Global Oil and the Nation State

by **Bernard Mommer**

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A review note by Prof Thomas Wälde

The discussion on oil extraction in Western countries – primarily the UK, the main international "reference case" at this time – has been largely determined over the last 20 years by a continuous lowering of taxes in all forms (royalty rates towards zero, abolition of petroleum revenue tax), with only a modest 10% surcharge on profits recently enacted. Behind this series of promotional policies is the idea that investment in the often very risky petroleum exploration and development operations should be encouraged, in particular in high-cost and high-risk areas (e.g. North Sea). Not tax income, but rather the employment and economic linkages by the petroleum industry are therefore in the focus of contemporary oil discussion in the UK. Similarly, promotion of investment is also encouraged to decrease dependency on imports. Possibly, in a wider frame of things, promotion of investment is also a strategy pursued by Western (consuming) governments and their international coordinating vehicles, the International Energy Agency, but also the EU Commission and the Energy Charter Conference, the World Bank) to diversify supplies to the energy-dependent developed countries, thereby reduce dependence on the politically volatile OPEC nations. Lastly, promotion of investment wherever possible is also likely to increase production and therefore reduce both oil prices and the influence of the OPEC countries on prices – the lesser their share of world production, the lesser their ability to control prices by way of production quota.

Taxation in this dominant paradigm should not be special, and not be meant to extract the mineral vent, i.e. the intrinsic value of the resource, but rather treat mineral extraction as any other industrial activity under generally applicable

corporate income tax. It should be moderate – to encourage investment and be flexible, perhpaps higher in cases of high rate of return which means mostly large oilfields and high oil prices, lower for less profitable operations and in times of lower oil prices. Even such modest special characteristics of petroleum taxation have been more or less eliminated in countries such as the UK. This model has been propagated, mainly by the World Bank (less so by the IEA which has had little influence or interest in upstream oil&gas investment conditions outside the IEA membership) to (mainly) developing producing and prospective producer countries around the world, notably in the Caspian region. It is also followed by virtually all countries that wish to attract investment into areas with higher geological or political risk (e.g. Colombia). Russia is a case apart as an official investment promotion policy has co-existed uneasily with an equally strong anti-foreign-company sentiment.

Mommer's book is intended to disrupt this influential and far-reaching "UK & Washington" consensus. He does not look at oil "governance" from the view of a developing country anxious to produce for the domestic market and gain some export revenues nor from the view of a developed country keen to maintain and expand employment and industrial linkages or a developed country keen to diversify supply and reduce prices for consumers, but rather from the absolute opposite: The perspective of an oil producer that is absolutely dependent on revenues from oil exports. His perspective is therefore mainly an OPEC perspective (though Norway, Angola, the Caspian states and to a more limited extent Russia may also fall into this group). This is not surprising: Dr Mommer, a former executive of PDVSA and senior fellow at the Oxford Energy Institute, is currently an adviser to OPEC – ex-OPEC Secretary General Ali Rodriguez adds a foreword to the book; he has also been a leading spirit behind the recent enactment of a much more restrictive petroleum law in Venezuela which emphasizes payment of royalties and government majority participation. One might be tempted to include this work in the growing number of anti-globalisation studies, this time focused on the oil sector and an attack on "neo-liberal" models

of governance – but we will leave such more ideological qualification to the end of this review.

Mommer starts with a theoretical introduction where he questions the exclusion of land and resources – "land & resource rent" – from the economic discourse since Ricardo. He proposes that such unwarranted exclusion of land/resources as a very distinct factor of production has led to neglect and misunderstanding of their role, and the importance of "land rent" for oil governance. He sees two essentially different models of governance in competition: A proprietorial model where the regime (consisting of mineral title rules, licensing rules and commercial practices to get access to mineral resources) focuses on the right of the owners of the resource to dispose of the resources as they see fit and allows them to extract maximum payment for access. This proprietorial model is contrasted with the non-proprietorial model where the legal regime weakens the strength of ownership over the subsurface minerals and emphasizes rather the rights of the commercial companies of getting access and developing natural resources. A proprietorial regime – irrespective if the proprietors are private land-owners or the state – will tend to maximize tax income and not allow depletion of a non-renewable resources if there is not a commensurate payment, whatever the commercial viability of extraction and profitability of the company. He finds proprietorial models in UK coal nationalization, in the US (mainly Western, non-public land systems of landownership including subsurface minerals) and in the post-nationalisation regimes of the 1970s, mainly in the major OPEC countries. This distinction is not a legal and formal one – mining law distinguishes between the traditional common law principles where land includes subsurface minerals and the civil law (regalian) systems where subsurface minerals belong to the state. It is rather one focusing on the relative strength of ownership over minerals – be it public or private. Strong ownership models allow a land-owner maximum leverage (and power to obstruct mineral development against his will), non-proprietorial systems weaken the rights of land-owners and enhance the access and security of tenure rights of access-seeking investors. He quotes the Marquis

of Mirabeau who, during the French revolution, emphasized the priority of the state (or society) for access to minerals over the more restrictive interests of private land-owners. A proprietorial system emphasizes and allows the owners of the resource to decide on development and extract maximum rent; a non-proprietorial system considers minerals rather as a "public good". Overtaxing and restriction of exploitation would reduce industrial activity that generates net benefits for the nation and is thus discouraged.

In reality, evidently, the two concepts tend to co-exist, but one or the other will dominate the existing system of mineral licensing and taxation. A proprietorial system will tend to limit exploitation. Larger reserves to production ratio indicate that a proprietorial system prevails. Non-proprietorial systems will tend to accelerate production and involve shorter reserve to production ratio; Mommer calls this "intensity of production": 0.56 in OPEC countries, but 7.87 in the UK. Non-proprietorial systems are therefore better, at least in the short-term, for consumers as they tend to lead to oversupply and cheaper prices. In proprietorial systems owners sit more tightly on their reserves; they are constrained only by their current cash needs. Conservative business families (including the House of Saud) or Norway might be the prime examples. Proprietorial systems take a longer perspective, implicit use a lower discount rate, while non-proprietorial systems are more short-term and "pump what they can" on the assumption that what is good for the companies is in some way also good for society at large. This essential distinction of non-proprietorial regimes (associated to some extent with economic liberalism) informs the book, its analysis, case studies and propositions throughout. A major challenge for extreme proprietorial systems – i.e. those where both the resources and the commercial operators are nationalized – is that state petroleum enterprises develop a life and power of their own. They tend to "eat up" mineral rent otherwise available for taxation; they have more political and bargaining power in the non-at-arm's-length relationships with the tax collecting government and an incentive to reduce taxable or distributable profit by inflating cost. Mommer notes this post-nationalisation

phenomenon. His analysis of post-nationalisation PDVSA sheds a lot of light on the challenge posed by state enterprises to fiscal objectives of the producing country governments.

In Mommer's narrative, the oil producing states should be seen analogous to "landlords", while the commercial operators are "tenants", i.e. actors with a lesser, derived and more transitory right. This narrative is significant: The prevailing Western narrative presents countries as havens of investment opportunities keen to see their resource developed and therefore keen to attract investors with the ability to choose among competing projects. In Mommer's narrative, the producer state is a landlord who may, or may not, but in all cases only against maximum rent, give temporary access to commercial operators to its natural resources. One implication of this change of narrative is the emphasis on royalties, i.e. a percentage levy mainly on the value of production, rather than on income taxation, the modern and prevailing approach towards oil extraction. With taxes, the company only pays when and if there is a profit. This means that revenues may only come after years of extraction or, in weaker projects and in case of weak prices, never. Given modern resource tax systems, engineered in particular through production-sharing contracts and accelerated recovery, this contrast between on-going production and absence of government income is almost always a cause for considerable discontent. In the landlord-tenant model, the royalty is the price that has to be paid always, whatever the profitability. It is a minimum charge on depletion. For the landlord, it makes no sense to let a company extract its oil without any payment. The landlord is not concerned over the company's profitability, but over getting a maximum price for the disappearing resource. Royalties, as Mommer points out as well, have the additional advantage of being much easier to calculate and are much less subject to complex deductions through transfer pricing, corporate overhead, profit shifting and other accounting magic. Had he written this a year later, he would undoubtedly have drawn upon the accounting travails of the ENRONS and its many followers.

Mommer does, surprisingly, not reinforce his narrative with an environmental argument (e.g. minimum charge for depletion of non-renewable resource) as he could have done easily (e.g. Z. Gao, *International Offshore Petroleum Contracts*, Graham & Trotman, 1994). The fact that royalties may penalize and therefore prohibit projects is of little importance for the author: If oil extraction can not afford to pay a royalty, it should be better left in the ground. He also makes the argument that oil companies can shift royalties – as cost – to the consumer so that in his perspective the conflict is not between oil companies and producing countries, but rather a distributional question between oil producers and consuming countries. Oil companies are, in the author's view, only intermediaries between the landowners and the consumers.

It is never quite clear if the author suggests that oil companies could shift royalty as cost to the consumers in general and provided all relevant countries imposed royalty-like payments or if he suggests that a specific oil company could shift such costs in a specific projects to consumers. It is probably the former as Mommer does not exclude royalty rebates for more difficult projects. Presumably, his argument runs, or should run, that if all relevant producer countries would impose a standard royalty, then, for an oil company, such royalty would be an irreducible cost factor without specific impact on benchmarked and competitive production cost and would be born exclusively by the consumer in the form of higher price. That argument is, though, never developed fully. Mommer describes the evolution of royalty regimes US land-leasing practice for oil operators towards a common practice of charging standardized rates. He observes that such rates tended to be uniform and standardised whatever the specific project economics. This should be puzzling to a fine economic mind, but is understandable as a market's response to the complications and transaction costs of project-specific royalty negotiations. Mommer probably foresees – or advocates – that a global standardized royalty regime could, or should, evolve in a very similar way. His analysis seems to indicate throughout the several case studies that common royalties, in UK coal, in US, Mexican, Venezuelan and

OPEC, developed. If he were to investigate earlier mining law history, he would find the Spanish "Quinta Real" and similar, standardized, easy to administer royalty rates, again irrespective of project specifics. Such royalties are really a base price for depletion of a non-renewable resource. The owner in fact says: Either you pay me so much, or I prefer the resource to remain undeveloped in the ground. The counter-argument is that the chance of a worldwide uniform royalty regime seems minimal. The world is less homogeneous than US oil producing states in the latter 19th century. There is no worldwide coordinating authority – such as the Texas Railroad Commission. Mommer's idea is probably that OPEC should act as the successor to the Texas Railroad Commission and other US oil policy coordinating bodies. Such ideas were present in the early part of OPEC's history in the 1960s and still present in the famous Resolution XVI.90. But such a strategy would meet the same obstacles as most OPEC policies – the fact that royalties just imposed on OPEC production gives a competitive advantage and hence chance to expand market share to the detriment of OPEC countries to those outside a standard royalty group.

The value of Mommer's study does not only lie in its determined attempt to present an alternative narrative for oil governance, but also in a series of individual case studies. I will nor review his case studies, and the implications he draws from them. His analysis of the history of British coal highlights both the emergence of customary royalty standards irrespective of project characteristics and the concentration of ownership over mining rights in the state as an instrument to create a more efficient system of exploitation, i.e. by reducing the transaction cost of complex and varied legal relationships between individual mine-owners and operators. A very similar argument underlay the 2002 mining law reform in South Africa where the reversion to the state of specific mining rights was – partly – justified by the need to simplify licensing and bring "fallow" titles back into circulation. He notes that public ownership of minerals was never questioned, even when British coal, as major mine operator, was re-privatised in 1991.

Mommer's main inspiration comes from the history of American oil. Here, royalty was the normal and customary payments to be made to private land-owners (with common law extending ownership to subsurface minerals – "usque ad inferos et ad caelum"). Mommer reports royalty rates up to 50%, with an average of 15%. Instruments and issues well known in mineral law – "delay rentals", obligations to explore the land, distinction of exploration and production phase – developed in standard lease practice interacting with judicial intervention. US regulatory and judge-made law and institutions (Texas Railroad Commission; Inter-state Oil Compact Commission) imposed with "pro-rationing" a form of early production control on most oil producers in response to market demand . Mommer views OPEC as a kind of universalized successor to these two US institutions. They operated until the 1960s, i.e. during the time oil was plentiful. They stopped operating a production control system when US consumption outstripped domestic supplies and imports became inevitable.

Public lands in the US were (and still are) leased through public tender with a royalty of no less than 12.5% (higher offshore). Higher royalty rates are often paid both to public and private lessors, in particular after the oil prices increased substantially after 1973. Additional tax privileges (mainly the depletion allowance) benefited both land-owners and operators ("tenants"). The US seems to be the main conceptual precedent for Mommer: The US system emphasizes – in tune with the general make-up of US law and society – property rights over the state's general intervention power, but it also allowed, quite contrary to the general US antitrust heritage, a widespread and effective system of production control and coordination (e.g. mandatory unitisation) for conservation reasons. Mommer's study, the 2002 Venezuelan petroleum law and a modern justification for OPEC's export control draw inspiration from the analogy to US oil history. Such analogy – as all analogies – are not without flaws: It is not easy to transfer the concept of private land-ownership in the US common law tradition to sovereign states owning all mineral resources in their territory. The distinct situation in the US was that at least in the earlier phases of the US oil industry most of the oil was

privately owned and privately contracted, with the state exercising only a very moderate role as facilitator. In OPEC countries, the state plays every role thinkable: owner, operator, regulator, lessor and even consumer.

Mexico provides another illustration of changes between proprietorial regimes. First, under the influence from Texas, a proprietorial (e.g. accession) system prevailed. It was the basis for an unprecedented investment boom which catapulted Mexico into the role of the world's leading producer. Royalties – paid to private land-owners – were between 5% and 40% until a standard rate of around 15% seems to have emerged. After the Mexican Revolution of 1917, original mining title (e.g. ownership of subsurface resources) reverted to the state, against opposition both from private land-owners and foreign operators. The prevailing reasoning was that private land-owners were passive "rentiers" or "deadweights" without contribution to economic development, while the foreign investor was seen as an active and essential contributor. Another reason was the experience that fragmentation and title disputes increased transaction cost for oil development and constituted a significant investment disincentive – an argument that showed up again in the 2002 South African mining law reform. Minor compensation was granted and preferences for landowners who had actively worked the land. Parallels to thinking on land-reform are obvious. In 1936, the whole industry itself – as distinct from the original mining title – was nationalized, creating Petroleos Mexicanos (PEMEX). With such Mexican nationalization (which Mommer seems to regard as rather accidental and not absolutely necessary) a potent myth of national economic emancipation from US influence emerged. This strong national sentiment lingers on in the current constitutional provision against foreign ownership of upstream oil and the exemption of the upstream petroleum sector from NAFTA rules. Mexican oil production from then onwards was geared mainly to domestic demand and its export markets (mainly the US) disappeared. Mommer's analysis does not reach 2002 where the first non-PRI government of Mexico is trying hard to prise open the legally and symbolically tightly closed oyster shell of PEMEX in order to

combat the large-scale corruption enveloping the economic monopoly of Pemex and the former political monopoly of the up to 2000 continuously ruling PRI party, its inability to reach normal standards of economic efficiency and to use and invest in the Mexican oil and gas potential to re-develop the export markets that were given up after 1936. While Pemex has functioned reasonably well as a domestically oriented monopoly, it has failed to harness the export potential of its resources. It is now offering long-term risk contracts to international oil companies, though the shadow of constitutional invalidity overhangs these proposals to test the waters of a Mexican oil "apertura".

The conclusion Mommer draws out of this instructive case study is that public mineral ownership has a clear advantage over systems of private ownership as private ownership has led in Mexico to fragmentation and endless – including violent – title. To be more specific, it seems that Mommer has a preference for proprietorial systems of governance as such, and among the proprietorial systems a preference for those where the state becomes the landlord-owner. That may be so, but one needs also to see that the Mexican petroleum industry was developed under a system of private ownership, and decayed under a system both of public title and nationalized industry. It is as always difficult to disentangle a cause-effect relationship out of historical complexity. But if one were to contrast the American system of private ownership (with a stable political and economic system as the foundation) with the Mexican of double public ownership (of title and industry), then the Mexican system looks like an economic failure. It does, though, express in symbolic terms a Mexican need for independence from the US. But such emotive satisfaction has come at a very high cost. Such cost includes damage to the political system by the corrupt intertwining of Pemex, the oil trade unions, the PRI and the government. The political damage is not compensated by a great economic benefit, but economic damage is rather heaped on the political damage.

The core of Mommer's case studies is Venezuela – naturally, given his background and insight knowledge. I suggest that the book's theme and concept is largely built around the Venezuelan case– and his conclusions as well are mainly relevant to Venezuela and comparable OPEC countries, e.g. the Middle East and to a considerably lesser extent Nigeria and Indonesia. Venezuela started with state ownership of minerals and access granted through concessions under, mainly, a general, not petroleum specific, tax system. This led to an investment boom and Venezuela in turn became the world's largest oil producer. "Crony capitalism" played in this boom phase as in other OPEC countries (e.g. Indonesia, Nigeria) its role, with politically connected concession brokers getting their cut, essentially for facilitating the award of concessions. Different from what one hears now about corruption from the international agencies, such practices (which one would now regarded as bribery) seem not to have had a negative, but rather an accelerating effect on private investment.

Once the industry had been built up with liberal incentives in the format (in Mommer's terms) of a non-proprietorial model, a counter-reaction set in. Royalties were introduced, up to one sixth. They later, in bidding competition, moved up to one third. Concession brokers were at least formally put out of business. The 50:50 profit split was first introduced as a concept – later a precedent for the restructuring of relationship between producing countries and international oil companies in the 1960s under the aegis of then established OPEC. The 50% government share was assumed to consist out of the addition of general corporate taxes, land-rentals and royalties. Later, it was made into a floor for all oil-related taxes together. The first elements, in Mommer's narrative, of a "proprietorial regime", largely modeled on US land-lease practices, evolved. An industry that was now established could be squeezed. Similar developments took place elsewhere, in the now familiar renegotiation of the state-oil company relationship in the Middle East, often influenced by the trailblazing precedent of Venezuela. The government take in Venezuela went up to 64% in 1958. But the state-proprietorial model of governance now required influence over the price by

coordination with other producing countries – the emergence of OPEC. OPEC, in Mommer's narrative, is the logical implication of state-proprietorial models emerging in the major producer countries, much as the Texas RR Commission was the logical consequence of private proprietorial models in Texas.

OPEC is currently, in the West, seen as at best a dubious "cartel" of producers which, by means less than fair, make Western consumers pay more than what a fair and competitive world market would do. The qualification of OPEC as a "cartel" is far from evident. It owes much to the successful shifting of blame by Western governments for their high gasoline taxes. OPEC controls much less than half of world production and exports; its controls over its member are tenuous and have their ups and downs. In times of low oil prices, OPEC is regularly described as a paper tiger and its members of "dumping" oil rather than price gouging. Sometimes, OPEC is presented rather as a façade for Saudi oil policies – Saudi Arabia, as the only major producer with significant excess capacity, seems truly to have power to significantly increase (less so in view of its domestic constraints decrease production). Oil competes with other fuels – notably coal and now gas (which is as yet not under the influence of a producer alliance). It is not a private cartel of companies trying to squeeze out competitors and increase the price for private profit, but rather an alliance of the major producing states pursuing policies sometimes more akin to the agricultural market restraints in the EU or the US. What is generally not strongly and intuitively appreciated in Western countries is that OPEC countries – but also Norway, Angola and to a lesser extent Russia and Mexico – have become seriously dependent on oil export in a way no Western country (apart from Norway) has ever experienced. Even Norway would have some future beyond oil, Saudi Arabia has none. Western government-sponsored agricultural "cartels" involve an industry that has much less significance and dependence than the oil industry has in OPEC countries. While in some oil has squeezed out prior industry (mainly agriculture), there is virtually no alternative in the major

Mideastern producers. It is therefore interesting how Mommer builds up producer coordination as a necessary feature of the proprietorial regime.

The book first reviews the pro-rationing system implemented by the US Interstate Oil Compact Commission in the inter-war years and beyond as well the Texas Railroad Commission. The system was later extended to Canadian and Venezuelan production, with the support and at times leadership of the US government when post-War investment led to oversupply and therefore losses for US marginal wells. It is interesting to note that the system was formally legitimated by "conservation"; this reasoning was accepted by the US Supreme Court – an interesting parallel for today's reliance by OPEC countries on the conservation exception in Art. XX of the GATT. The 1959 US import restrictions were mainly directed against Venezuelan oil imports (then, as later in 1998 also qualified as "dumping") then triggered the Venezuela-led initiative which led to the establishment of OPEC. As so often, US foreign policy actions were instrumental for the subsequent emergence of much larger problems in the more distant future. A US trade restriction – plus the precedent of and special expertise from the Texas Railroad Commission – are thus presented as being at the origin of OPEC in 1960.

It is here worthwhile to reflect on the role of the international oil companies. They had, with some, though not overwhelming success, carved out areas of influence and markets in the 1920s and 1930. Their accelerated production in the 1950s may have contributed to the low prices which then helped to trigger the formation of OPEC and the traumatic restructuring of their relationship with producing countries. The oil companies were transformed from long-term holders of mineral rights to shorter-term providers of service. At times, and in particularly in the Middle East, they were even complete excluded from equity positions after 1972. But OPEC policy towards higher prices should have been in their interest, then and now. But there is little indication of the oil companies identifying a common strategic interest with OPEC, namely to develop and maintain a higher price

structure. The parallel move of oil company share prices in tune with oil prices reflects better than anything else this objective community of interest. It remains a tacit and implicit community since it is neither in the interest of host, home or oil companies to highlight that Western oil companies are large, possibly even the largest, beneficiaries of OPEC successes. The bill is presented by these three group of actors engaged in tacit collusion to final consumers of oil. Mommer considers that the conflict over resource ownership (in our view in the end a formal and legalistic dispute rather than a material conflict) and later nationalization and taxation as responsible for preventing such a alliance. US antitrust with its increasing notion of extraterritorial effect as it developed from the 1950s onwards up to now may have also put a stop to formal collusion of the oil companies with OPEC. Even now, OPEC is still largely a "taboo" for Western governments, the oil industry and even the IEA where OPEC is rarely mentioned. Objectively, the oil companies benefit to the same extent as OPEC countries do from higher prices; their efforts to use the cash flow in times of higher prices to invest outside OPEC countries constitutes free-riding on the back of OPEC. Very low prices – e.g. those as are postulated to be likely to be produced by truly competitive markets (say: 5-10 US$ per barrel) – are as damaging to the oil industry as to the exporting countries.

OPEC thus in Mommer's view replaced the decaying cartel of the international oil companies, not only by – since 1982 – using national export quota, but also by an implicit policy of restricting investment. While a formal common investment policy may have been under discussion around 1970s (including calls for uniform royalties and tax), there has never been an explicit policy by OPEC on investment, neither by its state companies nor by foreign investors. Indonesia, Nigeria, Algeria and, during the "apertura" Venezuela, have developed their capacity almost exclusively through promotional foreign investment policies. Such investment creates production capacities which then exercise a natural pull towards being used – and hence the continuous pressure against national OPEC quotas. A review of national investment plans and intentions in, e.g. Venezuela

(even today), Norway, Russia, the Caspian, Indonesia, Nigeria, Algeria or Kuwait will therefore indicate a growth of capacity substantially beyond what the realistically obtainable OPEC (or quasi-OPEC) production quota might be. Lack of investment policy coordination is therefore a large hole in the feasibility of the OPEC production quota system as "over-"investment exercises a continuous pressure for exceeding production quota. Production quota can be enforced over public and private oil operators by translating the OPEC commitments into contractual or regulatory pro-rata production constraints, but that seems (apart from the 2002 Venezuelan petroleum law and regulatory powers of the Norwegian government) rarely done systematically. Mommer's study therefore should receive the merit of going beyond traditional descriptive history of OPEC or narrowly focused oil tax or oil investment analysis by highlighting the nexus between national investment and tax regimes on one hand and international production and price coordination efforts on the other.

The study thereon presents the reaction of the Western consuming countries against the successes of OPEC in the 1970s. He views what can be described as the legal and institutional regime for the global economy consisting of the major liberalizing treaties (WTO, NAFTA, Energy Charter Treaty, bilateral investment treaties) and institutions (World Bank, IMF, WTO) as being mainly intended, or at least deployed to create a surplus into the world oil market. Mommer sees the IEA as mainly responsible, a creation of the Western countries explicitly to counter OPEC. I disagree here – the IEA has had very little influence or activity over upstream investment conditions, such activities were carried out in the 1980s and 1990s mainly by the World Bank. The underlying strategy of Western consumer countries throughout the last decade, as interpreted by the author, was to encourage petroleum investment in the generally much more high-cost oil provinces outside OPEC, with notable successes in the North Sea, Alaska, Angola, the Caspian and now Russia. In addition, he sees a capturing of the leadership of many of the large state companies (prominently PDVSA in the period of apertura) to enlist them in a comprehensive Western drive towards

more investment and production countervailing OPEC control over most of the world's oil reserves. There is an element of truth in this analysis. But it may be excessive to ascribe the global trends of economic liberalization in the 1990s solely to an intention to bring down OPEC, in particular as the organization has been largely seen during this period – with two significant oil price collapses (1985 and 1998) – as largely ineffectual.

Mommer highlights – quite rightly – the use of the UK as a reference case, with – for a significant petroleum exporter – extremely low petroleum taxes. But he may be too much influenced by the situation of Venezuela – a developing countries with low absorptive capacity and very weak governance – to appreciate that in the UK maximization of oil taxes is not the only relevant aspect: The UK has seen the development of a sizeable oil and oil services industry, of significant financial and professional services now utilized worldwide, as a result of its conscious policy to build up the North Sea with a minimal tax take. The quid-pro-quo between investment and tax is very different in the UK than in a oil-dependent developing country such as Venezuela. But he points out rightly that the UK is not really a low-oil tax country: It may take little from the oil companies working the North Sea, but it takes the biggest tax bite anywhere from gasoline consumers. To present the UK as the spearhead of consuming countries out to get the lowest oil price is therefore wrong. The country is perfectly happy with high oil prices (at the pump) for fiscal reasons and under environmental cover. The difference is that it is the UK, and not the producing country who takes the lion's share from the defenseless consumer. The juxta-position of ultra-proprietorial regime (OPEC countries) and ultra-non-proprietorial (UK) does therefore not work that well. It may be better to say that each country is trying to exploit to the best of its abilities its situation. Mommer, though, may have a point to draw attention to the fact that the UK, being one of the world's leading oil exporters (about 1 million bpd), still acts as if it were largely producing oil for domestic consumption. The continuous decline of the role of royalty in UK oil taxation and the unwillingness to follow Norway in its concertation with OPEC

looks, from this perspective, as based on the incorrect view of the UK as not being a major oil exporter. But again, the UK may benefit much more from attracting and building up a sizeable oil industry than from getting more oil tax income – income that is very liquid and likely to be dissipated much more rapidly than the benefit of having a vigorous industry. The focus on tax income alone (the proprietorial perspective) leads very easily to over-emphasise the fleeting benefit of cash versus the lasting benefit of solid industrial development.

Mommer's case studies continue with Alaska which seems to pursue a definitively proprietorial strategy – emphasizing royalty and then focus on post-nationalisation Venezuela. Mommer is naturally critical of the "apertura" by which PDVSA led a significant re-orientation of Venezuelan petroleum policy towards foreign investment. This is described in detail in the study. In essence, he describes a capturing of the state and legislative machinery by the all-powerful, state-in-the state, oil company. This has led to production capacity which exceeds the available OPEC quota of Venezuela. A logical corollary of the PDVSA "apertura" strategy was breach of OPEC quotas and departure from OPEC. Mommer's criticism of this policy boils down to the simple argument that Venezuela has the choice of either producing less with a much higher, OPEC-induced world market price or more with the resultant collapse of world market oil prices. While the issue may be more complex, it seems hard to argue, from a producer country's view, that it is best to produce less at a higher price than more at a lower price. The approach of the 2001 Venezuelan petroleum law, with its definitively restrictive and discouraging approach towards foreign investment, makes therefore perfect sense if seen within the context of the wish to see higher, OPEC-induced oil prices and therefore compliance with OPEC quotas. This very strong link between acceptance of the OPEC production control and exaction of a much higher price for oil extraction is properly noticed by commentators, national critics or even oil company spokespersons. If a country accepts the OPEC quota, there is absolutely no point to encourage investment beyond what is needed to reasonably, on a mid-term perspective, produce up to

the quota. It would be a serious policy error to encourage investment with a much lower tax regime (as for example in the UK or many petroleum hopefuls) and then produce only up to the quota. To the contrary, the most sensible policy is to extract a maximum fiscal take if such policy does not prevent investment for production up to the quota. Better 3 million barrels per day at 25 $ than 6 million barrels at 10 $. The logic of the quota (and the price strategy underlying the quota) is restriction, rather than encouragement of investment, if current capacity and reserves are easily sufficient. This "iron logic" connecting OPEC quotas and investment and tax policy places a big question mark behind the alleged opening of the Kuwait and Saudi petroleum sector to foreign investors. Such opening would only make sense, to those countries, if otherwise they could not fill the present and a possible future range of OPEC quotas. Promoting oil investment only makes sense if a country may in the future not be able to produce up to its current and likely quota or if a country is outside the context and concertation of OPEC, e.g. in essence a free-rider on the OPEC pricing benefit or a country focused primarily on its domestic market.

It also explains why the policy is so different from oil in gas: There is, currently, no gas exporters' coordination (though Algeria and Russia have talked about it). The Venezuelan gas law, therefore and very logically, has a much more favourable and less restrictive regime to encourage foreign investment in gas than its sister petroleum law. Similarly, the Saudi opening is not about petroleum (where Saudi Arabia does not need additional capacity), but about gas. If all these favourable gas regimes worldwide would make the gas market collapse, then one should expect talk on coordinating gas exporters become more specific than at this stage of early maturity of the gas industry. It is, again, surprising that Mommer does not rest his argument as well on the currently more popular environmental leg: High prices are, as the tax authorities in Europe are extremely keen to repeat in unison with the environmentalist organizations, likely to lead to higher energy efficiency, to conservation, to less emission of greenhouse gases and so on. An OPEC policy of managing production and getting higher prices is

therefore, whatever the real and prime monetary intentions, a prime conservation and emission control instrument – identical in effect, though not in distribution of benefit, with the high EU excise taxes on petroleum.

One of the most interesting observations in Mommer's book, however, deals with the relation between post-nationalisation Venezuela and its powerful and self-centred state company, PDVSA. Mommer, with insight knowledge and good access to tax data, demonstrates how the operations of the state company have virtually eaten up about 50% of the oil tax revenues that were available under Venezuela's tight oil tax regime before nationalization. There are a number of reasons for this experience which is far from unique for Venezuela – though exceptionally well documented by Mommer. First is that state companies are less separated from the political sphere than private, in particular foreign oil companies. While the latter do have to pay their informal tribute to domestic politics in one form or another, state companies essentially serve as the president's cash cow. They are enlisted to pay for all purposes, legitimate or not, for which the President, or those in power, need ready money. "Social expenses" is a term for such expenditures. It may include rather "political expenses", but also true social expenditures as state companies in developing and transition companies typically are asked to take on functions which otherwise would be qualified as public services. Second is that the state company is a significant, often very powerful, actor in the domestic political process. That certainly was and still is the role of PDVSA – the power to open or cut the lifeline of money to governments full of promises but short of money can make or break presidents. There is also a comprehensive entanglement of the state company with politics, the state's administrative services. Through the promise of better pay the state company can exercise pressure on virtually all of the agencies which are supposed to regulate it. All this is in theory also possible to private companies, but they live at a much greater at-arm's length relationship with the host state. A state company can therefore pressure for lower taxes or dividend distribution, for less oversight over its budgeting process or approval for international expansion.

Mommer documents how PDVSA in effect pays for roughly the same production about half of the taxes that the foreign oil companies paid or would have paid. He also documents how a confiscation of PDVSA cash by the state led the company to a consistent policy of hoarding income by transfer-pricing and similar methods ascribed traditionally to evil multinational companies abroad, out of the reach of cash-hungry politics. The way Mommer describes it, PDVSA also took the lead in getting the state to accept international treaties which it needed to provide legal protection for the "apertura" contracts with international oil companies. PDVSA, in a way, seemed to have escaped from Venezuela for political risk reasons, and then managed to obtain a better political risk protection for international oil companies in its home country than was available for itself. The state company is here described as the inevitable "gatekeeper" for foreign investment, taking its fee for intermediation; a similar interpretation was provided in the 1970s (by Girvan and Elsenhans) for the "state classes" acting as intermediaries between foreign investors and the national economy. This function, hence, seems to have moved to the state company set up post-nationalisation.

At the end, Mommer concludes by explaining the rationale of the controversial new petroleum law in Venezuela of 2001. It is presented as a way to take back control of national oil policy from the state company and to pursue the logic of OPEC-compliant, proprietorial governance aiming at producing (and investing) less, but at a much higher per-unit and total benefit for the government. His conclusion suggest that he sees the globalisation of professional classes (now dominant also in state companies as in multinational companies) as a separation of the state companies from their nations. They tend to see themselves rather as multinational companies, than as public companies in developing countries. He then strongly advocates the right of resource-rich countries to decide themselves on the conditions for access to their resources as part of states' and peoples' sovereignty against a "liberal" agenda to capture the state machinery and the state companies for non-proprietorial, i.e. low-tax access, strategies.

The book is written in an engaging, but well documented style. The author is not captive to any dominant ideology, be it of statism of the traditional Latin American, mercantilist or socialist kind or of the Washington consensus preaching privatization and universal investment promotion in the petroleum sector. It seems to me superior to conventional histories of the oil industry written, e.g. by Daniel Yergin or Anthony Sampson, as he tries not only to heap facts upon facts, but to bring them into a conceptual system, to explain and advocate positions and policies. One of its great advantages is that it presents the narrative of the oil industry not from essentially Western and then universalized views, but very definitively from the perspective of a developing country absolutely dependent on its oil export. It is not a neo-socialist advocacy either: The author recognizes the inefficiency of the state-led development model, the squeezing out of national private entrepreneurship by the alliance between state enterprise and superior international oil companies and some of the "resource curse" aspects of relying on a purely oil-led development model. Nor is he hostile to multinational oil companies which he recognizes as being instrumental for starting an industry and for generating a continuous flow of finance, technology and management to bear. Mommer recognizes that an ideal state-proprietorial regime requires that the landlord-state and the oil companies are operating at an arm's length. The landlord-state's objective to squeeze as much revenue out of oil production gets diluted and undermined once the landlord-state faces the state-operator with its own interest, strategies and domestic political leverage.

Several times, the author – without much in-depth argument or analysis – joins the condemnation of "neo-liberalism" which is currently again fashionable in developing countries and with a large part of "civil society". But is he anti-liberal? The conclusion I would draw from his model is the opposite. "Liberal" is easily used and misused, and today, again, rather misused against any policy that seems threatening or any policy or influence from abroad. But the essence of economic liberalism, old or neo, is respect for property and its uses. The

objective of developing countries to use their property and natural endowments to their advantage is not against the basic principles of economic liberalism much as the forces seeking easy access may at times claim. The history of capitalism, old or new, is of entrepreneurs trying to charge as much for their rights as the market can bear. It is hard to see Bill Gates in possession of petroleum acreage being more lenient with prices for oil than for the intellectual property rights created by Microsoft and then relentlessly exploited. OPEC's production controls do give headaches to liberal approaches as competition between producers is limited. But liberal economic principles rather focus on competition between private enterprises than restraints of competition by states which are, as a rule, exempted everywhere from the application of antitrust law. Companies in commodities and mineral markets tend to behave not that dissimilar from OPEC, though antitrust law prevents them from employing an explicit coordination mechanism: They reduce investment and production if prices fall and increase them if prices go up. What OPEC does is to institutionalize and formalize this process, but on an intergovernmental level. Conservation is not an objective that is alien to modern neo-liberal economic policy. It is recognized that markets may not pay enough attention to longer-term risks and that public action is therefore necessary to internalize environmental costs and risks. Conservation is therefore a "public good" justifying state intervention – and so sanctioned by Art. XX of the GATT. Again, Mommer's support for OPEC's export coordination is therefore not necessarily alien to modern capitalism. Microsoft provides more examples of restricting competition – without the benefit of the conservation argument. Finally, the hallmark of neo-liberal policy is to separate the sphere of the state – responsible for law, order, market-economy institutions and other public goods – from the commercial sphere. Mommer's advocacy of a rigorous "proprietorial" regime is perfectly compatible, indeed favours such separation. The very logic of his analysis compels to consider privatization of state oil companies as a necessary step to set up a well functioning proprietorial regime. It is only when the state – as land-lord/owner of the resource – is at an arm's length relation with

private companies – as "tenants" working the minerals under conditions set by the state/landlord, that the state can obtain the maximum price for access to the resource. Mommer's book is therefore a powerful advocacy of the modern privatization processes which separate the state from its public enterprises, which separate licensing, fiscal, regulatory and commercial functions and brings back regulatory and licensing functions from the state enteprise to specialized governmental agencies – as has occurred in Brazil, Argentina, Peru, Bolivia and Chile for example. I would therefore have no problems as qualifying this study as an important contribution to setting up nationalist, but definitively liberal systems of oil governance under the specific conditions of major producing countries, with rigorous separation of the role of the state and the role of the commercial, preferably private, operators. Perhaps "crypto-liberal" might be the correct label for this engaged and engaging author.

But this study is often still in need of further reflection and refinement. For example, the relation between investment liberalization and oversupply is plausible, but needs to be thought through. Much of the encouragement of private investment by Western countries is not due so much to price reasons (since they tax oil much more than OPEC does tax or lift prices), but to security of supply reasons. Almost all oil producing countries are for a variety of reasons high-risk. Oil consuming countries can not but pursue policies of diversification – more energy fuels, more supplying countries, better institutional and treaty-arrangements to secure investment, transit and supply. Much of what Mommer views as policies driven by a consumer interest for cheap supply are actually driven by consumer security of supply interest – and OPEC policies bringing about high oil prices are logically an incentive to develop oil wherever it may be profitable. You can not have a high price and no push towards more supply: Oil is not, as Mommer suggests, only politics, it is also about simple economics. The same need for more deeper examination applies to the argument raised several times that royalties are of no concern to companies as they can be shifted easily to consumers. It seems patently incorrect if a specific project is considered. On

the other hand, the theory might work better if royalties were imposed at least OPEC-wide or even worldwide. Mommer's observation that standard royalty rates have emerged in the past, irrespective of project economics, and thus generated a uniform cost basis, is true for particular industries – British coal, Spanish colonial regalias ("Quinta Real"), US land leases; but it is hard to see how such uniform royalty rates can emerge in the global oil industry. But it can not be utterly exluded that OPEC precedent and the conservation argument could result in a re-emergence of the royalty as a depletion charge. The environmental dimension of royalties is something that clearly deserves more attention – and would tend to reinforce Mommer's position.

The main conceptual underpinning of the work is the diametrical opposition of proprieto rial versus non-proprietorial governance regimes. While I applaud the ambition to bring the unstructured and un-themed narrative of oil history (in the style of Daniel Yergin) into a conceptual framework, I am not convinced the proprietorial concept explains that much. First, the analogy made by Mommer between private-proprietorial (US land-leases) and state-proprietorial is not persuasive. The state acts fundamentally different from private land-owners and has many more than mere fiscal objectives in mind. In essence, the concept does not refer to legal formalities of mining title over subsoil resources. In Mommer's – evolving – view the distinction is rather between governments whose priority is maximum taxation and governments whose priority is maximum industrial development, even if at the cost of lower taxes. "Proprietorial" says little about these differences which can be explained mainly by the different situation of countries. Countries which import petroleum or have no meaningful industry naturally trade investment against high taxes. Once they have developed (and this was the case of all major producers at some stage in their oil history), mainly by foreign investment, bargaining power and interests change: Getting more out of an already established and mature industry becomes the priority. Raymond Vernon's concept of an "obsolescing bargain", with bargaining power shifting decisively to the host state after the investment has been carried

out, helps to explain some of these policy shifts. This goal is intensified when OPEC quota set a ceiling on easily achievable production; in this case, the only rational strategy is to ration allowed investment and production with a maximum price in the form of royalty and other special petroleum taxes. Countries which are developed can absorb petroleum revenues and retain economic value – e.g. the UK or the US. They can trade the benefit of economic linkages (employment; offshore services; oil-related manufacturing; professional services; domestic oil endowment to springboard for developing an international oil-related industry) against lower taxes, in particular if (North Sea) production costs are so much higher. These factors suggest that it is not proprietorial or non-proprietorial, but rather the particular situation of a country, its level of development, its oil potential and its general economic policies, governance quality and constraints which decide on the best policy to pursue. Mommer quite correctly criticizes Western oil economists (in particular UK tax specialists) of exporting concepts that may have been appropriate in the UK, under particular national and ideological conditions, to countries where such concepts (e.g. the rejection of royalties) may have been unsuitable. But the same feature – universalisation of an individual country's conditions and recipes – can be found in his analysis. Venezuela may be similar to some other OPEC countries, but its particular path can not be universalized. What may be good for a Venezuela willing, for its own good reasons, to support OPEC quotas, may not be suitable for a Colombia or Brazil wishing to avoid paying scarce foreign exchange for imported oil. What is good for the petroleum "haves" may not be good for the "have-nots" – even if it would suit the "haves" to have the "have-nots" abstain from developing oil production of their own.

I see considerable merit in Mommer's definite way of narrating oil history from a developing country producers view. I accept that the global liberalization of the 1990s has helped to encourage private investment in difficult places (including those with an oil and gas potential), but I would not accept that this global trend was in any particular way marked by consumer countries' interest to get cheap

oil. The World Bank's petroleum investment promotion and later privatization programme may have been partly influenced by such considerations, but the main factor has been the interest of prospective producer countries to attract otherwise unavailable investment and the oil companies exclusion from the Mideastern OPEC countries. But I think to ascribe a global trend to particular oil industry issues is excessive. Similarly, the idea that we have "producing" and "consuming" countries, linked, but with respect to price in a zero-sum game, may be sacrificing reality on the altar of dialectics. A low oil price is not compatible with environmental and security of supply objectives of importing countries. It would encourage energy inefficiency, slow down the development of alternative energies, increase emission of greenhouse gases and encourage supplies from a small, highly volatile group of Mideastern countries only. Consumers, in particular in the EU, have never been left to enjoy the periods of low oil prices – national excise taxes made sure that the importing states rather than OPEC members took the lion's share of possible taxes.

Finally, I miss at least an appreciation that getting maximum oil taxes is not enough. Mommer expresses considerable sympathies with the people of developing countries. But at no point does he raise the question if more oil taxes will actually help them. He concedes that oil income has not been used very well in the past. It is difficult to see how that would change as the basic context of underdevelopment and weak governance is unlikely to go away. Why would squeezing more government Dollars out of oil companies suddenly benefit the economies of the major producers which have become absolutely dependent, with the squeezing out of all alternatives, on an absolutely unproductive rentier situation. Did the UK, with less oil taxes and much more indirect economic benefits, not do much better than the Venezuelas, Nigerias, Indonesias and Saudi Arabias where oil is more plentiful, cheaper and tax income so much higher? An excellent article by Amuzegar (Foreign Affairs 1998) now followed up by a World Bank project on the "resource curse" and a 2002 UNDP report on the economic and social development of Arab countries suggests that oil income and

development may not be positively, but perhaps even negatively correlated. So if oil income leads only to more corruption, lethargy and rentier passivity – how would the people benefit if a really tough proprietorial regime were established? If good-governance does not exist before the oil income flows, such income is likely to be rather counter-productive to development. My suggestion is that the link of oil to national entrepreneurship, the design of privatization strategies intended not to simply sell out to the multinational oil companies, but to create a national oil and service industry are more effective for economic development than squeezing a maximum of liquid tax income which then gets misused anyway. The less liquid a country's economic assets, the more they might contribute to industrialization rather than be dissipated. Similarly, on an international level, initiatives to promote trade in energy and energy-related goods and services between developing countries may represent a truly neo-liberal approach that works – rather than pretend-liberal approaches preached, but not practiced by the developed countries. The disliked examples of global liberalization – WTO, GATT, ECT, bilateral treaties, EU Treaty – may be essential building blocks for wealth-creation between developing countries which, for reasons of internal weakness and resultant politically convenient hostility to neighbouring countries have as yet not been deployed.

But these comments do not detract from the fact that this is a significant study on the governance of world oil. It is a welcome and necessary contrast to the universalisation of particular Western-country views and should be required reading for any student of the world oil industry, particularly those who are not by background or involvement intuitively familiar with and sympathetic to the role of oil in oil-dependent developing countries. The author should be congratulated for this massive work which tries to re-set a somewhat distorted balance. I would hope that Bernard Mommer does not cease after this impressive study, but goes on refining his presentation of the world oil industry as seen from producer countries. A revised edition in some years would be the ideal follow-up.

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