The State and Energy Reform in Mexico

Marco A. Merchand [1]

Date received: February 12, 2015. Date accepted: June 2, 2015

Abstract

This article examines how the energy sector reforms rolled out by the Enrique Peña Nieto (2012-2018) administration represent the culminating act of a State disinterested in safeguarding Mexico's territorial patrimony. It is the State itself that is imposing accumulation by dispossession to the benefit of the few, especially multinational companies that win the tenders for energy megaprojects—such as thermal power plants—or projects in oil, mining, telecommunications, etc. The State promotes capital accumulation that favors the global value chain in a wide range of activities: energy, agriculture and livestock, real estate, and even tourism.

Keywords: Mexico, State, energy reform, privatization, foreign investment.

INTRODUCTION

This paper will analyze how the State paves the way for all types of investment through the privatization of the public assets that it legally safeguards. Drawing on a neoliberal development style, the State orchestrates the sale of these assets (privatization) and begins to operate this way; thus ensues a major devaluation of these assets (water, oil, mines, telecommunications, transportation, social benefits system, etc.). To achieve this general objective, this paper begins by describing the epistemic scope and assumptions underlying this paper, and also explains how the concept of accumulation by dispossession has become entrenched in Mexico. Finally, I explain how the power sector will become increasingly dominated by transnational companies once the Mexican energy reforms have been implemented.

METHODOLOGICAL PROPOSAL AND PURPOSE OF THE STUDY

Regarding the methodological proposal concerning the current situation of the reforms that are the topic of this paper, this section begins with an epistemic discussion to sustain the premise that the effective consequence of implementing energy sector reforms in Mexico is the reconfiguration of the national territory to meet the needs of transnational capital, acting through national and/or local spaces.

This analysis is based on the hypothesis that the State acts to the benefit of foreign capital, turning natural goods into market commodities; that is, reifying and transforming them into private property to be appropriated. The State instigates accumulation by dispossession, which is one of the ways in which capitalism has historically exercised power, although this accumulation by dispossession takes on an ideological sheen in light of the neoliberal model and currently represents the most significant—although certainly not the only—way to sustain or increase capital accumulation worldwide through the appropriation of local and/or regional spaces.

These local and/or regional spaces are privatized and taken over by foreign interests (transnational investment). This is, in large measure, why the State is no longer sovereign (the State no longer makes its own decisions to defend the national territory from foreign interests); in fact, the State is now merely an entity to promote said foreign investment (Garay *et al.,* 2013). These ungoverned spaces are characterized by a "non-sovereign" State that opts not to regulate and/or curb the extractive activities in which transnational companies engage, and which are a feature of the current age of neoliberal globalization (Garay, 1999).

This practice of neoliberal globalization happens when the spaces of a national, local, and regional territory of a country are privatized, and become increasingly exposed to negative externalities due to the presence of foreign capital.

In brief, one distinctive feature of globalization or the global political economy is the process by which agricultural goods and natural resources become securitized in global capital markets. This concept of a global capital market is increasingly relevant as a result of the multiple forms of domination possible, including the mass acquisition of land, extensive licensing of the subsoil for the exploitation of non-renewable natural resources, the implementation of mechanisms, such as the Real Land Surface Right (*Derecho Real de Superficie, DRS*), to turn land use into a commodity. The standout feature of this capital market is the hoarding of land or subsoil usage and/or land ownership in developing countries by way of foreign capital (Garay, 2013).

In his recent book, *Seventeen Contradictions and the End of Capitalism*, David Harvey (2014) offers readers a useful lesson about the above explanation. He describes the 2008 crisis in terms of the use value and the value of exchange. (With the housing crash in the United States, two million people were evicted from their homes—use value—due to speculation—that is, because of a higher exchange value.) David Harvey completes the above explanation, asserting that the powers and practices of the State have become increasingly oriented towards satisfying the demands of companies and shareholders, frequently at the expense of citizens. This entails a State that is extremely supportive of a good business climate with conditions favorable to capital. In many cases, the result is that the State is doing just fine, while its population is not.

In turn, one of the major functional contradictions that Harvey analyzes is the contradiction between private property and the capitalist State, which is especially striking. Harvey explains that this contradiction involves the difference between what are called usufructuary rights (which refer to active use) and exclusionary permanent ownership rights. This difference has frequently been a source of confusion, especially throughout the history of colonialism. The indigenous populations tend to operate on the basis of usufructuary right to lands. For example, this perspective is true of nomadic farmers. Historically, the colonial powers almost always imposed exclusionary ownership rights, a practice that was and continues to be the origin of many conflicts. Populations who moved around to follow their livestock or moved away from barren lands to newer and more fertile lands were all of a sudden prevented from using the lands they had traditionally considered to be available to them, because they were now enclosed and surrounded by barbed wire by someone who would possess them absolutely and in perpetuity, but not use them.

Moreover, the imposition of these private property rights depends on the existence of state powers and legal/court systems (usually in conjunction with monetary tax collection), which codify, define, and enforce the contractual obligations that correspond to private property rights and the rights of individual legal subjects; furthermore, there is compelling evidence that the coercive power of the State played an important role in generating spaces in which capital could flourish, long before the private ownership regime prevailed.

Harvey adds to his commentary that currently, the eradication of usufructuary rights and the loathsome practice of the enclosure of the commons have made it possible for a system of unrestricted individual private property to reign free, backed by the power of the State. As a guarantee of these private property rights, individuals appeal to the State, with its monopoly over the legitimate use of force and violence, to prevent or suppress any transgression of the individual private property rights regime. The capitalist State uses its monopoly over the means of violence to protect and preserve this regime, as articulated in the "free" functioning of the markets.

For reasons of space, I cannot delve further into the discussion of the role of the State in the neoliberal model, but there are a series of important authors and theoretical perspectives[2] in this regard. In particular, I would like to highlight Robert Jessop (2008), who also reflected on the evolving role of the State, which has gone from the welfare State to the workfare State, whereby the organizing, legitimizing, and coercive state apparatus works not to achieve social inclusion and raise the quality of life for its citizens but rather to boost the competitiveness of companies in the international arena. Or, as Ralph Miliband (1978) asserted, the State is an instrument of the ruling class, although this is a complex formulation that cannot be read linearly.

The next section details the concept of accumulation by dispossession, which is a key element of how the State allows natural resources to be appropriated by capital, both national and foreign.

ACCUMULATION BY DISPOSSESSION

Before diving in to the concept of accumulation by dispossession, also called primitive or original accumulation, it is essential to examine the work of a few authors (De Angelis, Bonefeld, Composto) who situate the concept based on the new enclosures[3] proposal, which Harvey himself references in his books.

For reasons of time and space, I will not reconstruct here the debates and controversies that exist within the Marxist tradition around the concept of accumulation by dispossession employed by Harvey 2007); nor is it my intention to focus too long on this case, and all of the theoretical thicket surrounding these debates and concepts. Rather, I will briefly mention the concept of original accumulation, illustrated through an interview conducted by Claudia Composto and Mina Lorena with John Holloway. The question asked by Composto and Lorena revisit the proposal of Massimo De Angelis, who asserts:

> "Original accumulation is an inherent and permanent process, even in mature capitalist societies, which is expressed through the continuity of the violent separation between people and, not only their means of production, but also their overall living conditions, which we could call 'the commons;' and this means, for example, that neoliberalism is the current expression of original accumulation, insofar as it has advanced towards community arrangements, territories, and social relations that were outside of the reach of the market as the result of historical social struggles" (Composto and Lorena, 2012).

In summary, Holloway believes it is more useful to think of dispossession in terms of a strategy to overcome the crisis of exploitation, and not as another form of accumulation. It could be posited that capital depends not only on the mere exploitation of labor, but rather on the increasingly accelerated and intense exploitation of labor. Holloway's position coincides with that of Massimo De Angelis (2012), who asserts that capital deploys *ex novo* processes of original accumulation that rely on privatization and the merchandization of the commons, insofar as labor is an obstacle to its reproduction and makes the accumulation dynamics more rigid. De Angelis asserts that primitive accumulation cannot be reduced to a historical past event, but rather is necessarily present in "mature" capitalist systems as an inherent process, which, given the conflictual nature of capitalist relations, is ongoing over time.

In the same frame of thought, W. Bonefeld (2012) goes further into detail about this concept, arguing that primitive accumulation is a form of accumulation that is constantly reproduced, whether in terms of the renewed separation of new populations from their means of production and subsistence, or in terms of the reproduction of the wage relations in the “established” relations of capital. The former seeks to bring new workers under the control of capital and the second to contain them there as social classes “liberated” from their conditions.

It is precisely beginning with the return to and/or renewal of original accumulation that the Italian author De Angelis reformulates capital accumulation as a policy of “new enclosures” and the privatization of the commons that has taken place over the past two decades in vast swaths of Western Europe, as well as in nearly all of Latin America.

This feature of privatization becomes increasingly relevant in the age of neoliberalism, as Harvey explains quite well in his book *New Imperialism*. The continuous privatization of common spaces, public assets, forests, lakes, and mountains throughout our entire continent should be seen as part of a broader strategy of capitalist accumulation, based on predatory mechanisms that seek to convert these vital entities and common assets into highly profitable products. It is precisely here that the core of this paper comes in, with an analysis of the extraordinary profits obtained by transnational companies, so long as they are buttressed by the unrestricted support of what has been called the “national competition State,” which as the entity responsible for creating the space for accumulation, becomes the partner in this disappropriation, but with an asymmetrical relationship with transnational interests.

One perfect example of these relationships is explained by Composto (2012), who underscores how peripheral countries have granted continuity to this expanded reproduction; the extractivist offensive entailed by the increasingly subordinated integration of peripheral economies into major global capitalist production is expressed in the new nature of dependency and the processes of recolonization characteristic of recent decades (Seoane, 2012).

It is in Latin American countries where a process known as “the extractivist offensive” has taken place, defined as the perennial cycle of the profound and accelerated advance of expropriation, merchandization, and deprivation of the natural commons of the region, the strategy of capital to face the global crisis of accumulation currently ailing the system (Seoane, 2012).

Now, returning to accumulation by dispossession (Harvey, 2004), a core concept of this paper, it takes on an ideological sheen in light of the neoliberal model and currently represents the most significant—although certainly not the only—way to sustain or increase capital accumulation worldwide (achieve the establishment of the banking system and major corporations and power centers: WB-IMF-ECB[4]).

The economic-political feature that defines this accumulation by dispossession is that its implementation requires that the State and the owners of capital (productive, commercial, financial) “collude” around the common interest that destination spaces are meant to serve capital to increase its capital; this is achieved not only by expropriating the right of the worker to a dignified life with a decently remunerated job. In the words of David Harvey (2007), what makes accumulation by dispossession possible is the liberation of a set of assets, including labor power, at a very low cost and in some cases, at no cost.

Harvey (2007) has shed light on the importance of the concept of capital accumulation, which is worthy of study, especially in light of the fact that capitalism has undergone a transition from the old accumulation model to a new model. Harvey characterizes Fordism as the old model (the mass production assembly chain, mass political organization, and welfare State interventions), while flexible accumulation (the new model) is characterized, in general, by the quest for specialized markets, where decentralization plays a role alongside the spatial distribution of production. Once the nation-State declines to implement interventionist policies, it becomes possible to liberalize and privatize State assets.

Moreover, thanks to its monopoly over the use of violence and its definition of legality, the State plays a crucial role both in supporting and promoting these processes. To the list of mechanisms used, I would add the extraction of patent rents and intellectual property rights and the reduction or elimination of various forms of community property rights (such as State pensions, paid vacations, access to education, and health care).

Along the lines of Harvey (2007), the competition between various territories (states, regions, or cities) to possess the best economic development model or the “best business climate” was relatively insignificant in the 1950s and the 1960s. However, the contest between territories and/or countries to attract capital (nation states that offer incentives to promote capital inflows, both direct and indirect FDI) took off after the 1970s with the rise of a neoliberal model that has, in the long term, engendered unequal global geographic development in terms of accumulation by dispossession whose equivalent is the appropriation of space. This appropriation can be executed by formal or informal imperialism, depending on the intensity of the domination, whether violent or concealed (Wallerstein, 1988).

This explanation is completed with the following argument:

It is important to note the demand on nation-States to promote the *deployment of capital accumulation* in the logic of the global value chain in tourism, agricultural, mining, and industrial activities. In other words, as Harvey (2004) explains, State sovereignty over the circulation of commodities and capital is obligingly handed over to the global market. To David Harvey, the crux of the issue is found in the spatial-temporal solutions, because they generate demand, both for investment and for consumer goods in other places (example: tourist activities). Even going beyond the concept of the deployment of capital accumulation, oil and other geostrategic resources in Mexico, including land as a commodity, are all part of the neocolonial objectives of Washington and transnational corporate capital, as reflected in the Security and Prosperity Partnership for North America (Merchand, 2012b: 37-38).

It has been said time and again that accumulation by dispossession cannot be carried out without the unrestricted support of the State, and it has been made clear that the State is a key player in the four aspects involved in accumulation by dispossession (privatization and merchandization, financialization, crisis management and handling, and crisis redistributions). The State employs violence and enforces legality. It is obvious that any economic process that entails the management of economic resources and/or financial assets must go through the State to obtain legal clearance for this dispossession, as the State holds the power to make laws more flexible (deregulate) so that the various forms of capital can avail themselves of the productive and financial resources of their territories. This also permits capital to take advantage of the unequal spatial conditions of an economy in terms of the varying resource endowments at the national, regional, and local level.

It would be useful to reiterate that the analytical elements that comprise the concept of accumulation by dispossession must encompass, to begin with, an analysis of the notion of geographic space, as the power struggle between global and national tensions. The stance taken implies that the current global scenario reflects the dialectic relationship of two logics of power: territorial and capitalist.[5] The relationship between these two logics should be understood as one of conflict—and frequently contradictory—rather than functional or unilateral, insofar as the State and capital continue to form and forge economically and politically convenient relationships to align the interests of the two logics described.

Thus, the composition of these two logics or vectors (the territorial and the capital) can be viewed in power terms. On the one hand, there is the interest of the United States—as the nation-State that deploys an imperial State power policy—with its specific and broad-ranging political project, true of agents whose power is based on the control of a territory over the rest of the nation-States of the continent, ensuring at the same time that State, which acts imperially towards a significant portion of the world, is able to face off in disputes with other power blocs, pursuant to the global division of power.

To guarantee the reproduction of global capital, the State creates a legal space for transnational corporations above the state sovereignty. Such is the case of the transnational oil companies installed in the Mexican territory.

THE ENERGY REFORM PROMOTES FOREIGN INVESTMENT

The question from which I depart is why the State behaves the way it does. One of the reasons dates back to the 1970s; even into the present, the economies of developing countries have been governed by the neoclassical approach imposed by neoliberal administrations,[6] where the global advocates of these models are the two financial bodies (IMF and WB) that sustain the leadership of the United States. The influence that these international bodies exercise over the economic policy choices of other countries aims to strengthen and successfully reproduce global productive, commercial, and services capital in national economies. Thus, one of the greatest challenges for economic policy is that all policy interventions must ensure, at all costs, guarantees to productive and financial capital.

In other words, the majority of Latin American governments, with a different emphasis, insist on insertion in the global economy, which inevitably demands the dismantling of regulations, obstacles, and costs involved in the trade of goods and capital flows. This globalization process leads to the dilemma of redefining the role of the nation-State, through the enactment of measures to attract investment and promote exports. Over the past few decades, with the advent of neoliberalism and the boom of globalization, Latin America has witnessed the “destatization” of the State, a process whereby the State is dispossessed of its principal attributions. In this way, the State has progressively been dispossessed of its function to govern. Not only has it lost governing effectiveness, but it has actually become confused and changed the mode of governance, moving away from being a body and instrument of governance.

For example, to attract international capital, these administrations have relaxed labor standards and granted all sorts of tax exemptions. They have also made an effort to achieve macroeconomic stability (stable exchange rate, high interest rates with respect to international rates), to provide secure conditions for productive and financial capital.

The Mexico case and the neoliberal capitalist Mexican State can be characterized by the recommendations issued by the Permanent Peoples’ Tribunal (TPP, 2014).[7]

Since the mid-1980s, the Mexican State, like many other States in Latin America, has implemented public policies and government programs centered around all types of dispossession of public goods and commons belonging to the people. The objective of this accumulation by dispossession implemented by the State has been to set up an extractivist model, supported not only by oil exploitation but also by energy extractivism, including conventional gas, shale gas, wind power, solar power, and, of course, mining and hydrological power. These natural resources are currently controlled by oil and gas companies, especially those funded by United States capital, and in the case of mining, Canadian capital.

To John Saxe (2002), the United States has implemented military and financial mechanisms to guarantee the dispossession of strategic resources, not only from Mexico, but also from the vast majority of Latin American countries. This description is a manifestation of the centuries-old position of Mexico, first as a colony and later as a peripheral country, which has historically applied geopolitical and economic pressure on the nation. Historically, a good quantity of the wealth has been transferred abroad through financial mechanisms, the constant repayment of international debt, and trade mechanisms with unequal conditions of exchange and the uncontrolled exploitation of natural resources by foreign companies.

The Mexican State operates with a model to grant concessions and/or sell natural resources that belong to the country to questionable interests (transnational companies, who irrationally exploit natural resources). This has entailed investing in an institutional order that was built based on the 1917 Political Constitution of Mexico. The neoliberal State holds a distorted attitude, using its attributions and powers to guarantee privileged positions, not only for the national oligarchy, but also directly for the international oligarchy, principally from the United States.

In other words, this State, rather than fulfilling its duty to defend national sovereignty, has permitted national wealth to end up in the monopolistic hands of a small group of transnational companies. This behavior is called a "diversion of economic power."[8] Concretely, in this "diversion of economic power," the State employs its legitimizing institutions through the implementations of laws and standards (energy reforms), to benefit powerful private interests, thereby certifying the dispossession of natural resources that originally belonged to the people.

In Mexico, a few situations and cases clearly illustrate this "diversion of power," as follows:

- The establishment of public institutions to favor the interests of the economic elite and policies through multiple legal simulations.
- The dismantling of the Mexican Political Constitution of 1917 through neoliberal counter-reforms in recent six-year presidential terms.

This "diversion of power" was already present in the six-year presidential term of Carlos Salinas (1988-1994), who sent to the Mexican Congress a reform bill to modify Article 27 of the Constitution,[9] which undoubtedly represented the most significant social reform of Mexico's agricultural laws. This legal change to Article 27 of the Constitution stipulates that under certain circumstances, the purchase and sale, lease, and other concessions of land shall be permitted, something that was prohibited in the previous legislation. The privatization and denationalization in the neoliberal model began to operate with the comprehensive handover of strategic natural resources (significant portions of the oil industry, electricity, metal mining, water, and biodiversity), and even strategic infrastructure (railroads, seaports, cabotage lines, and clearance navigation areas, satellite networks, etc.).

Alejandro Nadal (2013) explained this situation precisely, as it seems that the only task of the governing class is to impose schemes to rule over the majority to the benefit of the few. Against all economic and political logic, the decision to turn over the energy sector to transnational companies, who have never sought to hide their appetite for Mexican hydrocarbon deposits, was imposed on the Mexican people. In this way, the reform entails reopening the doors to companies that were expelled from the industry in 1938. Another description, written by William Robinson (2013), regarding how the State adapts to manage a liberalized economy ruled by the interests of transnational capital, would be fitting here. In his words, “the transnationalization of capital takes place on the foundation on which State officials and the political elite carry out its production.” However, this does not mean that capital no longer needs the State to create and maintain the conditions necessary for its growth, but rather that the “system of nation-States, composed of discrete units that interact among each other, is no longer the guiding principle of capitalist development.”

This regression destroys fundamental components of the Mexican State as it was when it emerged from the Revolution. Control over natural resources was and has been, up until now, one of the most important aspects of the struggle to achieve independence and development. That is why it continued to be one of the essential principles of the Political Constitution of 1917. Since the 1980s, Mexican administrations have gradually abandoned the economic development project, thereby undermining constitutional precepts regarding the sovereign control of natural resources, which began to serve as a mere reminder of what the path of economic development could have been. Nowadays, these precepts have been distorted and this historical regression has supplanted the promise of development. The same institutions that should in theory advocate for national interests are the very institutions that have expedited the betrayal.

Since the Vicente Fox administration, energy extractivism has existed to the benefit of privatization, granting oil resources and their byproducts to transnational companies from the United States (Shell, Halliburton, Schulemberger). According to an article by the journalist Alfredo Jalife-Rahme (2014),[10] companies from the United States that are ranked as the top four mega-oil firms (Exxon Mobil, Chevron, Shell, and BP) have become the principal beneficiaries of the energy reform, by which a “neoliberal Mexico” cedes control of the deep-water exploitation of the Gulf of Mexico and toxic shale gas,[11] which needs special treatment due to the serious impact on water availability in zones adjacent to extraction sites.

Table 1 reflects on the liberalization measures granted to the now-outsourced oil industry.

The Enrique Peña Nieto administration pushed for energy reform, which has been approved, and has put into practice accumulation by dispossession, legally underpinned by the constitutional reforms and energy bylaws, which essentially consist of forms of political domination, through a complex process of lobbying-negotiation-cooptation with, and even the repression of, the actors involved in the story. As has already been explained, this accumulation by dispossession entails the merchandization and privatization of the land and the mandatory expulsion of rural populations; the conversion of various forms of property rights—common, collective, state, etc.—into exclusionary property rights; and the abolishment of the right to the commons.

Table 1

Neoliberal Administrations	*Liberalization of the Oil Industry*
Vicente Fox administration (2000-2006)	Comprehensively privatized the gas industry. Dismantled the Mexican Oil Institute, a strategic technology and research center tied to the state enterprise Petróleos Mexicanos.
Felipe Calderón administration (2006-2012)	Allowed transnational companies from the United State to control (through contracts) the extraction of deep-water wells with the major reserves of crude in the Gulf of Mexico. Also sought (on two occasions: May 20, 2008 and 2011) to expedite the privatization of the petrochemical industry in the hands of the State. At the end of the six-year term (May 2012), it is estimated that 80% of the oil industry and 55% of the electricity industry were already in private hands.
Enrique Peña Nieto administration (2012-2018)	On December 20, 2013, published the energy reforms and constitutional amendments in the Official Mexican Gazette (DOF). On April 30, 2014, the President of the Republic sent to Congress a package of bills to issue, reform, add, and repeal various provisions of bylaws that could be debated and approve in an extraordinary session in June of the same year. In the hydrocarbon sector, Articles 27 and 28 of the Constitution were amended to permit private and public sector participation in energy industry activities. This initiative set forth an unprecedented plan for the country, which sought to transcend to all realms.

Source: Created by the author.

It would be useful to note here that one of the legal forms of doing away with land ownership and indigenous territories is expropriation, an act executed unilaterally by the Public, Federal, or State government, whose purpose is to deprive owners, whether private or social, from the use, enjoyment, and availability of their assets "for the cause of public utility."

This legal concept is not new. Conceived of during the Cárdenas era (1934-1940) to bolster the national project, it now serves to promote individual profit to the detriment of the commons and social property. The Mexican State has resorted to expropriation to carry out major public works that were later handed over to private interests for to their usufruct, among them, hydroelectric dams (López, 2014a).

The dispossession of private, social, and even public lands to the benefit of foreign enterprises that come to the country to exploit oil is provided for in the Hydrocarbons Act (Article 33)[12] and expanded upon in the law for the energy regulatory bodies. It stipulates that contracts for the exploitation and extraction of hydrocarbons, to lay pipelines, and to build the necessary infrastructure, shall be granted jointly with the respective declaration of public utility for the premises in question.[13]

It would be fitting here to cite an article by López Bárcenas (2014b), who reflects on this topic in a similar fashion to this paper, and explains that the legal reforms being enacted in the Mexican congress to profoundly transform the oil and gas extraction regime, as well as the power generation scheme, represent the second disendowment of land and natural resources, similar to what the country went through in the nineteenth century, but this time, the energy reforms are going even further. According to the Dictionary of the Royal Academy of the Spanish Language, this disendowment (*desamortizar*) means to “place in a state of sale assets in mortmain, through legal provisions.”

What makes the legal reform even worse is the fact that these resources have not fallen into disuse, that is, they are not unproductive. Rather, these resources have served to improve the welfare of the Mexican people. The dispossession of land will certainly affect agricultural communities, who will be impacted the most, because they own the largest share of the Mexican territory. The same is true of the indigenous peoples,[14] who have in their custody the goods so desired by capital. The reforms open the door to the discretional use of expropriating and imposing modes of ownership; the difference is that these privatization measures are not oriented towards strengthening the nation as a whole and safeguarding national assets to bolster Mexican welfare, but rather will be used to private benefit.

López Bárcenas (2014b) underscores that the collateral measures of the Energy Act, in terms of expropriation, will not restrict the action of capital. Rather, this capital will be used to dispossess the rural and indigenous peoples of their property in the name of the nation, even though we all know it is really to benefit the owners of transnational capital.

The Energy Act will be implemented through the National Hydrocarbon and Energy Regulation Reform commissions, which will serve as the regulatory bodies for the energy sector and shall be entitled to, pursuant to the same Article 33:

Undertake the legal actions necessary to enforce the declaration of public utility, as long as these activities are of social interest and public order, which is why they shall take precedence over any other reason entailed by the use of the surface of the subsoil of the lands affected. These regulatory bodies shall facilitate the work to foreign enterprises. "They shall not have to negotiate anything, because the Mexican State will take care of the procedures to use the premises they require to do oil or electricity business."

This Article 33 "opens the door to the expropriation of land for supposed public utility, to be used, and even includes biosphere reserves, meaning that the provision goes far beyond the scope of the energy reform approved in December 2014."

In summary, the Hydrocarbon Act Reform and its bylaws permit national or foreign private companies to invest in Mexico in the exploration and exploitation of hydrocarbons: oil, gas, and its byproducts. Since the oil expropriation of 1938, these activities had been exclusive to the State. The way in which private companies will be able to participate in the exploration and exploitation of hydrocarbons will be through entering into contracts with the State. These contracts may be licenses, service agreements, or shared profit or production contracts, and shall be assigned through tenders by the National Hydrocarbons Commission, one of the regulatory bodies for the sector.

The same Hydrocarbons Act provides for the possibility that the contractual zone granted to a private entity include land in the possession of private landowners. In that case, in order to initiate activities, the contractor will have to arrive to an agreement with the landowner, whether to purchase the land or to permit its use through legal easement, temporary occupation, or surface use.

The law also opens the door the exploitation of shale gas, obtained through a practice known as fracking, which consists of drilling into the earth and introducing water and chemicals under pressure to remove the hydrocarbons.

However, Alicia Bárcena Ibarra, the Secretary General of the Economic Commission for Latin America and the Caribbean (ECLAC),[15] proposed that Mexico should look to the case of Norway to achieve greater independence in oil exploitation, and she even suggested considering the models of Bolivia and Ecuador, members of the Bolivarian Alliance for the Peoples of Our America. It is worthwhile to examine in detail the Bolivian and Ecuadorian strategies, as these countries even went so far as to amend their constitutions and renegotiate contracts with foreign companies to come to agreements that are much more beneficial to their societies. In the case of Norway, a strong social pact has been maintained. This is what we should be doing, and these examples should give us hope that our natural resources could be at the service of our society.

It would be fitting here to cite the case of Bolivia (Petrich, 2014a), which is a tempting model to follow, thanks to the way the country renegotiated concessions and contracts with transnational mining and gas companies. The Evo Morales administration in Bolivia undertook two procedures. For gas, and to a lesser extent oil, underground and in pipelines, all ownership was nationalized. Private companies are not permitted to exploit the resources found in the subsoil on the market as their own. Service contracts are signed for facilities and machinery. In the realm of exploration, companies are allowed to prospect for oil and gas, and if they find it, it belongs to the State. The government decides to whom and how much to sell. With regard to machinery, technology, and labor, the government reimburses companies for what they have invested with an additional profit of between 10% and 15% of earnings; the government keeps the rest. As is evident, Mexico has done entirely the opposite, moving towards full privatization and handover to foreign enterprises.

The economic outcome of the nationalization of gas in Bolivia is that the country has emerged from its historical position as one of the poorest countries in South America. Now, with the policy to nationalize hydrocarbons and mining, Bolivia is one of the top three fastest-growing economies in the region. Its economy is expected to grow at above 5% next year, underpinned by the policy to renationalize natural resources, principally gas and mining.

In Mexico, for over 30 years, annual average growth has been declining, failing to exceed 2.3% for the past 20 years. Even among Latin American countries, Mexico has grown the least.[16] Add to this that the last two preliminary official reports released by the largest state enterprise in Mexico, Pemex Exploration and Production (PEP), revealed that in January 2015, crude oil production continued to fall and is now at a daily average of 2 million, 235 thousand barrels a day, similar to Pemex levels from 35 years ago. This volume of 2 million, 235 thousand barrels per day in January 2015 is equivalent to 1980-1981 levels and in real terms, it could be even lower, because production is reported before shrink, inventory movement, transfers, and illicit theft of hydrocarbons.

This collapse of oil production is accompanied by budget cuts for the Mexican oil company announced on January 30, 2015, by the Ministry of the Treasury and Public Credit (SHCP) amounting to 62 billion pesos.[17] This drop in production, as well as falling oil prices[18] and spending cuts, will have implications not only for the public treasury, but also for Mexico as a whole. The Enrique Peña Nieto administration is trying to reverse this crisis with investment in the energy sector, propped up by the reforms it has implemented, believing that it can achieve sustained economic growth that is inclusive of all Mexicans, but it has clearly been shown here that this is not possible!

The questions that remain are as follows. Why is Mexico not growing? Why is the economy unable to grow enough to meet the employment and welfare needs of the majority of Mexicans?

A report published in March 2014, prepared by the McKinsey Global Institute and the offices of McKinsey in Mexico (2014), "A Tale of Two Mexicos: Growth and Prosperity in a Two-Speed Economy," analyzes the issue of economic growth in our country. There are essentially two Mexicos, one in which a high-growth modern economy flourishes and the other in which there is a traditional, low-performing economy. These two Mexicos are moving in opposite directions. While the modern sector is growing and able to compete internationally, the traditional sector with small and medium-sized enterprises, frequently informal, has seen productivity plummet.

CONCLUSIONS

It has been stated that accumulation by dispossession cannot be orchestrated without the unrestricted support of the State, and that the State has been a central figure in the four aspects of accumulation by dispossession (privatization and merchandization, financialization, crisis management and handling, and crisis redistributions). The State is entitled to employ violence and enforce legality. As such, any economic process that entails the management of economic resources and/or financial assets must necessarily go through the State to legally protect this dispossession. We must remember that the State holds the power to make laws more flexible (deregulate), so that the various denominations of capital (mining) can avail themselves of the productive and financial processes of its territories, thereby permitting capital to take advantage of the unequal spatial conditions of an economy in terms of the varying resource endowments at the national, regional, and local level.

Looking at the issue of transnational companies in the exploitation of natural resources (mining, oil, tourism, agriculture, etc.), we must bear in mind two aspects. One, extractive activities prompt environmental damage in the areas in which they operate, and their consequences are difficult to mitigate in the short and medium term, frequently affecting nearby populations. Two, transnational companies make little or no contribution to fiscal revenue, which would come through the payment of taxes or other royalties. There is a clear need for companies to pay suitable contributions for the right to extract non-renewable natural resources, in light of the fact that Mexico is home to abundant resources in good physical condition for exploitation and/or extraction, which lowers costs for these firms.

In this sense, the overexploitation of the environment is even more harmful to non-renewable resources, such as natural gas, oil, metals, and precious stones, which comprise the foundation of profit-generating extractive activities in economic enclaves.

BIBLIOGRAPHY

Bonefeld, Werner (2012), “La permanencia de la acumulación primitiva: fetichismo de la mercancía y constitución social”, *Theomai 26*, second semester, Buenos Aires, Argentina.

Cepal/ECLAC (2014), Informe: Panorama Social de América Latina 2014.

Composto, Claudia (2012), “Acumulación por despojo y neoestractivismo en América Latina. Una reflexión crítica acerca del Estado y los movimientos socio-ambientales en el nuevo siglo”, *Astrolabi,* no. 8*,* http://revistas.unc. edu.ar/index.php/astrolabio

Composto, Claudia and Navarro Lorena (2012), “El despojo es una estrategia del capital para superar la crisis de la explotación”, interview with John Holloway, *Theomai 26*, second semester, Buenos Aires, Argentina.

De Angelis, Massimo (2012), “Marx y la acumulación primitiva. El carácter continuo de los ‘cercamientos capitalistas’*, Theomai 26*, second semester, Buenos Aires, Argentina.

Diario Oficial de la Federación (2014), Ley de Hidrocarburos y se reforman diversas disposiciones de la Ley de Inversión Extranjera, <http://www.dof.gob.mx/nota_detalle.php?codigo=5355989&fecha=11/08/2014>

Garay, Luis (1999), *Globalización y crisis. ¿Hegemonía o corresponsabilidad?*, Tercer Mundo Editores Colciencias, Bogotá, Colombia.

______ *et al.* (2013), *Minería en Colombia. Fundamentos para superar el modelo extractivista*, Contraloría General de la República de Colombia, Bogotá.

González, Roberto (2015), “Boquete de $124 mil millones al gasto”, *La Jornada*, <http://www.jornada.unam.mx/2015/01/31/politica/002n1pol>

Harvey, David (1990), *Los límites del capitalismo y la teoría marxista,* México, Fondo de Cultura Económica.

______ (2004), *El nuevo imperialismo,* Madrid, Spain, Akal.

______ (2007), *Breve historia del Neoliberalismo*, Madrid, España, Akal.

______(2014), *Diecisiete contradicciones y el fin del capitalismo,* primera ed., Quito, Editorial.

Instituto de Altos Estudios Nacionales del Ecuador (IAEN) (2014), 296 pp. Juan Mari Madariaga (trad.).

Jalife-Rahme, Alfredo (2014), Bajo la Lupa, *La Jornada,* <http://www.jornada.unam.mx/2013/12/29/opinion/006o1pol>

Jessop, Robert (2008), *El futuro del Estado capitalista*, Catarata, Spain.

López, Francisco (2014a), Acumulación por desposesión y autonomía indígena, <http://www.lopezbarcenas.org/doc/acumulaci%C3%B3n-desposesi% C3 %B3n-autonom%C3%ADa-ind%C3%ADgena>

_______ (2014b), “La segunda desamortización de las tierras”, *La Jornada*, <http://www.jornada.unam.mx/2014/07/25/opinion/019a2pol>

Merchand, Marco (2012), *Acumulación por desposesión en la geografía local*, Universidad de Guadalajara.

McKinsey Global Institute (2014), A Tale of Two Mexico’s: Growth and Prosperity in a Two-Speed Economy, McKinsey Global Institute, <http://www.mckinsey.com/insights/americas/a_tale_of_two_mexicos>

Miliband, Ralph (1978), *Marxismo y política,* España, Siglo XXI Editores.

Nadal, Alejandro (2013), “Crisis económica y crisis del Estado”, *La Jornada*, <http://www.jornada.unam.mx/2013/12/18/economia/030a1eco>

Petrich, Blanche (2014a), “24 Cumbre Iberoamericana. Cepal insta a México a imitar modelos energéticos de Bolivia y Ecuador”, *La Jornada,* <http://www.jornada.unam.mx/2014/12/09/politica/004n1pol>

_____ (2014b), “Ningún país debe dejar sus energéticos en manos extranjeras: Álvaro García Linera”, *La Jornada*, <http://www.jornada.unam.mx /2014/12/22/politica/012n1pol>

Robinson, William (2013), *Una teoría sobre el capitalismo global: producción, clase y Estado en un mundo transnacional*, Mexico, Siglo XXI Editores.

TPP (2014), Libre comercio, violencia, impunidad y derechos de los pueblos en México. Audiencia final, <http://www.internacionaleliobasseit, http:/ issuu.com/tppmexico/docs/sentencia_audiencia_final_tpp_mexic>

Seoane, José (2012), “Neoliberalismo y ofensiva extractivista. Actualidad de la acumulación por despojo, desafíos de nuestra América”, *Theomai 26,* second semester, Buenos Aires, Argentina.

Saxe, John (2002), *La compra y venta de México*, Mexico*,* Plaza y Janés.

Zenteno Lira Mora (2014), Reforma Energética Resumen del proyecto de decreto que expide las leyes secundarias en materia de hidrocarburos, <http://www.pwc.com/es_MX/mx/industrias/archivo/2014-05-secundarias-hidrocarburos.pdf>

Wallerstein, Immanuel (1988), *El capitalismo histórico*, México*,* Siglo XXI Editores.

[1] University of Guadalajara, Mexico. E-mail address: merchandrojas@yahoo.com.mx

[2] There is no consistent and unified theory of the State, even in classic studies of the State (such as Weber or Marx), or, of course, in subsequent writings, whether in the pluralist or Marxist tradition. However, there are different approaches, each of which has its own purposes and is inscribed in its own historical context, which complement each other.

[3] The term enclosure refers to the closing off of common lands (public domain) to the benefit of the landowners, a process that took place in England in the eighteenth and nineteenth century.

[4] ECB (European Central Bank).

[5] Quoting from Harvey (2004: 39), Arrighi explains that the logics of power referred to as “territorial” and “capitalist” are very different from each other. Harvey adds to that and indicates that the relationship between the two logics should therefore be understood a something problematic—and frequently contradictory (that is, dialectical)—rather than functional or unilateral.

[6] The neoliberals, who rule the current economic and political scenario, assert, in principle, that the “State” must minimize its actions and shrink to maintain a suitable framework for the private sector to act. They believe that in this way, the private sector will have a more stable environment, higher profits, and will be more likely to act. According to these ideas, neoliberals believe that the only appropriate intervention is to “maintain law and order,” which essentially means to guarantee private property and support businesses. They conclude, thus, that public spending should be minimized as much as possible, as well as the taxes on individuals and company profits.

[7] The Permanent Peoples’ Tribunal (PPT) was founded in 1979 and is the descendant of the original tribunal created

by Bertrand Russell to judge the crimes committed by the United States government during the Vietnam War, and the court organized by Julio Cortázar to judge the dictatorship of the Argentine military. Now, the PPT has convened in Mexico to hear the case Free Trade, Violence, Impunity, and Peoples' Rights in Mexico. In this framework, various hearings were held before international and national judges selected by the PPT (2014).

[8] "In Mexico, the diversion of power is a heretofore unknown concept. In a few recent resolutions, the Supreme Court of Justice recognizes the concept as a plausible hypothesis. The First Bench of the Court speaks of diversion and abuse of power as a distorted use of discretional attributions, which therefore becomes arbitrary. In Spain, the concept has been expressly provided for in the legislation since 1956. The new administrative regulatory law for contentious jurisdiction number 29/1998 defines the diversion of power as the exercise of administrative powers for purposes other than those set in the legal regulations" (TPP 2014/15).

[9] The reform to Article 27 and the Agriculture Act have allowed public policies to be designed that seek to eliminate social property, in reality. Such is the case of the Program to Certify *Ejidal* (Communal Property) Rights and the Ownership of Plots (Procede), which fosters the merchandization and privatization of *ejidos* and communities that adopt the legal concept of "full domain." This mode suppresses the nature of land, which cannot be "proscripted, alienated, or seized." Full domain entails the fragmentation and individual ownership of communal lands and territories and makes it easier for them to go on the land market. These lands can then be sold, mortgaged, and seized, or leased to companies, which modify the diverse historical spatial structures built by the indigenous and rural people on their lands and territories, as well as the destruction of community assemblies, which are the social institution that governs and regulates life within *ejidos* and communities and is the maximum authoritative body. These existed before the 1992 reform.

[10] "Among the 12 least ethical major transnational companies (sic!) are three oil companies from the United States: Halliburton, Chevron, and Occidental Petroleum. Exxon Mobil's (449 billion dollars in revenue, ranked third on the Fortune 500 list/CNN) 1989 oil spill (750,000 barrels) in Alaska competes with BP's spill in the Gulf of Mexico for the spot of largest environmental damage" (Alfredo Jalife-Rahme, 2014).

[11] Shale gas production in the United States took the world by surprise, as it developed so quickly and pushed oil prices down, raising the supply of hydrocarbon reserves. This development grew alongside the oil and natural gas condensate supply. It is estimated that the United States could be oil self-sufficient and a surplus gas producer in less than 30 years. The renewed push for non-conventional hydrocarbons is starting to be seen as an energy revolution that will give new momentum to the United States economy. Because it is so new, it is difficult to fully evaluate these developments, due to methodological and statistical challenges, and the availability of scientific, technological, social, and economic knowledge in this regard. However, there are many proven reserves of shale gas in the United States and Canada.

[12] *Diario Oficial de la Federación* (2014). The Hydrocarbons Act has reformed various provisions of the Foreign Investment Act.

[13] The Summary of the Energy Reform Package that issues the hydrocarbon bylaws. This summary includes the bylaw bills for energy reform sent by the Federal Executive on April 30, 2014 to the Congress of the Union, so they will be subject to changes that can be approved during June of the same year (Zenteno, 2014).

[14] The Agrarian Reform Act of 1992 is an example of the institutionalization of a change of this type. The intention of the reform was to liberalize the land market to foster the penetration of capitalist relations of production. The *ejidatario,* now "liberated" from his land, was converted into cheap labor.

[15] Petrich, B. (2014b).

[16] It is useful to keep in mind that last June, in its report *Global Economic Prospects*, the World Bank (WB) forecast that growth in Mexico would not exceed 2.3%. One month later, in July, the International Monetary Fund (IMF) also revised its development prediction downwards for Mexico, lowering it to 2.4% as compared to the 3% calculated in April. And just at the beginning of August, the Economic Commission for Latin America and the Caribbean (ECLAC) cut back its 2014 growth forecast for the Mexican economy from 3.0% to 2.5%. 2015 forecasts from these bodies will not exceed 3.5%. [17] "The federal government recognized on January 31, 2015, the need to resort to cutting

public spending by 124 billion pesos, equivalent to 0.7% of the gross domestic product (GDP). This measure was described by the Treasury Secretary, Luis Videgaray Caso, as a preventive measure in acknowledgement of the changing international financial environment and falling oil prices" (González, 2015).

[18] The Mexican oil mix for export was trading at 91 dollars in January 2014. In the early days of February 2015, the price plunged to 40 dollars a barrel, a more than 100% drop in the first months of the year. The price of the Mexican oil mix for export is the principal source of funding for public spending, but it has shown a consistent downward trend over time.