws of the state and other constitutional provisions) and to govern their own development by managing their natural resources and by levying and re-distributing taxes.¹¹⁰ Inclusion of indigenous representation even extends to the judicial system since the constitution provides for a "new indigenous judicial system, at the same level of ordinary justice, along with a new Plurinational Constitutional Court which will have to elect new members for both systems."¹¹¹ Most important to the present analysis are the provisions regarding natural resources; in some

103. Romero, *supra* note 3.

104. See Freymann, *supra* note 83.

105. Romer, *supra* note 45.

106. Alex van Schaick, *Bolivia's New Constitution*, NORTH AMERICAN CONGRESS ON LATIN AMERICA, Jan. 21, 2009, <https://nacla.org/node/5437>.

107. Mauricio Ipiña Nagel, *The Bolivian Legal System And Legal Research*, GLOBALLEX, Dec. 2009, <http://www.nyulawglobal.org/globalex/bolivia.htm>.

108. Susan Healey, *Cultural Resilience, Identity And The Restructuring of Political Power in Bolivia*, Presented at the 11th Biennial Conf. of Int'l Ass'n for the Study of Common Prop., Bali, Indon. (June 19-23, 2006), at 2, available at http://www.indiana.edu/~iascp/bali/papers/Healey_susan.pdf.

109. Van Schaick, *supra* note 106.

110. *Id.*

111. Nagel, *supra* note 107.

cases the indigenous population is granted full control over any such resources in their territories and in others they are at least guaranteed the right to be consulted about the nature of extraction and entitlement to share in the economic benefits of that extraction.¹¹²

While the constitutional changes appear drastic, the creation of increased indigenous authority may have been viewed as a way to repair former grants of rights that have gone largely unfulfilled—by placing control in the hands of the indigenous groups and allowing them representation in the government, they will be better able to police and enforce their own rights. A 2007 U.N. Special Report on human rights and freedoms of indigenous peoples highlighted the fact that, despite provisions in the constitutions of many countries that provide for inalienable rights to and titling procedures for gaining ownership of land, the process has been slow and largely ignored, especially in Bolivia. “[By] 2005, the indigenous Aymara people in Bolivia—which make up sixty to eighty percent of the total population—had filed land claims covering 143,000 square miles, but due to the slow, under-funded titling process, only 19,300 miles had been granted by the end of 2006.”¹¹³

Even more discouraging is that in many countries, despite specific demarcation of indigenous lands, resource extraction and encroachment by transnational industries has gone largely unchecked, particularly in the mining and logging industries.¹¹⁴ The U.N. has noted the significance of such abuses because of the fact that “the majority of the world’s remaining natural resources—minerals, freshwater, potential energy sources and more—are found within indigenous peoples’ territories.”¹¹⁵ In an effort to combat flagrant disregard for indigenous rights, the new Bolivian Constitution puts the power in the hands of those most affected, and thus transnational corporations in Bolivia can expect increased scrutiny over current and potential operations within the country.

B. REAFFIRMATION OF NATIONAL OWNERSHIP OF NATURAL RESOURCES

In addition to improving the rights of the indigenous population, the new constitution also reasserts Bolivia’s right to the full benefit of its natural resources under article 349. “Natural resources are the inalienable and indivisible property and direct dominion of the Bolivian people and will be administrated, in the collective interest, by the State.”¹¹⁶ It further specifies that the state oil and gas company, YPFB, is in charge of

112. José Aylwin, *Land and Resources*, CULTURAL SURVIVAL Q., 30.4 (Winter 2006), available at <http://www.culturalsurvival.org/publications/cultural-survival-quarterly/joseacute-aylwin/land-and-resources>.

113. *Indigenous Peoples—Lands, Territories, And Natural Resources*, U.N. PERMANENT FORUM ON INDIGENOUS ISSUES, available at http://www.un.org/esa/socdev/unpfi/documents/6_session_factsheet1.pdf.

114. Aylwin, *supra* note 112.

115. *Indigenous Peoples*, *supra* note 113.

116. Van Schaick, *supra* note 106.

the entire productive chain with authority to enter contracts with private companies to engage in oil and gas production as well.¹¹⁷ Apart from specific contracts with private organizations, all remaining profits from natural resources are considered property of the state.¹¹⁸ Article 359 is more specific, discussing hydrocarbons in particular, and reaffirming that they “are the inalienable and imprescriptible property of Bolivians” and that, on behalf of its citizens, the government “exercises the property rights over all hydrocarbon production in the country and only it is authorized to carry out its marketing.”¹¹⁹

It is interesting to note that the constitution specifically stipulates control over hydrocarbons, but fails to mention lithium resources. Perhaps Morales and the Bolivian government assumed control over lithium would fall under the more general article 349 provisions governing natural resources as a whole. Alternatively, the specific provisions of article 359 could simply be a result of the relatively volatile history of hydrocarbon management as a way of ensuring Bolivian control for the future. A third (and the most likely) possibility is that Morales did not want to foreclose all opportunities for gaining foreign investment in developing the lithium industry and therefore did not specifically target it in the constitution so as to avoid the appearance of an overbearing government, unwilling to yield benefits to private actors.

Asserting control over natural resources is crucial to Morales’ developmental goals for his country.¹²⁰ By capitalizing on Bolivia’s natural wealth, Morales can presumably increase living standards for his people while gaining international recognition as a major resource supplier, the benefits of which are already accruing even without a developed lithium industry. “Bolivia’s mining industry was producing significant gains for the country, leading to a 9.4 [percent] increase in its GDP, as reported in early 2008.”¹²¹ Such positive indicators could signal the start of a much-needed reversal in the fortunes of a country that, until recently, did not have the political strength to overcome its instability. “Bolivia is typical of the world’s poorest countries, where the management of resources essential to sustain economic development has suffered serious neglect.”¹²²

The fortified strength of the government under the new constitution should drastically improve control over the natural resources that are a key aspect of internal development “especially for indigenous and peasant groups that cannot easily benefit from the international economic system.”¹²³ Opponents of nationalization frequently criticize the system for

117. *Id.*

118. Nagel, *supra* note 107.

119. *Id.*

120. See World Bank Indep. Evaluation Group, Natural Resources Management in Bolivia, <http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/443BAEC06DB35A26852567F5005D8501> (last visited Oct. 11, 2010).

121. Lucky Bolivia, *supra* note 20.

122. World Bank Indep. Evaluation Group, *supra* note 120.

123. OCHOA, *supra* note 41, at 93.

failing to allow the capitalist system to run its course by allowing strong-armed governments to manipulate and control markets, however:

If things were left purely to the momentum of economic forces—the so-called logic of the market that is nothing more than the logic of the transnationals—the result would be a type of integration that would continue producing marginalization and poverty in every country and accentuating the inequalities between rich countries and poor countries.¹²⁴

The increased control of the government is not solely a power-grab by the elite politicians either; much of the impetus and support for the new constitutional provisions came from the Bolivian people themselves, and as Francisco Quisbert (leader of a group of salt gatherers in the Salar de Uyuni, known as *Fructas*) said in an interview with the *New York Times*: “We know that Bolivia can become the Saudi Arabia of lithium . . . we are poor, but we are not stupid peasants. The lithium may be Bolivia’s, but it is also our property.”¹²⁵ The alignment of sentiments between the national government and the Bolivian people will most likely color the execution of future plans for the country’s lithium resources, but before jumping into a full-scale development project, they would be best-served to learn from the rise to economic and resource prowess of an unlikely, but surprisingly similarly situated nation, Saudi Arabia.

V. AN UNLIKELY ROLE MODEL: SAUDI ARABIA

A. AN ALTERNATIVE TO NATIONALIZATION: PARTICIPATION AGREEMENTS

Bolivia’s dilemma, that it possesses vast reserves of valuable lithium without the capital or infrastructure to properly extract it, is similar to the one Saudi Arabia, the country that possesses the world’s largest oil reserves, faced during the 1930s.¹²⁶ The development of the now-booming oil industry in Saudi Arabia was a direct result of significant foreign investment. In the 1930s, when Standard Oil of California (SOCAL) discovered oil in the nation after winning concessions from the government, the country was capital-poor and undeveloped, thus unable to provide the necessary investment to create an oil industry to exploit the valuable resource.¹²⁷ In fact, “prior to World War II, [Saudi Arabia] was one of the poorest [countries] on earth.”¹²⁸ Foreign investment in Saudi Arabia was particularly important for its oil industry since “the problems of oil production . . . have always been the high sums of money needed for investment, the need for using the latest technology and the high risk and

124. Zibechi, *supra* note 90.

125. Romero, *supra* note 3.

126. See ALI D. JOHANY, ET AL., *THE SAUDI ARABIAN ECONOMY* 30 (1986).

127. Lucky Bolivia, *supra* note 20.

128. *THE GOVERNMENT AND POLITICS OF THE MIDDLE EAST AND NORTH AFRICA* 85 (David E. Long & Bernard Reich, eds., 4th ed. 2002).

uncertainty involved mainly in the exploration phase.”¹²⁹ The extent of oil production operations in Saudi Arabia quickly grew as SOCAL gave way to a series of other cross-company partnerships (later known as the Arabian American Oil Company—ARAMCO) when it sold part of its interest to Texaco in 1936, which was then joined by today’s Exxon-Mobil in 1946 “to gain investment capital and marketing outlets for the large reserves being discovered in Saudi Arabia.”¹³⁰

The initial ownership of ARAMCO was divided wholly between those four companies with Mobil taking ten percent and the remaining three each owning thirty percent.¹³¹ Through significant foresight, the Saudi government managed to secure its future place at the helm of the oil industry by negotiating a gradual buyout process for ARAMCO known as “participation.”¹³² The Saudi government recognized that without maintaining involvement of the oil companies (if it chose to implement a traditional nationalization), the oil-producing countries would engage in pricing battles that could collapse the global market.¹³³ In 1950, Saudi Arabia negotiated a fifty-fifty profit sharing agreement whereby the government would tax each barrel of oil produced by ARAMCO, which led to a significant increase in the country’s tax revenues.¹³⁴ In 1972, under what was termed the “General Agreement,” Saudi Arabia continued to incrementally nationalize ARAMCO through participation purchases, initially beginning with a twenty-five percent share in the company with a five percent annual increase until a fifty-one percent holding by 1983; this would prevent “a precipitous nationalization” while laying “the groundwork for cooperation between the American and Saudi owners based on common business interests, such as maintaining stable markets and supply.”¹³⁵ The agreement was modified periodically and by the end of the 1980s, Saudi Arabia had officially repurchased all of ARAMCO’s (now renamed Saudi Aramco) assets and was the oil conglomerate’s sole owner.¹³⁶

The importance of this repurchase process in the context of Bolivia is that Saudi Arabia started out in a similar situation of possessing a vast wealth of natural resources that the country could not afford to develop into a profitable economic sector on its own—much as Bolivia is unable to get its lithium industry on a global production level without significant

129. SHUKRI M. GHANEM, *OPEC: THE RISE AND FALL OF AN EXCLUSIVE CLUB* 4 (1986).

130. See HELEN CHAPIN METZ, *SAUDI ARABIA: A COUNTRY STUDY* (1992), available at <http://countrystudies.us/saudi-arabia/>.

131. GHANEM, *supra* note 129, at 10.

132. THE GOVERNMENT AND POLITICS OF THE MIDDLE EAST AND NORTH AFRICA, *supra* note 128, at 85.

133. *Id.*

134. METZ, *supra* note 130.

135. Amy Myers Jaffe & Jareer Ellass, *Saudi Aramco: National Flagship With Global Responsibilities*, JAMES A. BAKER III INST. FOR PUB. POLICY, 38 (Mar. 2007), available at http://www.rice.edu/energy/publications/docs/NOCs/Papers/NOC_SaudiAramco_Jaffe-Elass-revised.pdf.

136. *Id.* at 39.

outside aid.¹³⁷ Saudi Arabia provides an excellent example for Bolivia because it obtained the necessary investment to get oil production off the ground, but managed to resist selling out its entire national resource wealth to foreigners by devising a clever method of regaining control of its assets over time. For a country like Bolivia, whose history is plagued with exploitation by such outside investors, taking a close look at how the Saudi government structured such a deal is crucial to ensuring the successful and profitable development of its lithium resources.

In order to effectively develop lithium production into a profitable, high-volume industry while maintaining a beneficial stake in the profits, it seems Bolivia should take steps to encourage outside investment and partnerships with a similar "participation" plan as Saudi Arabia executed during its fledgling years. The Bolivian government should also consider downplaying its nationalistic tendencies and realize that there are equally viable options that will bring wealth and improved standards of living to its people without polarizing foreign investors. The Saudi government carefully avoided a bare nationalization of ARAMCO after it realized the crucial role that foreign oil companies played in keeping the oil market stable and profitable. The Bolivian government needs to recognize the substantially similar position it is in and quell its population's rancorous language concerning nationalization and the dissolution of contracts with private corporations. Without the aid of such corporations, it seems highly unlikely that Bolivian lithium production will be relevant, if it succeeds at all.

The best plan is for the government to draft an agreement as a precursor to allowing any external aid in which the government specifies how it will maintain an ownership stake in any joint venture with foreign multinational companies and that it will retain options or rights to repurchase the remaining shares over time. To encourage investment, the government should specify limits on its ability to repurchase all of the outstanding assets—either that it would be unable to do so before a specified date or before its foreign partners had recouped their initial investments or booked a specified profit. Furthermore, the Bolivian government will have to devise a reasonable share repurchase rate because unlike Saudi Arabia, Bolivia has a history of breaching contracts and misappropriating foreign companies, and thus it will have to tread lightly to encourage transnational corporations to trust the government and will be unable to engage in as aggressive a share repurchase process as Saudi Arabia conducted. With such a "participation" agreement, Bolivia could ensure its involvement in its lithium production industry despite the country's need for foreign-sourced capital and infrastructural development.

137. See Lucky Bolivia, *supra* note 20.

B. SHOULD BOLIVIA CREATE ITS OWN OPEC?

Another factor that greatly aided Saudi Arabia's development and the success of the oil market as a whole for oil-producing nations was the creation of the Organization of the Petroleum Exporting Countries (OPEC) in 1960 between Saudi Arabia, Iran, Iraq, Kuwait, and Venezuela.¹³⁸ This structure is another that, if successfully mimicked by Bolivia and other lithium-producing nations, could lead to a stable and profitable market for the metal. OPEC was a necessary response by oil-producing nations to check the pricing pressures of transnational oil companies (those same companies that provided the necessary initial investment to get the industry off the ground) and other threats to the producing nations' welfares.¹³⁹ OPEC represents the collective interests of oil-producing nations (much like a labor union, but for countries) and has four primary defining characteristics:

- 1) OPEC is an intergovernmental organization restricted exclusively to countries heavily dependent on oil exports for foreign exchange and economic development;
- 2) membership is in practice limited to developing countries;
- 3) decisions are reached by a ministerial conference, require a unanimous vote, and are subject to approval of all member governments;
- 4) political matters are at least formally outside the scope and purview of the organization.¹⁴⁰

Surprisingly, it did not take long for the organization to have a beneficial impact for member countries: "at the moment of its inception, OPEC managed to halt additional attempts to reduce oil's posted price."¹⁴¹

Article 2 of OPEC's guiding statute sets forth that its main purpose is to unify and stabilize oil prices between member countries, to ensure a stable income from oil production to those countries, and to ensure a regular supply of oil to consuming countries.¹⁴² The most interesting provision, however, is in article 2(c), which states that one of the functions of the organization is to give "due regard . . . to . . . a fair return on their capital to those investing in the petroleum industry."¹⁴³ While awkwardly phrased, this provision essentially declares that not only will OPEC protect member-nations, but it will also operate to ensure that those participating in the oil industry (the foreign oil companies) will receive a "fair return" on investment. This provision was probably included to reduce the threat that OPEC posed to the multinational oil companies—while other provisions set boundaries to protect the interests of OPEC members, this provision specifically extends an olive branch in asserting that

138. JOHANY, *supra* note 126, at 50.

139. Zuhayr Mikdashi, *The Opec Process*, 104 DAEDALUS 203, 205 (1975).

140. *Id.* at 206.

141. Jaffe & Ellass, *supra* note 135, at 33.

142. Org. of the Petroleum Exporting Countries, OPEC Statute, ch. 1, art. 2, (2008), available at http://www.opec.org/opec_web/static_files_project/media/downloads/publications/OS.pdf [hereinafter OPEC Statute].

143. *Id.*

non-member investors can expect fair treatment and thus encourages continued partnership and investment in the oil industry.

Despite unification under OPEC, a number of differences continue to cause tension between member countries mainly due to unequal allocation of natural resources and correspondingly varied policy interests. For example, while Saudi Arabia is interested in maintaining moderate price levels to ensure the long-term value of its vast reserves, a country with a smaller endowment of oil would want higher prices to maximize its return over its shorter production horizon.¹⁴⁴ A further area of disunity is the proper role for national oil enterprises in member countries—whether they are to become proper transnational companies or remain agents of the national governments focused primarily on domestic development.¹⁴⁵ Even with their assorted differences, however, the OPEC members continue in their joint relationship, realizing that “unless they remain together on the oil-pricing issue, they may well fail separately, and that their protagonists, the industrial powers and major companies, will regain the power they had over the oil industry until recently.”¹⁴⁶

Article 3 of the OPEC statute reflects the desire for members to cooperate despite differences by providing that “[t]he Organization shall be guided by the principle of the sovereign equality of its Member Countries . . . [who] shall fulfill, *in good faith*, [their] obligations . . . in accordance with this Statute [emphasis added].”¹⁴⁷ This article means that despite inequalities in distribution of oil resources and wealth, each member of OPEC is considered an equal of the others thus mitigating the threat of the more powerful members (Saudi Arabia) from setting the agenda and policies of the organization over the protests of weaker members (Venezuela). In addition, the language of “good faith” in the second clause of the article also addresses the guarantee of a fair return for non-member investors under the above-mentioned provisions of article 2. It effectively prohibits a member nation from breaching the guarantee by taking a drastic step contrary to an investor’s interests, such as nationalization, which is unlikely to classify as a “good faith” action under the statute.

The OPEC statute does not specifically provide for sanctions against a member country if it should breach any of the statutory provisions, however, the power to impose sanctions seems to be indirectly proposed under article 4. Article 4 provides: “If, as a result of the application of any decision of the Organization, sanctions are employed, directly or indirectly, *by any interested company or companies* against one or more Member Countries . . . [emphasis added].”¹⁴⁸ The language of the provision suggests that the OPEC members cannot themselves enforce sanctions, but may issue a decision leading a non-member corporation to

144. MIKDASHI, *supra* note 139, at 209.

145. *Id.*

146. *Id.* at 210.

147. OPEC Statute art. 3.

148. *Id.* art. 4.

impose sanctions on its own accord. The remainder of the provision clarifies that it is not actually meant as a grant of sanctioning power, but as a guard against the potential contradiction of a decision by the members as a result of a corporation imposing sanctions against one member for the benefit of another:

[N]o other Member shall accept any offer of a beneficial treatment, whether in the form of an increase in oil exports or in an improvement in prices, which may be made to it by such interested company or companies with the intention of discouraging the application of the decision of the Organization.¹⁴⁹

Thus, rather than providing for some inherent sanction power, the statute instead establishes that in the event a non-member imposes sanctions against a member, no other member may profit from those sanctions or go against the collective interest of the organization. This stipulation seems to further address the general policy of cohesion and cooperation between members, recognizing that allowing members to profit from the misfortunes of another would be divisive and undermine the unified interests that the organization seeks to protect.

A final interesting aspect of the organization is the quasi-democratic nature of its structure despite the fact that most member countries do not themselves embrace any form of democracy in their own respective governments. The organization is divided into three main components: a Conference, a Board of Governors, and a Secretariat.¹⁵⁰ The Conference is essentially the legislative body of the organization whose primary role is to set the general policies and methods for implementing them, to adopt the budget, to amend the statute, and to conduct other common policymaking functions.¹⁵¹ The Board of Governors, on the other hand, plays an executive oversight function (more along the lines of a board of directors in a corporation) directing the management of the affairs of the organization, implementing decisions by the Conference, and making recommendations to the Conference regarding policies and drawing up the budget for the organization.¹⁵² Finally, in addition to the Board of Governors, the Secretariat is also charged with an executive role that is subordinate to the board, but contains the legally authorized representative of the organization, the Secretary General (like the CEO of a corporation), who is appointed from one of the member countries for a three-year term.¹⁵³ The structure of OPEC seems like it is intended to establish a distribution of powers and division of labor, which also supports the ever-important cooperative bond between the member countries and prevents any one member from exercising too much control or authority over the others.

149. *Id.*

150. *Id.* art. 9.

151. *Id.* art. 15.

152. *Id.* art. 20.

153. *Id.* arts. 25-27.

After garnering foreign corporate investment to help get its lithium industry to become a regular supplier to the market, it seems that Bolivia would greatly benefit from taking a page out of the Saudi Arabian playbook by creating an organization similar to OPEC (perhaps the Organization of the Lithium Exporting Countries—OLEC) jointly with Tibet, Mexico, and the other South American lithium producers. The goals of creating such a joint venture with the other lithium producers would be similar to those that instigated the creation of OPEC in the 1960s, namely a need for a unified front against pricing pressures and for a self-regulated production and supply schedule to stabilize prices and ensure regular income to each member. Structurally, an organization between lithium producing countries would be best served to adopt a similar division of powers that exists under the OPEC Statute. A separation of powers is important to ensure no single member becomes too powerful or abusive of the policies.

While it is unlikely that Bolivia could currently exert enough influence to instigate the creation of such an organization, after a few years of producing and supplying the market with its lithium, being the country with the largest known reserves, it would be best suited to lead the charge towards protecting the market for its valuable resource. Furthermore, if Bolivia could somehow currently convince the other lithium producing countries to join such an organization and to adopt a statute containing provisions similar to the OPEC Statute that protect outside investor corporations participating in the industry, Bolivia could potentially solve its issues with convincing transnational companies to invest in lithium extraction and production infrastructure within the country. Those companies would be statutorily protected for a “reasonable return on their investments” and, should Bolivia violate those terms, the corporations could impose sanctions against its production.

To add further assurances to convince foreign corporations to invest despite Bolivia’s recent trend toward nationalization, the organization should include its own provisions for censuring member countries that breach the statutory language and provide sanctioning power by one of the arms of the organization. In order to effectively hear grievances by non-member corporations and render decisions when issues arise over the conduct of a member nation, Bolivia and its peers should also consider adding a pseudo-judicial arm or tribunal that could more effectively interpret and apply the statutory language governing their organization. Such a tribunal could be composed of a rotating group of representatives from member nations to ensure a fair representation of each individual’s interests and interpretation of the statute.

A strong statutory structure and protections like those proposed above would hopefully overshadow Bolivia’s history and recent reprise of nationalistic tendencies that chill foreign investment. With stronger protections for foreign corporations, they would be more inclined to feel confident that they could profitably invest in Bolivia’s lithium production infrastructure without facing a sudden seizure of assets in a governmental

nationalization. Clearly, Bolivia would benefit from such protective provisions as well because outside foreign investment is crucial to the country's ability to become a major member of the lithium production market. Therefore, a central organization of lithium producers governed by a strong statute seems like an excellent option for Bolivia and its peers to consider as the lithium market grows. Aside from helping countries like Bolivia obtain the necessary initial investment and eventual negotiated repurchase agreements with transnational lithium extracting companies, such an organization would add a further level of protection for Bolivia and fellow member countries by regulating the prices and supply of lithium on the market to avoid misalignment of supply or demand.

C. AVOIDING THE PITFALLS OF A RENTIER STATE

Before Bolivia proceeds to mimic Saudi Arabia in the hopes of becoming as wealthy and powerful, the country should take heed of the indirect negative effects of a government suddenly becoming the collector and redistributor of natural resource wealth. During the oil boom, Saudi Arabia transformed into what is commonly termed a "rentier state:" the government collected economic "rents" from the profits of the extractive oil industry and then became a "source of wealth domestically as one of its primary functions [became] that of distributor . . . [a] patron of both the economy and of society."¹⁵⁴ Rentier states are defined by the fact that their primary income is based purely on the extraction of natural resources rather than from some actual capital-producing function, and that without such rents, the state would be a deficit economy.¹⁵⁵ Furthermore, in their extraction of natural resources, rentier states employ a small percentage of the indigenous population because "the technology required for the profitable extraction of the natural resources is predominantly in the hands of foreigners."¹⁵⁶ With all rents concentrated in the hands of the government, the state becomes a distributor of economic benefits, which it uses as a continuing source of legitimacy to advance other agendas as it no longer depends on taxation and thus has no political accountability.¹⁵⁷

As a financially independent entity not dependent on taxation, the Saudi Arabian rentier-state gave rise to a controlling elite bureaucratic business class based on family connections, favoritism, and excessive wastage with the ability to "buy off" any potential opposition.¹⁵⁸ The various social provisions (medical care, education, food subsidies) making Saudi Arabia a "welfare state" have evolved into a "social contract" whereby the state provides and the people bite their tongues against its

154. CHAMPION, *supra* note 1, at 9.

155. Abdelrahman Al-Hegelan & Monte Palmer, *Bureaucracy And Development in Saudi Arabia*, 39 MIDDLE EAST J. 48, 48-49 (1985).

156. *Id.*

157. Gwenn Okruhlik, *Rentier Wealth, Unruly Law, And The Rise of Opposition: The Political Economy of Oil States*, 31 COMP. POLITICS 295, 296 (1999).

158. CHAMPION, *supra* note 1, at 81.

frequent abuses of power.¹⁵⁹ Distribution is not an entirely effective tool for silencing the masses, however, for the inequitable distribution of wealth is cause for dissent because “the prosperity of private citizens is dependent upon . . . access to contracts, information, jobs in the public sector or infrastructure governed by family relations, friendship, religious branch, and regional affiliation.”¹⁶⁰

When the government plays a central role in distributing economic rents, it is independent of its untaxed citizens who benefit from the welfare of the state and thus who “have little incentive and no effective mechanism by which to hold the government accountable.”¹⁶¹ While there are a number of proposed methods of mitigating this disconnect between governments and their people, the most effective solution would be direct distribution of revenues or interest from the extraction of natural resources to the people themselves.¹⁶² Although distribution to all citizens poses some logistical challenges, especially for developing countries, it is not impossible and has been done in Bolivia previously with direct distribution of pension returns from private enterprise to senior citizens—the advantage being that such a system prevents natural resource profits from passing through the hands of public officials prone to corruption and misappropriation.¹⁶³

Therefore, with the potential rise of a booming lithium industry that would bring much economic and social success to Bolivia, the government and its people should be wary of transforming into a welfare state or rentier-state whose primary function would become distribution of economic rents from its extractive industries to its people. While the population would certainly benefit from an improved standard of living, the lack of accountability that comes with a government running a constant budget surplus is risky to human rights and democracy, especially in a region where political corruption and improper influence is abundant.

Bolivia should strongly consider a system of direct distribution of the economic rents to its people to avoid exposing the country’s newfound wealth to misappropriation by political officials. The potential benefits of a direct distribution system would be threefold: 1) it would drastically improve the standard of living for each and every Bolivian; 2) with increased capital wealth, those citizens would have the ability to reinvest in the country’s economic development through various business pursuits; and 3) the government would remain accountable to its citizen body since it would still have to raise taxes in order to function. With foresight towards avoiding the pitfalls that have arisen in Saudi Arabia, Bolivia would maximize the beneficial effect of its lithium industry profits.

159. *Id.* at 82.

160. Okruhlik, *supra* note 157, at 297.

161. Nancy Birdsall & Arvind Subramanian, *Saving Iraq From Its Oil*, July/Aug. 2004 *FOREIGN AFFAIRS* 81, available at <http://www.foreignaffairs.com/articles/59923/nancy-birdsall-and-arvind-subramanian/saving-iraq-from-its-oil>.

162. *Id.* at 86.

163. *Id.* at 86-87.

VI. CONCLUSIONS AND RECOMMENDATIONS

Lithium extraction, production, and development have strong potential to raise Bolivian society out of the economic and social rut that has plagued the nation since colonial times. While in recent history the Bolivian government has favored a policy of nationalization of various natural resource industries in an effort to keep some of the profitability and wealth within the country, the current leadership under Evo Morales should pursue an alternative strategy for the development of the country's lithium industry. Threats of nationalization and misappropriation do not encourage transnational corporations and foreign investors to feel secure about helping the country develop the infrastructure necessary for a thriving lithium industry, but without such outside investment, Bolivia will be unable to exploit the full potential of its resource wealth and will run the risk of missing its window to join other lithium producing countries as a major supplier to the global market.

To fully realize the benefits of its wealth of lithium resources, Bolivia will have to make some important concessions at the start. By following the path Saudi Arabia took when developing its oil industry, Bolivia should initially allow foreign corporations to develop and begin lithium production under a collaborative central company and then use revenues from taxes on the profits of those corporations to gradually repurchase shares of that company under a participation plan to increase the state-owned share. This would allow Bolivia to benefit from outside help in getting the industry up and running as well as ensure it has a share in the process that could gradually revert to state control over time.

To protect the value and market for lithium, Bolivia should also encourage forming a lithium production organization like OPEC with its peers in the lithium industry. This would achieve dual goals of ensuring stable, regulated prices on the lithium market as well as further assure foreign corporations that investment in Bolivia is not too risky. With a proper statute and a judicial oversight arm to guide the conduct of member countries and provide for sanctions against those who breach the language, foreign corporations could be assured that their investment in infrastructure and expected profits would be guaranteed.

Finally, to avoid some of the societal pitfalls of a government distributing resource-wealth to its people, Bolivia should set up a system for directly distributing proceeds to Bolivian citizens to increase their standard of living, to encourage new investment in businesses and industries, and to keep the government accountable by forcing it to rely on a system of taxation for its budget.

With these policies and structures in place, Bolivia has great potential to become a valuable, resource-producing nation that will finally benefit from its own wealth and overcome centuries of abuse and mistreatment by external forces.

