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Title of paper: Argentina's debt affair: far beyond vulture funds

Francisco Cantamutto

Daniel Ozarow

Abstract

In December 2001 Argentina shocked the world when it declared the largest external debt default in history following its catastrophic economic and political crisis. After a decade of debt negotiations, President Fernandez de Kirchner's government recently boasted of having converted the country into a "serial payer," highlighting its 'dis-indebtedness' policy. Yet when the US Supreme Court upheld a successful lawsuit by US "vulture funds" in June 2014, approval of their exorbitant bond repayment demands sent shockwaves through the global financial system and condemned Argentina to a new, 'selective' debt default. This paper analyzes the origins and chronology of Argentina's debt. It proposes that the absence of a comprehensive audit of its legitimacy explains why the country has remained trapped in a cycle of debt-dependency since the 1980s. Further, it provides critical lessons for those countries that face the potential impossibility of debt restructurings as a consequence of the case.

Keywords

Argentina, neoliberal burden, external debt, dis-indebtedness policy, vulture funds

Author(s) details

Francisco J Cantamutto – FLACSO México/ CONACYT. E-mail:

francisco.cantamutto@flacso.edu.mx

Daniel Ozarow - Middlesex University Business School. E-mail: D.Ozarow@mdx.ac.uk

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In mid-2014, Argentina once again found itself in the global media spotlight as its debt affair in the international courts made headline news. When New York judge, Thomas Griesa's ruling against Argentina was upheld by the US Supreme Court, it obliged its government to immediately pay US\$ 1.3bn to a group of hedge funds. Having bought up cheap bonds on the secondary debt market following Argentina's 2001 crisis at a fraction of their face-value - with the specific intention of suing the country for exorbitant profits years later- these speculators are better known as "vulture funds". Led by NML Capital Ltd in this case - these vulture funds speculate on distressed debt of countries facing crisis, then 'hold-out' to pursue payment on the full amount of the original bond value when restructuring negotiations begin. The Argentinean government is currently refusing to conform with the Judge's ruling, in part because if payment is made it will trigger an 'equal treatment' clause that will make the country liable to multi-billion dollar lawsuits from the 93 per cent of investors which agreed to debt swaps during subsequent restructuring agreements.¹ At the moment of writing the conflict remains open, although it has sparked international preoccupations amongst global elites, culminating in a September 2014 vote at the UN General Assembly to create a multilateral framework for 'sovereign debt restructuring'. Our intention here is to examine the structural issues that lay behind the accumulation of Argentina's debt which have led to this scenario.

However, through its legal confrontation with these representatives of speculative capital, the Argentinian government was fundamentally mistaken in believing that an arbitrary decision of a foreign court might rationally find in its favor. Unsurprisingly, the bourgeois legal system ruled that a sovereign nation's right to defend the interests of its people through the debt re-structuring process is superseded by the rights of a handful of speculative investors to make multi-million dollar profits,. While the Courts' decision is certainly questionable, it should have been anticipated, given that capitalism has created a system under whose logic finance capital is the direct beneficiary.

The official negotiation strategy for the external debt, as established by President Eduardo Duhalde's administration (2002-2003) and then continued by both his successor Néstor Kirchner (2003-2007) and his wife Cristina Fernández (2007-2015), has been 'repay-as-much-as-possible'. These governments were responsible for disseminating the idea that this would ensure national sovereignty, a contradictory argument which has been advocated

¹ Two clauses apply here. The Rights Upon Future Offers (RUFO) allows the Argentinian government to continue bargaining with holdouts, but also permits bondholders that agreed to previous swaps to demand "equal treatment". This clause works in tandem with the Most Favored Creditors Clause (MFCC), which establishes that the most favorably-agreed terms may be applied to *all* bondholders upon demand.

by all wings of the Kirchnerist political movement. The principal idea was to make its creditors “partners” in Argentina’s economic recovery, through a win-win strategy under which repayment rates were partly pegged to national GDP. However, as Argentina’s vulture fund odyssey has proven, it relied on the false hope that limits could be imposed to the voracity of capital.

As the President herself boasted, Argentina had become a “serial payer” (Presidential Address, August 26 2013), to whom *any* financial claim deserved to be honored. Thus, according to that official estimation, public debt has already been repaid in full since 2001, *plus* an additional 25 per cent of what was originally owed. Yet curiously Argentina has since been locked out of international credit markets. Further, despite these repayments, the debt amount has actually increased by more than half during the same period. Further, whilst the vulture fund speculators would have therefore made enormous profits on their original investments even if they had decided to agree to ‘haircuts’ during the two debt restructurings in 2005 and 2010, this did not satisfy their thirst. So just how did the country get to this position if its official policy was one of ‘dis-indebtedness’?

This paper aims to clarify the trajectory of Argentina’s national debt burden and is organized as follows. In the first section a brief explanation of the importance of the debt burden as a catalyst to engender the neoliberal stage of capitalism is provided. Then, the second section outlines the debt-swap process which was conducted during the Kirchnerist governments since 2003 and which culminated in the 2014 vulture funds affair (introduced in the third part of the paper). The fourth section pieces together the different threads of the ‘dis-indebtedness’ policy, highlighting its achievements and limitations. Based upon this analysis, some concluding remarks are then outlined.

1. A short history of Argentina’s debt

The exponential growth of external debt is an almost universal feature among national economies within neoliberal stage of capitalism. In Argentina’s case, both the roots of the neoliberal model and its external debt can be traced to its last military dictatorship (1976-1983). Despite certain differences between the respective economic projects pursued by the dictatorship - President Raúl Alfonsín’s administration (1983-1989) and then that of the Convertibility period (1991-2001) when the Argentine Peso was pegged to the US Dollar under Presidents Carlos Menem and Fernando De La Rúa - the debt trajectory establishes a underlying continuity between them. External debts are the manifestation of a specific form of subordination: that of an indebted state under creditors’ pressure (Toussaint and Millet,

2010). By granting tax exemptions to multiple sectors of foreign capital as a tool of fiscal policy that aims to deregulate external trade, the debt mechanism and foreign currency accumulation through foreign investment and export sales were promoted as an alternative source of national income. That is why most barriers to the mobility of capital have been removed in the last thirty years (Harvey, 2005).

To elaborate, within the paradigm of neoliberal structural reforms, indebtedness played a central role in Argentina's external macroeconomic program (Basualdo, 2006). Capital inflows were facilitated through deregulation, which stimulated the acquiring of foreign credit at low international interest rates. The idea was to then invest that capital in the local financial system, obtaining high yields because of high national interest rates. The final stage of this "financial bicycle" process was to then re-invest these profits abroad, the result being net financial outflows and losses for Argentina. Because trade liberalization turned most productive activities unviable, these capital inflows did not enter the country in the form of productive investments (which could rarely satisfy interest yields), but rather took the form of speculative financial activity.

Another rationale for indebtedness was because speculative investments provide immediate liquidity so as to bolster weakening currencies and thus avoid exchange rate devaluation. Foreign debt then, did not play any role in encouraging productive investment, but represented a business opportunity itself for international speculators. In doing so, it cultivates unstable conditions for external disequilibrium. Systematic increases in debt repayments (due to accrued interest) may reach unsustainable levels, occasionally forcing default and the need to renegotiate with creditors. This cycle of indebtedness may boost economic activity when capital inflows are available, but produces profound crisis when they are not (Schvarzer and Tavošnaska, 2008). Public indebtedness plays a central role in extending periods of structural adjustment. Moreover in Argentina, successive administrations have nationalized private debt. Consistent with the processes outlined in world-system theory (Wallerstein, 1974), the domination of financial capital with core-country origins is being reproduced –within the specificities of a peripheral country.

The debt has grown steadily since then, and that has not changed within the left-leaning Kirchnerist policy framework. Debt restructuring negotiations and swaps are not new: the dictatorship ended in the midst of a default, which Alfonsín sought to negotiate until

1984, only to fall back into a debt crisis a few years later.² Menem then restructured defaulted debt under the Brady plan in 1989, which was the framework agreement which prompted completion of the country's structural reforms. The explosive debt dynamics then led to numerous renegotiations in the twilight years of the Convertibility program in 2000-01. In each case, despite short-term gains (including lower nominal debt value, longer repayment terms or interest rate reductions), what prevailed was the continuity of the logic of indebtedness. As Brenta (2008) described, "debt amounts can be always negotiated, while the subordinated relationship is not under discussion."

It is in this context that President De la Rúa (1999-2001) completed three debt negotiations. First in December 2000, the "Financial Shield" (*Blindaje Financiero*) was arranged, which committed funds to Argentina from both international credit agencies and the Paris Club countries. Then, in June 2001, the "Mega-bond swap" (*Megacanje*) was completed, a highly questioned operation, since the very same bondholders also operated as its underwriters. Under this restructuring, millions of dollars of private debt liabilities were transferred into state coffers, adding US \$40 billion to Argentina's long-term debt (García, 2001) in a colossal fraud to public finance for which David Mulford the American Banker is still under criminal investigation and facing extradition. Under the third set of negotiations in the series, in November of that year another debt swap took place. On this occasion local holders' bonds were exchanged for new ones and were underwritten by the state's future tax revenues. Astoundingly the Economy Minister, Domingo Cavallo had mortgaged what did not yet exist - future fiscal revenue. After this swap was completed, the International Monetary Fund (IMF) vetoed its approval then refused to release a US\$ 1.3bn loan instalment, citing the Argentine governments' failure to reach previously agreed-upon budget-deficit targets. As a result, the country's access to external funding sources was cut off, soon triggering a bank run as private savers (fearful of a debt default), rushed to withdraw their dollar deposits. On December 2nd 2001 the government enacted the *corralito* (Decree 1,570/01), a measure which effectively froze savers' bank accounts for twelve months to prevent further capital flight. Although at this point, a faction of the bourgeoisie (known as the "Productive Group") publicly demanded that the government cease debt payments and renegotiate (Cantamutto and Wainer, 2013), the public declaration of debt default by one-week-president Adolfo Rodríguez Saá at the end of December 2001 was

² A debt swap consists of the renewal of credit bonds, exchanging the old certificates for new ones. This is a standard and quotidian operation which debtors perform in capital markets, but they often only acquire visibility when involving significant sums and when the debtor is either unable or refuses to repay.

simply admitting the inevitable – on the bourgeoisie’s terms. In the run up to the default (and already two years into a depression), the government’s economic mismanagement was fully exposed. Together with contingent events such as the anger provoked by the declaration of martial law in response to food riots in Buenos Aires, a general strike by the unions and the *corralito* – enormous street protests followed which targeted not only the government but also the institutions of the Washington Consensus such as the IMF and the World Bank (Ozarow, 2014a). Having identified neoliberal capitalism and representative democracy as responsible for the new debt crisis, the protests demanded nothing less than *¡Que se vayan todos!* – a removal of the entire neoliberal infrastructure, and its politicians to boot.

These respective debt swaps have each been subject to judicial investigation for their flagrant irregularities (Olmos Gaona, 2011). The multiplicity of crimes (477 separate acts in total) committed in the name of this logic of ‘indebtedness’ have been documented by the late journalist Alejandro Olmos. Furthermore, the report also highlighted the debt’s illegitimate, unethical and unconstitutional origins. First accrued under the military dictatorship (1976-83), the government at the time had no constitutional right nor popular mandate to acquire foreign debt, as it did not consult Congress before doing so. Further, with significant proportions of the loans having then been used to torture, murder and conduct horrific genocidal practices upon the population as part of the National Security Doctrine when 30,000 citizens were ‘Disappeared’, these acts breach international human rights law. Further, missing legal documents and incomplete registers of debt commitments provide further arguments not to pay the foreign debt on the grounds of its illegitimacy and potential illegality.

Based on this dossier of evidence, in the year 2000, federal Judge Jorge Ballesteros ruled the character of the borrowing process to be *illegal, predatory and illegitimate*. Its odious jurisprudence and anatocism (usury which consists of charging interest payments upon interest) mean that the illegitimate origins of the debt have subsequently been recycled, placing doubt on the legality of the accrual of more recent national debt. The core legal principle is that no illicit action can later serve as the basis for a legal act such as NML Capital Ltd.’s bond purchases. On that premise, all the successor debt falls, nullifying the value of investments made in it, including the vulture funds’ bond purchases after Argentina’s 2001 economic crisis (Ozarow, 2014b).³ Judge Ballesteros’ ruling is valuable because it proved what many had been claiming since the dictatorship years, and opened the way for

³ A federal court decision in Argentina that may well declare the debt null and void is pending.

other trials in Argentinian courts. Some studies have since sought to explain the existence of international law jurisprudence to claim the illegal and illegitimate character of debt (Toussaint and Millet, 2010; Weber, 2008), but this effort has yet to win attention of researchers and –most of all- of politicians.

Yet although Judge Ballesteros ordered Argentina's National Congress to consider the judgment in order to legislate on the matter, fourteen years have passed since then with Congress having failed to take any action in this regard, despite its constitutional obligation to do so. That was until September 2014 when, the new Sovereign Payments Law (despite the oxymoron), ordered a Commission to be established to investigate the origin of the country's debt, dating back to the military dictatorship. Whilst it is not clear whether the mandate of this Commission is specifically to conduct a public debt audit with the end of non-payment in mind (and curiously it does not cover the period of the Kirchnerist debt-swaps from 2005 onwards), its findings may yet provide powerful leverage to anti-debt activists to press home this demand through the courts.⁴

Interestingly, should Argentina undertake a full public debt audit, it would be far from setting a precedent. Indeed, Ecuador –under Rafael Correa's administration- was able to create a commission to audit its debt in 2007, confirming the illegality of its debt as state policy (Olmos Gaona, 2012). Some 70 per cent of its debt was found to be illegitimate and was unilaterally cancelled. Through partial default and selective buyback, the country's debt burden was slashed by US\$ 3bn (Denvir, 2008). Contrary to the predictions of international markets, it currently stands as one of the fastest-growing economies in the region (ECLAC, 2012).

Finally, in addition to the legal grounds for non-payment of the debt, Argentina's popular organizations have also made similar claims and have sought to initiate such audits in the past. Indeed, it became one of the principle demands of the 2000-2001 cycle of mobilizations. In 2003, the Argentine Confederation of Workers (CTA) organized a public referendum, in which 88 per cent of the more than two million votes returned expressed opposition to the payment of the debt (Echaide, 2005). This overwhelming mandate was presented to President Kirchner in 2004, but he preferred to maintain a stance of negotiating the payment of existing debt commitments. Further, the 2005 Council of Americas meeting in Argentina was marked by an umbrella of popular organizations having participated in a

⁴ Moreover, this Commission is enacted by a law that declares the paying of all debt to be 'in the public interest'. The very same law orders re-payments to be made during the intervening period, before the Commission's findings are even known.

parallel summit - the Council of the People. Enormous demonstrations against free trade and indebtedness also featured. That very same year, the Kirchner administration secured the biggest debt-swap in financial history, willfully ignoring and invalidating popular claims for the debt's illegality and illegitimacy.

2. Kirchnerist swaps and the myth of the debt write-down

After December 2001, nearly half of the public debt was defaulted (US\$ 82bn); the other half had been swapped in previous months (Damill, Frenkel and Rapetti, 2005:144). Interim President, Eduardo Duhalde immediately began to negotiate the restructuring of defaulted debt, while still paying international credit agencies and honoring recently-swapped debt commitments. This was the same strategy that was subsequently pursued by Néstor Kirchner.

The official proposal to bondholders was presented during the 2004 World Bank and IMF meeting in Dubai and offered them discounted bonds with an *apparently* much lower nominal value (54 per cent of the original). After negotiating for nearly a year, the swap was completed in 2005. However there were other important reasons for its success. On the one hand the block-acceptance by retirement and pension fund managers (which held nearly a fifth of eligible bonds) account for a significant proportion of those that joined the swap and on the other, the passing of the Lock Law (No. 26,017) by Argentina's legislature assured investors entering into a 2005 restructuring that the swap would not be reopened. This, plus the fact that those bondholders that did not accept that proposal would be left with worthless papers convinced almost all to agree to the debt write-down. The 153 varieties of bonds involved, the numerous denominations of currencies they were held in and the multitude of national jurisdictions that were applied to them, were all reduced down in the 2005 agreement. Some bonds were issued in pesos and adjusted for inflation, but the main novelty was the promise of bonus dividends that were tied to growth performance (measured by GDP), so as to make creditors "partners" in Argentina's economic recovery (Damill, Frenkel and Rapetti, 2005; Datz, 2009; Macías Vázquez, 2008).

Meanwhile the Argentinean government presented this negotiation as an epic showdown with speculative capital. According to the official account, the nominal value of the restructured bonds represented a 'haircut' of approximately 75 per cent. However, more diligent scrutiny of the figures reveals that this achievement is grossly exaggerated. Firstly, more precise estimates that also account for the capitalization of reduced interest rates until the moment of the swap, show that the write offs were in fact only valued at around 60 per cent of the total renegotiated part of the debt in question (using official figures). This

represents a reduction of just 35 per cent of the entirety of the debt (Vázquez and Cantamutto Valencia, 2013). Secondly, once the updated performance of the GDP-linked bonus is also taken into account alongside new interest that has been accrued since 2005, this actually eroded the value of any haircut to the point where in reality there was no real-terms debt reduction at all (Cafiero and Llorens, 2004; Giuliano, 2013; Lo Vuolo and Seppi, 2008) despite the plethora of academic and journalistic articles which affirm the contrary.

It should be noted that both the IMF and the then administration of President George W. Bush were ardent supporters of this swap, because: 1) it closed –once again- the doors to a public debt audit; 2) it preserved jurisdiction of the debt in foreign courts; 3) it promised high returns due to being linked to growth; and 4) it emulated the framework used by private creditors during client bankruptcy proceedings. If, as then Economy Minister Roberto Lavagna suggested, we must “let the market speak” (La Nación, 2005), then it can be said that ‘the market’ endorsed the swap, as its high acceptance rate by 76 per cent of bondholders suggests. Even though some factions of the bourgeoisie were hardly fond of the Kirchner administration, this restructuring received full support from their Chambers of Commerce and their representative associations. The consensus witnessed among capital’s different factions brings into question the Kirchner government’s attempts to convey the 2005 restructure as a confrontation with them (Vázquez and Cantamutto Valencia, 2013). An amicable agreement appears to be closer to the truth.

Instead, in the absence of any overtures towards refusing to pay the debt until its legitimacy was investigated, President Kirchner completely disregarded not only the will of the two million people who had voted in a referendum but also Judge Ballesteros’ mandate from the Olmos Cause (2000). The main concession that Kirchner applied was to promise to pay ‘no more than the country could afford’ – a precept which has influenced government policy and discourse ever since. Because of this insistence on repayment and indebtedness, the national accounts were soon once again characterized by growing interest and debt payments, whilst generating balance of payments problems, just as had been the case during the 1990s. However, with Argentina still locked out of international capital markets, few funds entered the country. Thus, unlike the 1990s, Argentina was thus transformed into a faithful debt payer without receiving the benefits of large capital inflows from doing so.

A series of government Degrees followed in 2005 which reinforced its policy of ‘indebtedness’. For example, Decrees 49/05 and 1601/05 underlined this intent whilst Decree 1599/05 announced that Argentina’s Central Bank’s (BCRA) “free reserves” would be used

to make advance payments to international credit agencies (capped at the reserve levels necessary to secure the nation's monetary integrity). Using this definition, US\$ 9.8bn worth of reserves were allocated to pay off the debt to the IMF in its entirety. Considered to be a 'privileged creditor' during the restructuring process - that is, one for whom all debt was to be recognized and paid in full, in January 2006, the Argentinean government made this payment to the IMF. With it, amidst great fanfare, Nestor Kirchner declared that country had regained "the freedom of national sovereignty" (National Address, December 5, 2005).

Meanwhile many of the bonds that were not swapped and which remained outside of the restructuring agreement were purchased by three of the world's largest banks (Barclays, Citigroup and Deutsche Bank). In 2008, these banks approached President Cristina Fernández (2007-2015) with a proposal to reopen the 2005 swap, promising to provide fresh funds for the country. The president enthusiastically announced her intention to pay to these bondholders as well as the debt owed to the Paris Club of creditor nations. As the last remaining holder of Argentine debt that was still in default (besides those bonds held by the vulture funds), these nations eventually received a payment of US\$ 9bn, which included penalty charges and interest. While the latter transaction would take until 2014 to execute, payment to these three banks occurred more quickly.

In April 2010, Congress retracted the Lock Law, and so allowed for the reopening of the debt swap agreements. As Argentines were to later discover during the vulture funds battle, it would have been more prudent to have retained the Law and instead enforced a change of national jurisdiction on its existing valid bonds (as the government belatedly sought to do in the September 2014 Sovereign Payment Law). Instead, rather than a new swap, the 2010 negotiations served to reopening the old 2005 one, providing the litigious creditors with exactly the same repayment conditions as was the case five years earlier. Unsurprisingly, the three aforementioned banks hastily seized this opportunity, accepting the five-year-old proposal, and earning instant cash at zero risk. Having bought the bonds at 20 per cent of their nominal value, they now stood to make tens of millions of dollars in capital earnings, not including any profits made on interest or the infamous GDP-linked bonus. Once again, the 2010 swaps proved that it was financial speculators and the multinational banking sector that had the most to gain from a restructuring system designed for them. Once the second part of the swap was completed, nearly 93 per cent of the defaulted debt had been restructured and normalized. The government demonstrated that it was willing to change its own laws to meet the requests of large speculators. Only later would it discover the true costs of doing so.

3. The new situation

The 2008 global economic crisis should not be merely understood as an unanticipated financial convulsion in the world's advanced capitalist societies. More accurately, it obscured a structural problem, which Keynesian scholars understood as a demand insufficiency (Palley, 2013) and Marxists viewed as the result of contradictions in the attempts to increase the rate of profit through financialization as a consequence of overproduction (Laibman, 2009). Even though business opportunities do not expand as quickly as capital needs them to, the deregulation of financial markets advanced across the world at extraordinary speed.⁵ In other words, financial deregulation had concrete effects in every inch of the globe, from urban business centers to some of its most isolated rural communities. Meanwhile, the logic under which 1990s structural adjustment in Africa and Latin America delivered substantial profit to large corporations provided the inspiration behind the conditionality that the IMF has attached to recent loans made to Spain, Greece, Ireland and Portugal. It was almost as if the disastrous social consequences of such programs in the global south had been forgotten.

The global crisis impacted upon Argentina's balance of payments in two principle ways: a) by complicating foreign direct investment opportunities and; b) through a collapse in external demand for the country's exports. Thus revenues were squeezed from both sources. These affects occurred simultaneously alongside certain internal macroeconomic inconsistencies to severely limit Argentina's continued possibilities for growth. This scenario commonly occurs in periphery countries due to a condition of 'dependency,' under which reduced inflows of 'strong' currencies (i.e., dollars, euros) due to factors like those that Argentina was experiencing, mean that when domestic businesses and consumers needed to purchase goods and services that cannot be produced at home, they had to do so by buying abroad. Yet domestic currency weaknesses in such situations (where demand for national currency is low) mean that importing becomes prohibitively expensive and stunts the expansion of economic activity. Further, such scenarios reduce the value of the national currency as an effective denomination in which to hold financial reserves. External indebtedness works as a mechanism to ease this restriction in the short term, however by

⁵ For example, it explains the food market bubble, which prompted an intensification of land grabbing in periphery countries (Costantino, 2014).

2013, after a decade of such policies, the debt problem began to become visible again in terms of an economic slowdown.

As these limitations began to dominate the political agenda, the contradictory nature of the government's policies became more transparent. 2014 began as a year of systematic social regression in terms of government policy. Domestically, a huge peso devaluation coincided with the halving of state subsidies for household gas supply costs, which aggravated already high inflation. In an attempt to restrain price rises, the government sought to tame labor unions' demands by insisting that collective bargaining agreements established wage rises that were below the rate of inflation. This adjusted real-terms wages downwards, whilst further antagonizing the unions by depicting them as the representatives of the labor aristocracy (Inda, 2012). This contributed to a new cycle of industrial conflict. In the meantime, falling demand for Argentine exports for the reasons mentioned earlier has contributed to a decline in job creation in numerous industries, including car production. Thus, in contrast to traditional Peronist governments, the Kirchner administration positioned itself as the true representative of the most disadvantaged and excluded sectors, rather than the organized working class, implementing further targeting of the poorest through social policy tools and income redistribution.

This orientation was complemented with open subordination to a wide array of demands from foreign capital (Katz, 2014). With the prospect of further debt interest payments due imminently, instead of resisting such exigencies, the government promised that its liabilities would be honored. Consistent with its 'repay-as-much-as-possible' policy, 2014 began with the news that the state would compensate the Spanish energy company REPSOL to the tune of US\$ 5.3bn for its partial renationalization, even though this multinational had effectively looted the country's oil reserves by exporting petrol at huge profit. Just weeks earlier, following a decade of litigation, the government had caved in to a ruling by the World Bank's International Centre for Settlement of Investment Disputes (ICSID) and promised to pay US\$ 677 million to a consortium of corporations that had filed a complaint against Argentina. ICSID is an international institution that provides the framework to facilitate the arbitration and conciliation of legal disputes between international investors and states. However, the pattern of its dispute settlement activities clearly demonstrates a bias in favor of transnational companies. For this very reason, Bolivia, Ecuador and Venezuela each decided to withdraw from it, citing the 'sanctity of national sovereignty'. The path chosen by Argentina however, has been starkly different; it has remained within the agency's orbit, accepting its verdicts in order to access new sources of credit, which could be understood as a

form of extortion. Through these two gestures, the government has manifest its willingness to accepted a subordinate role to that of the very foreign transnational capital that had emptied the country of its lucrative natural resources, rewarding them for their misdeeds in the process. The government's defense is that in exchange for capitulation, new financial revenues flow into the country in the form of foreign investment. New 'partners in growth' are thus created such as the energy corporation, Chevron despite the significant environmental damage that its activities cause.

However, the icing on the cake occurred a few months later when the Economy Minister, Axel Kicillof traveled abroad to sign a deal with the Paris Club to repay it almost US\$ 10 billion of debt, which had largely been accumulated during the 1976-83 military dictatorship and the fraudulent 2001 debt swaps. Between that year's debt default and the payment settlement to the Club in 2014, the debt owed to it had grown from US\$ 6.1bn to US\$ 9.7bn - an increase of almost 60 per cent in a decade. Scarcely any other global investments of equivalent magnitude have generated such high yields. Furthermore, unlike the 2005 swap, this time no attempts were exerted to achieve any write down and instead, Argentina's sovereignty was ceded without objection. Proud of the settlement, the Minister surprisingly played down the expectation that a "tidal wave" of foreign investors would now seek to invest in Argentina as a result of the agreement (Página/12, May 31 2014). Unlike previous agreements, in this case subordination to foreign capital did not even increase the possibility of stimulating national economic growth.

Meanwhile during 2013 and 2014, the litigation being pursued against the Argentinean government by the 'holdout' investment funds, took a serious turn in the courts of the United States. As the 7 per cent of the original bondholders that had refused to enter the debt restructuring process continued to chase payment for the full value of their bonds, they achieved several important and unprecedented legal victories. However, whilst these increased the pressure on the Argentinian government, it had already demonstrated its willingness to modify its own domestic laws to suit its creditors' will when it rescinded the Lock Law in 2010. Therefore, even before the series of court rulings against Argentina (originating with Judge Griesa's order that it pay the 'holdouts' US\$ 1.3bn, followed by different Appeal Courts' confirmation of it), these funds had few incentives to accept the swap. Yet throughout the case, the judge treated Argentina as an 'incurable debtor,' thus completely overlooking the 'repay-as-much-as-possible' policy that had defined the Kirchner government's stance towards the national debt since 2003.

However, the two principle ‘vulture funds’ that had brought the lawsuit - NML Capital Ltd and Aurelius Capital Management, which themselves owned just 1.5 per cent of Argentina’s bonds, relentlessly hounded the country for payment by extra-judicial means too. For example, in 2012 they actually impounded an Argentine navy vessel that was in Ghanaian waters – *The Libertad* – claiming it as compensation for the money they believed they were owed. The ship was eventually released back to Argentina by an International Tribunal, but it demonstrated the extraordinary lengths to which the vultures were prepared to go in pursuit of profit. In an even more sinister twist, these funds even established a lobby group in Washington DC to argue their case in the corridors of power. ‘American Task Force Argentina’ employed a dirty tricks campaigns to turn the international community against the country, including seeking Argentina’s ejection from the G20 and lobbying the World Bank not to hand it any further loans. Indeed, in perhaps its most explicit attempt yet to hijack the democratic process, it has spent US\$ 4 million persuading US Congressmen to support them (Johnston, 2012), clearly demonstrating how liberal democracy under capitalism can be manipulated by the interests of capital and its multi-billion dollar assets.

Leaving aside the dubious legality of Argentina’s debt itself (an issue that Griesa had entirely refused to address), the government pinned its hopes of a favorable judgment upon the assumed rationality of the judge who they assumed would wish to avoid the potentially explosive secondary impacts of a contrary ruling upon the global financial system. As it turned out, in executing the demand that Argentina pay the holdout funds in full, it established a legal precedent that may render any future debt restructurings impossible anywhere in the world. This is because it removes any remaining incentives for such creditors to agree to a debt swap, knowing that they would be able to successfully sue the debtor country through the courts for the original promised sum (Ozarow, 2014a). The ruling also impacts upon future poor country access to credit, and propels predatory speculation. It also jeopardizes current debt-swap negotiations that are taking place in several European countries, which is why Argentina not only managed to garner the support of several moderate heterodox scholars such as Paul Krugman and Daniel Rodrik during its vulture funds affair, but also unexpectedly obtained backing from neoclassical laureates as Robert Solow as well as the Organization of American States, President Obama, the IMF and the World Bank (Oakford, 2014). In short, the institutions and supporters of global financial capitalism became terrified of the consequences, should the framework status quo that sustains external debt accumulation (and thus the motor of neoliberal consumerism) be irrevocably overturned. Meanwhile, in an almost unprecedented show of strength, as the main

'losers' of the existing system of debt dependency, the 133 periphery countries belonging to the G77 Group of Nations united to take advantage of the occasion to pose real questions about the logic of the international debt system. Astounding the global community, first at their meeting with China in June 2014 and then at the UN General Assembly in September, they voted through a new multilateral framework to regulate the excesses of financial speculation.

The reaction of the Argentinian government to the initial rulings were twofold: on the one hand, an appeal was submitted, and on the other, displaying continuity with its own past logic, the 2005 swap was reopened yet again in 2013. The intention was to force the vulture funds to choose between either becoming immersed in a still further-protracted legal process (with all the financial costs it would incur) in order to continue pursuing the full nominal value of the bonds, or to tempt them into accepting the generous terms offered under the existing 2005 deal (which would still bestow them multi-million dollar profits upon their original outlay).

At this juncture one may ask why, if Argentina had abided by the principle of 'repay-as-much-as-possible' up until this point, did it not simply cede to the vulture funds' demands and to Griesa's ruling? Payment of US\$ 1.3bn was surely easily affordable for a country with some US\$ 27bn of reserves (BCRA, 2014). The reason is that the government was bound by what is known as a *pari passu clause* - a standard part of most borrowing agreements by national governments meaning "equal treatment". In other words- that all investors must be treated in the same way by the debtor in its repayment terms. However, Judge Griesa (in time, fully supported by the U.S. Court of Appeals) took a very broad interpretation of the clause, ruling that if Argentina made any more payments to the swap participants under their restructured terms, it had to pay what it owed to the holdouts *in full*. Thus paying the vultures could have opened the floodgates for the 93 per cent of funds that *had* agreed to a debt write-down in recent years to pursue full repayments based upon the original terms. If *pari passu* is applied retrospectively, then it could leave the Argentinean state with an insurmountable bill of perhaps US\$ 200bn which would force it into a debt default again and ignite a crisis possibly as serious as that of 2001. Given the undesirability of such a move, Argentina's last hope thus lay with the US Supreme Court, which it expected to at least hear its final Appeal.

International law firm Cleary, Gottlieb, Steen & Hamilton LLP has acted as Argentina's legal counsel ever since the Brady Plan bond swaps during the 1990s, yet it has mystifyingly also represented the large banks that are involved as the country's creditors. In October 2013, immediately after the US Supreme Court denied Argentina's initial request to

review the Appeal-Court decision, the former US Attorney General during George W. Bush's administration, Paul Clement was named as Argentina's legal representative to head their second appeal. His first act in this role was to present a document that assured the Court of Argentina's commitment to abide by each of its forthcoming decisions whilst also promising to pay any amount they might be charged in litigation. This decision was yet another example of Argentina forfeiting its sovereignty and its right not to comply with a foreign court's diktat. It also marked a capitulation to the precepts of neoliberal global financial economy.

On June 16 2014, the United States' Supreme Court rejected Argentina's final appeal to have its case heard, thus vindicating Griesa's original pro-creditor resolution. The official reaction was swift, and in a televised Address to the Nation on television (June 16 2014), President Fernandez announced that the country "will comply with the verdict" but will not accept any "extortion". Some analysts interpreted this statement as ambiguous, except on one issue: Argentina's willingness to negotiate.

Perhaps the most concerning implication of the ruling is that it opens the door for new lawsuits against Argentina from those 93 per cent of creditors which engaged in the restructuring. The sum for which Argentina may be liable could total US\$ 200 billion - the equivalent of the total value of debt exchanged in the 2005 and 2010 swaps, although this amount will increase in the coming years due to interest payments. It is estimated that within a year, the liable debt value to those bondholders which negotiated write downs will grow by about US\$ 30bn.

At the time that the next interest payment of US\$ 539 million to the restructured bondholders was due at the end of June 2014, Argentina had already deposited this sum into their bank account, ready for transfer. However, Judge Griesa ruled that given the government had not yet paid the holdout funds, this move was a violation of his court ruling. He therefore blocked the transfer and bizarrely (and perhaps ironically), even though Argentina had demonstrated both the willingness to pay immediate interest payment and had the capacity to do so, on July 30 2014 credit ratings agency Standard and Poor declared the country to have fallen into debt default for the second time in thirteen years.

Thus, Argentina finds itself in a debt crisis which, in a way is little different to that of 2001. The limits and internal contradictions of the official policy of 'dis-indebtedness' has been exposed and the government will be obliged - by its own logic - to once again restructure its debt, whatever the cost. The question now is whether the so-called default will provoke a political crisis that will bring the government down with it. At the time of writing whilst this has not happened and the outcome of the conflict remains open-ended. Our

intention is not to postulate on this, but to analyze the structural issues for the default's occurrence

4. Serial payers

So if a decade later, the debt situation remains stagnant, what exactly has the government's 'dis-indebtedness' policy accomplished? The Kirchner administrations can point to three achievements in this regard: a) a fall in the debt-to-GDP ratio from 127 per cent to 46 per cent between 2005 and 2014 (Ministry of Economy - MECON, 2014); b) a reduction in the proportion of public debt that is owned by foreign creditors (from 25 per cent in 2005 to 13 per cent in 2012), and c) a dramatic increase in the proportion of debt owned by state agencies as opposed to private investors. This now totals almost 60 per cent (including that owned by Argentina's Central Bank and ANSES – the state's social security agency), and represents an enormous increase from just 8 per cent in 2005 (MECON, 2014). Here we interrogate the claim that Argentina has achieved greater 'sovereignty.'

With regards to the first argument, its low explanatory power must be noted because the debt-to-GDP ratio does not accurately represent the proportion of debt liabilities that are sanctionable if they are not honored. In fact, this was only around 65 per cent just before the 2001 default, and nevertheless was sufficient to spark a profound crisis.

In relation to the second point about the proportion of foreign-held debt, the apparently considerable reduction of this burden merits further attention because it is this which represents an important and historic point of departure from previous episodes of national debt crisis. The government rightly asserts that this trend relieves external pressures and influences on the national economy, whilst reducing the need to earn foreign currency to meet the payments. Yet, whilst the economic impact is undoubtedly positive, there are questions about this change in the debt's composition which need to be answered.

Firstly, the fact that its reduction largely results from the impossibility of obtaining external sources of credit (given that Argentina has been locked out of international capital markets since 2002), rather than constituting a deliberate policy must be highlighted. To this end, the government's 'dis-indebtedness' policy has failed, because throughout the last decade it has been unable to reacquire such access, despite doing all it could to persuade international financial institutions of its reputation as a 'serial payer.'

Secondly, the reshaping of the debt from foreign to domestic sources is partly due to higher interest rates being charged on the domestic market. Until the policy of gradual peso devaluation began in 2009, exceptionally high interest rates were charged on its peso-denominated bonds, even when these were converted into dollars, due to the daily inflation adjustment (known as the Stabilization Reference Coefficient) and the GDP-linked payment bonus. Financial firms have thus generated extraordinary profits in Argentina, especially since 2008, and continue to act as the country's most profitable sector. In any case, the main destination of the internal re-composition of public debt has been the state itself. To ensure debt payments to creditors, the government has issued a series of new bonds via various state agencies; including BCRA and ANSES, but also the National Bank, the National Institute of Agricultural Technology and the National Lottery. Whilst the government's claim that the transfer of national debt to public agencies facilitates future negotiations is true, it neglects to mention other detrimental effects of such a scenario.

For example, because ANSES lends funds to pay the debt, more than half of its assets are government bonds. This leaves it with less money to meet its social security obligations, and a situation whereby in 2014 almost three quarters of the elderly receive only the minimum pension payment – which in any case provides below the poverty line income (Lozano, Raffo, Rameri, and Haimovich, 2014). Effectively it is poverty among the elderly that guarantees the payment of the debt to hedge funds. Indeed government supporters seem to be strangely blinded by this, insisting that it invests public funds primarily for progressive social policies, such as universal child benefit. However, they overlook what is its prioritization of the interests of capital over the vulnerable in society through its 'dis-indebtedness' policy. Similarly, the Argentine Senate changed its Central Bank's statutes in 2012 so as to allow the government unlimited access to the bank's reserves (which it has since used in the form of a loan to pay off the national debt). This payment mechanism has eroded national reserves that are used to back up the peso – having fallen from US\$ 52bn in late 2011 to US\$ 27bn in 2014 (BCRA, 2014). The effect since then has been a perpetual currency devaluation and aside from having suffered speculative attacks, is also weakened by the simultaneous outflow of dollars in the form of debt payments. This has further compounded the falling currency value and hemorrhaging of Central Bank reserves to pay the debt. The consequent impact in terms of currency devaluation has also led to a depreciation of wage-earners purchasing power (as imports become more expensive and increased production costs are passed on to the consumer). As the government has struggled to balance the books and reduce budget deficits in recent years (to try to minimize the debt), it has been

forced to reduce its expenses elsewhere. This is why, as we previously pointed out, it has become increasingly frugal in its wage negotiations and why public-sector employees' wages remain 35 per cent below their real-terms levels compared to 2001 (López and Cantamutto, 2013). Whilst more recently the government has been clamping down on corporate tax evasion (for example its November 2014 move to prohibit the consumer product manufacturer Procter and Gamble from conducting its business in Argentina due to alleged tax fraud), generally speaking attempts to fulfil debt repayment obligations have inevitably involved attacks on workers' rights and wages.

Thirdly, to some extent the benefits of less foreign-held debt are spurious because GDP is generated in *local* currency, whereas the debt has to be paid in *foreign* currency. Given the acute current shortage of dollars and other foreign currency denominations, the ability to pay the external debt has remained difficult.

Fourth and finally, due to the extremely high foreign ownership of Argentina's productive infrastructure (especially in the financial sector), it is often the case that domestic debt-buyers are subsidiaries of large transnational firms - that is to say, the very same foreign creditors who supposedly no longer own the debt. In any case, the domestic capitalists who receive dividends from the possession of debt bonds often reinvest their profits overseas, taking advantage of the neoliberal reforms which permitted the deregulation of capital flows and which redirect resources away from Argentina. This can have a negative impact on the current account and balance of payments. In short, the increase in the proportion of debt held domestically does not necessarily imply either a change in who its creditors really are, or a deterrent in terms of capital outflows.

In a series of public addresses in 2013, President Cristina Fernández boasted that her government had elevated the country to the status of "serial payer" of its debt liabilities. According to official figures, Argentina has made US\$ 173bn in repayments since 2003; however, the debt still rose from US\$ 145bn in 2001 to US\$ 201bn in September 2013. In other words, the central "achievement" of paying illegal debt... has been more debt. It is worth remarking that this official estimate excludes several factors such as the multi-billion dollar debts of provincial government administrations, provisions for interest and GDP-linked bonuses payments, and the debt liabilities of public-owned enterprises (Giuliano, 2013). In addition, the debt calculation does not even include the vast additions that were generated by the recent payoffs to REPSOL, ICSID and the Paris Club. Nor does it account for the amount owed to the vulture funds' following their victory in the US courts.

The reality is that it is only by challenging the legitimacy of the debt on the grounds cited in the first section of this paper that the seemingly irreversible trajectory of debt accumulation can be countered. Yet Kirchnerist government policy has at best repeatedly failed to question its dubious origins (and legality) and at worst has been actively complicit in reaffirming the debt's legitimacy through its repayment and 'dis-indebtedness' policy, as well as through the transfer of its jurisdiction to foreign courts. Responsibility for Argentina's spiraling debt crisis has been as much due to Kirchner and Fernández' failures as it has been to the pressure of global capital.

5. Concluding remarks – The case for moving from “repayment” to “non-payment”

Yet one must ask what alternatives exist and whether the government could have adopted measures that bestow true emancipation from debt dependence for Argentina? The answer is most certainly affirmative, even though the arc of *establishment* parties wish to deny them, and instead insist on permanent subordination in debt negotiations. The most obvious alternative is one that has become a political taboo. That is, declare a debt default, suspend all payments and force new negotiations. Only this time with one major difference. Argentina should completely audit the debt, shedding light on its fraudulent history and then refuse to pay the proportion of it that is deemed to have been accumulated through corrupt, illicit or fraudulent practices.

Clearly advocating such a strategy raises questions of feasibility. However, the country could use the momentum of the international solidarity it received during its recent battle with the vulture funds, as well as its newfound position of prominence among the nations of the global south, G77 and China to seek allies in support of such a policy. Already several governments in the region, including Bolivia and Ecuador have signaled their support for a strategy of this type (Katz, 2014). If expanded, it could draw the sponsorship of UNASUR and the Community of Latin American and Caribbean States (CELAC). Currently in Argentina, a popular front against the debt is being organized to this end. Consisting of trade unionists, parliamentary deputies from left-wing parties, anti-debt campaign groups, NGOs and Church representatives, The Public Audience for the Suspension of Payments and Public Debt Audit is an umbrella group which is asserting precisely this demand. Already, this coalition is having an impact, with a debt audit Commission finally having been established as part of the September 2014 Sovereign Payment Law (which incidentally also seeks to re-establish the legal jurisdiction of its payments to the 93 per cent of its restructured bondholders under French or Argentinean law). Yet this Sovereign Payment Law is no

panacea and itself is contradictory – on the one hand reasserting the governments' obligation to repay the debt whilst on the other questioning its legitimacy. Rather than accepting the already-established findings of the courts dating back to the Olmos Cause (2000), concerning the debt's illegitimacy, this Law will re-audit the debt once again on entirely different terms. Given the cross-party nature of the Commission which is charged with the task (and some of its members neoliberal inclinations), the concern now is as a politically subjective body, it will overrule Olmos, confine the illegitimacy question to history and ensure that Argentina is left with no option but to pay the vulture funds in full, as well as possibly its other creditors. A citizens' audit, rather than a 'politicians' audit is required. However, whilst it may be too little, too late for the Kirchnerist government with only months remaining of its mandate, any Commission findings that vindicate Olmos may yet provide vital leverage to press home the demand for non-payment of the illegitimate part of the debt, as was the case in Ecuador in 2008 and whose economy has since thrived despite non-payment.

The hope is also for the anti-debt movement to grow internationally. Support for public debt audits around the world as a means by which citizens can start to emancipate themselves from debt dependence and the neoliberal burden - as Jubilee 2000 have done for many years – is growing rapidly. In Iceland, citizens voted to refuse to nationalize their banks' foreign debts and have gained immensely. The economy is currently booming and unemployment is down to 2 per cent (Valdimarsson, 2014). The government of Norway has conducted an audit into debts owed to it, and cancelled those arising from loans for exports which were potentially dangerous at the time they were given. Even in France, a citizen's audit found 60 per cent of its public debt to be illegitimate. Public debt audits are feasible and refusing to pay does not have to mean financial Armageddon (Ozarow, 2014b). Of course, to perform these audits and advocate non-payment, the structures of national and global power must simultaneously be challenged. This presents its own problems which must be dealt with elsewhere.

The paper has summarized how Argentina's debt-management strategy has changed during the last decade. Whilst favoring repayment and 'dis-indebtedness' and accomplishing a re-composition of the debt has earned plaudits for its achievements, these possess important limitations and internal contradictions which have resulted in the most vulnerable and in particular, wage-earners being penalized at the expense of capital. The Argentinean government's naivety in believing that it could somehow achieve greater sovereignty through 'dis-indebtedness' in its debt affair, whilst also capitulating to the demands of capital has

failed disastrously. Kirchnerist debt repayment together with transference of its legal jurisdiction to foreign courts suggest the government's legitimation of what the 2000 Olmos Case proved is a fraudulently-accumulated debt. These policies are symptomatic of the governments' infantile disorder. To ask whether these policies have been enthusiastically pursued as part of the Kirchnerist political project or have instead been unwittingly delivered due to the pressure imposed by capital, should be a matter for further investigation. What is clear is that it has been the workers of Argentina and the world who lose out and suffer even greater exploitation as a result of debt dependence. Confronting the legitimacy question, whilst simultaneously challenging the structures of capital provides a path towards emancipation. Public debt audits are worth a try. The workers of the world have nothing to lose but their chains (of debt).

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