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Comment and Critique

Serial payers, serial losers? The political economy of Argentina's public debt

Francisco J. Cantamutto and Daniel Ozarow

Abstract

A global neoliberal architecture has enabled many countries to increase their public debts to meet their fiscal needs. But since 2008 a number of European and North American economies have faced financial crises induced by unsustainable debts. This paper analyses the case of post-default Argentina since 2001, so as to better comprehend the political economy of public debt, especially in cases where governments are elected on anti-austerity platforms. Presidents Néstor and Cristina Kirchner were committed to a debt-reduction policy, yet Argentina faced a new, 'selective', default in 2014. This paper analyses how the country has been trapped in a cycle of debt dependency, which can only be interrupted by a comprehensive audit of the debt's legitimacy followed by debt cancellation. Critical lessons are provided for other countries facing similar situations.

Keywords: Argentina; public debt; external debt; neoliberalism; default; vulture funds.

Once confined to non-industrialized economies in Africa, Southern Asia and Latin America, today, in the post-global financial crisis milieu, sovereign debt

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crises are a spectre that haunts Europe and North America. They are imperilling social cohesion in their societies in ways that were unimaginable just a few years ago. Since 2008, several European countries – Greece, Portugal, Ireland, Spain, Cyprus and Iceland – found themselves unable either to repay or refinance their government debt or to bail out over-indebted banks. Each had to call upon the European Central Bank (ECB), the International Monetary Fund (IMF) or other European countries for assistance. Meanwhile, the US federal debt, which continues to rise exponentially and now stands at US\$16 trillion, has been described as ‘unsustainable’ by the IMF (2015), and the United States has narrowly avoided defaulting itself during several ‘debt ceiling crises’ in recent years. Puerto Rico defaulted for the second time in several months in January 2016 and faces the prospect of financial crisis. In Europe, political responses to debt crises have seen left-wing governments elected that promise to end externally imposed austerity programmes and negotiate debt cancellation. We might instance Syriza’s shock rise to power in Greece, the left-wing coalition containing Communists and Greens that entered government in Portugal in 2015 and the possibility that a similar coalition including anti-austerity parties (Podemos and the United Left) might assume office in Spain by mid-2016. Sinn Féin became Ireland’s third largest party in a hung parliament following the general election in February 2016, standing on a similar platform. Yet the Greek experience suggests that even when debt cancellation is part of elected governments’ anti-austerity platforms, international pressure and systemic processes mean that the logic of debt prevails. These include new negotiations to obtain bail-out packages conditioned by structural adjustment and market reforms. As Syriza’s failed attempt to manoeuvre away from this institutionalized conditionality illustrated, seeking to break free is no easy task.

This paper analyses the case study of post-default Argentina since 2001 (until recently the largest debt default in history), so as to better comprehend the political economy of debt. It is especially relevant to cases where governments are elected on anti-austerity platforms and promise, and even achieve, debt cancellation, as occurred under the presidencies of Néstor Kirchner (2003–2007) and Cristina Fernandez de Kirchner (2008–2015). Whilst the geopolitical contexts between Argentina and European Union or North American countries are clearly different, they share many of the threats posed to indebted economies, including international financial institutions’ attempts to impose neoliberal reforms as a condition of bail-out funds and speculative attacks by hedge funds.¹ Indeed, in Argentina’s case, following the 2001 default and significant debt write-downs, and despite being the fastest-growing economy in the western hemisphere between 2003 and 2007 (World Bank, 2015) it controversially entered into selective (partial) debt default again in 2014.

The paper argues that speculative finance capital is the direct beneficiary, in this context, of a lack of regulatory controls within the economic, political and legal architecture of the global capitalist system, with the recent intensification

of hedge fund speculation on national debts in Argentina, Greece, Puerto Rico and elsewhere being symptomatic of this. In Argentina's case, the Kirchner governments maintained an official 'repay-as-much-as-possible' negotiation strategy under which its creditors became 'partners' in its economic recovery. Under this seemingly win-win strategy, rates of repayment were partly pegged to macroeconomic performance (GDP). Yet, paradoxically the debt has continued to grow.

Some scholars argue that corruption or economic mismanagement is also responsible for increases in public debt (Ferrer, 1997). Whilst these are contributing factors, no academic source exists to evidence a *systematic* relationship between the failings of individual agents and indebtedness. Instead our approach is to explain that the national debt trajectory in Argentina's case can be better understood through the logic of debt within the financial system, far outweighing such confounding influences in explaining tendencies towards indebtedness.

Indeed, whilst favourable external conditions (namely high world commodity prices and Chinese demand for soya) helped to explain Argentina's post-2001 economic recovery, scholars have recognized the merit of domestic economic policies in its achievement (Levy Yeyati & Valenzuela, 2007). Prudent public debt management was central to this because the unavoidable 2001 default, and subsequent debt restructuring in 2005, left surplus fiscal revenues available for other policies, such as investment in public services, industrial subsidies and social programmes. Yet in spite of this and the seemingly prudent 'partners-in-growth' strategy by which debt would only be repaid so long as economic growth permitted, the contradictions of such a policy are exposed in this paper. The refusal to follow other economic paths (as explained in section 5) is partially responsible for this. Argentina was not solely a victim of foreign conditions or agents, as the outgoing Kirchner government affirmed; rather it too shared culpability: while the government was able to negotiate *some* of the debt characteristics (namely, its currency denomination, its weighting relative to GDP and who its creditors were), it failed to change others, notably its legal foundation. Thus, we argue that addressing the illegitimate character of the national debt, then challenging its legal basis, should be prioritized by any government that seeks to solve the debt problem.

The first section of the paper presents the dynamics of Argentina's debt since 1973. In the second, the debt-swap process conducted under successive Kirchner governments after 2003, culminating in the 2014 'selective default', is then outlined. The following two sections analyse the contradictions between the government's debt-reduction policy and the growth of its national debt, including its so-called 'vulture funds' dispute. The fifth section engages with recent debates about whether alternatives exist, and the conclusion revives the proposal that resurfaced during the recent Greek debt crisis, calling for the legitimacy of national debt to be challenged. The feasibility of conducting a public audit of Argentina's national debt, followed by debt repudiation as a means for the country to break from this cycle of dependence, is examined and then proposed.

1. A brief history of Argentina's debt

Argentina has a long history of indebtedness since its independence in the nineteenth century (Basualdo, 2006). However, the debt's structural relevance was transformed during the military junta (1976–1983) which began a process of opening the entire economy to global trade and capital flows. This left almost every production decision in the hands of private agents. Across Latin America dictatorships, including Argentina's, took advantage of cheap loans and borrowed heavily in order to finance their market reforms and also to maintain their military regimes. Yet when external conditions changed, Argentina and her regional neighbours were left with enormous and virtually unpayable foreign debts, culminating in a region-wide debt crisis in the 1980s (ILAS, 1986). These heavily indebted countries were left with little choice but to request new loans from the IMF, which were provided under strict 'conditionalities' which aimed to deepen the free-market reforms. These were later crystallized into the 'Washington Consensus' reforms (Moreno-Brid *et al.*, 2009), which proponents argued would help control inflation and reduce debts but which in reality provoked a new wave of domestic business closures, poverty, unemployment and wage suppression.

Argentina's dictatorship was able to ensure that certain aspects of marketization and foreign debt dependence were to become apparently irreversible.² Indebtedness became the axis upon which Argentina's neoliberal reforms turned (Basualdo, 2006). Capital inflows were facilitated through financial and labour deregulation, which in time stimulated the acquisition of foreign credit at low international interest rates. This allowed capital invested in the local financial system to obtain high yields, which were later transferred abroad, resulting in net financial outflows.

The injection of speculative investments also provided immediate liquidity to bolster weakening currencies, such that exchange-rate devaluation could be avoided. Foreign debt, then, played no role in encouraging productive investment, but instead represented a business opportunity in itself for international speculators. In doing so, it promoted current and capital account disequilibrium and unstable economic conditions. Systematic increases in debt repayments (due to accrued interest) reached unsustainable levels in Latin America and occasionally forced default (as in Argentina in 2001) and the need to renegotiate with creditors. Similar dynamics have been repeated more recently in Greece since 2010. This cycle of indebtedness may boost economic activity when capital inflows are available but produces profound crisis when they are not. Public indebtedness plays a central role in extending periods of structural adjustment. Moreover, in Argentina, successive administrations have nationalized private debt, thereby increasing public indebtedness.

At this juncture it is important to recognize that the way that successive Argentinian governments have managed the economy and failed to control (and sometimes even themselves engaged in) corrupt financial practices has also aggravated its national debt. Complicity in both supporting the military junta and in debt

accrual from national banks, media and even the Catholic Church alongside transnational corporations has recently come to light in a controversial but important study edited by Verbitsky and Bohoslavsky (2015). Further, debt restructuring negotiations and swaps have littered Argentina's modern history but have often been signed in order to secure short-term political capital from a preoccupied electorate, whilst burdening state finances with unsustainable repayment conditions in the longer term. Local actors cannot be absolved of responsibility in the debt's accumulation, although their role has not on its own been significant enough to explain the intensity of the upward debt trajectory.

The dictatorship ended in a default, which newly elected President Raul Alfonsín sought to confront in 1984 both through rescheduling debt payments and proposing an audit of the illegitimately acquired debt from the dictatorship era. However, facing significant external pressure, he was unable to do this, and Argentina fell back into a debt crisis a few years later. President Menem then restructured defaulted debt under the Brady Plan in 1989, paving the way for further structural reforms. The explosive debt dynamics then led to numerous renegotiations in 2000–2001, the twilight years of the decade-long convertibility model (when the value of the peso was pegged to the US dollar). 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, fully subscribed to by national agents.

In this vein President De la Rúa (1999–2001) completed three debt negotiations. First, the 'financial shield' (December 2000), secured loans from both international credit agencies and the Paris Club countries. Secondly, the 'mega bond swap' (June 2001) involved national government complicity in the accumulation of the debt when Economy Minister Domingo Cavallo committed the debt's very bondholders also to act as its underwriters. Designed to ease short-term debt repayments by increasing medium-term debt, US\$40 billion was added to Argentina's debt, paying up to 17 per cent interest, and handing over US\$140 million in commissions to the foreign banks that served as intermediaries in the deal (García, 2001; Levy Yeyati & Valenzuela, 2007). In November 2001, a third debt swap took place in which local holders' bonds were exchanged for new ones and were underwritten by the state's future tax revenues. This effectively mortgaged the nation's future fiscal revenue. However, the country's access to external funding sources was soon cut off by the IMF when budget-deficit targets were missed, triggering a bank run as private savers (fearful of a debt default), rushed to withdraw their dollar deposits until the government enacted the *corralito*. This measure, enacted on 2 December 2001, effectively froze savers' bank accounts for 12 months to prevent further capital flight. Facing economic collapse, President De la Rúa resigned amidst social chaos. When interim President Adolfo Rodríguez Saá was forced publicly to declare a debt default at the end of December 2001 it exposed the government's economic mismanagement further. It became apparent that the Convertibility Plan had extenuated the national debt crisis as the over-valued peso had generated successive trade

deficits which had become unsustainable. De la Rúa resigned in the midst of an economic and political crisis. The following section describes how the incoming Kirchner governments (2003–2015) initiated a debt-reduction policy, and how the latter generated several unintended consequences.

2. New features of debt management: pay only what is possible

After December 2001, nearly half of the public debt was defaulted on (US\$82 billion); the other half had already been swapped in previous months.³ Interim President Eduardo Duhalde (2002–2003) immediately began to negotiate the restructuring of defaulted debt, while still paying international credit agencies and honouring recently swapped debt commitments. According to his own weekly Address to the Nation speeches,⁴ he understood debt, not as a problem, but as serving to fuel productive business. Through the deepening of national indebtedness, businesses would be able to access the necessary credit to invest and produce. This was the same strategy that was pursued by President Néstor Kirchner (2003–2007), who agreed to the 2005 debt swap (Vázquez Valencia & Cantamutto, 2013), at the time the largest in financial history. Within a few months, the government proposal to restructure the debt had been agreed by 76 per cent of bondholders. There were several important reasons why such a high proportion agreed to such a substantial write-down. First, collective acceptance by retirement and pension fund managers (who held nearly a fifth of eligible bonds) gave others the confidence also to agree to the deal. Secondly, the passing of the ‘Lock Law’ (Law No. 26,017) by Argentina’s legislature assured those entering into the swap that other investors would never be offered more favourable terms in future. Thirdly, the deal reduced and harmonized the national jurisdictions applied to the bonds and the currencies they were held in. This lowered the legal risk that bondholders were exposed to by signing up. However, the main novelty was the promise of ‘bonus dividends’ tied to Argentina’s economic performance (measured by GDP), so as to make creditors ‘partners’ in its recovery (Macías Vázquez, 2008).

The Argentinian government presented this negotiation as an epic showdown with speculative corporations in which the nominal value of the restructured bonds supposedly represented a ‘haircut’ of 75 per cent (Macías Vázquez, 2008). However, this achievement was greatly exaggerated. Once the capitalization of expired interest is factored in, the write-offs were in fact only valued at around 60 per cent of the total renegotiated part of the debt in question, and just 35 per cent of the *entirety* of the debt (Vázquez Valencia & Cantamutto, 2013). Furthermore, when accounting for the fact that bondholders received their GDP-linked bonus, thereby redirecting monies away from the Treasury (in a context where Argentina’s GDP had grown by almost 50 per cent between 2003 and the 2010 swap), as well as the amount incurred in accumulated interest payments after 2005, the value of the haircut was actually completely annulled (Giuliano, 2015).

It should be noted that this swap gained some supporters both in the IMF and the then administration of President George W. Bush (*La Nación*, 2004) because: (i) it closed – once again – the doors to a public debt audit which may have exposed the illegality of many of the investments made in it (Ballester, 2000); (ii) it preserved jurisdiction of the debt in foreign courts; (iii) being linked to growth, it promised high returns; and (iv) it emulated the framework used by private creditors during client bankruptcy proceedings, as the Meltzer Report to Congress recommended (Macías Vázquez, 2008). With the deal having drawn support from several representative bodies from the corporate world, the 2005 restructure was hardly ‘a confrontation’ but more of an amicable agreement (Vázquez Valencia & Cantamutto, 2013).

In doing so, President Kirchner had disregarded the outcome of the 2003 Argentine Workers’ Central Union (CTA)-organized public referendum, in which 88 per cent of more than two million voters expressed opposition to the payment of the debt (Echaide, 2005). He was also violating a court ruling in the Olmos Case, in which the debt itself was declared ‘illegitimate, illegal and odious’ by Federal Judge Ballester (2000). The debt having resulted from ‘477 separate fraudulent and arbitrary acts,’ Ballester ruled that it should thus not be paid (see section 5). Despite this, the President chose to negotiate the payment of existing debt commitments in order to regain investor confidence and the trust of credit markets, as expressed in a series of his public speeches.

Another novelty of Kirchner’s swap was to promise to repay ‘no more than the country could afford’ – a precept which has influenced government policy and discourse ever since. After the deal was closed, national accounts were once again characterized by rising interest and debt payments, which would soon generate fiscal and balance of payments problems (Figure 1). However, Argentina was still locked out of international capital markets (as it had been since the 2001 default), so that few sources of finance entered the country. Thus, and in contrast to the 1990s, Argentina was transformed into a faithful debt payer *without* reaping the benefits of large capital inflows.

Government decrees that followed in 2005 reinforced the policy of ‘debt reduction’. Decree 1,599/05 announced that ‘free reserves’ from Argentina’s Central Bank (BCRA) would be used to make advance payments to international credit agencies, as the government did when allocating US\$9.8 billion (4.4 per cent of GDP) to pay off its entire debt to the IMF in 2005. Amidst great fanfare, President Kirchner declared at her official address to the nation on December 5 2005 that the country had regained ‘the freedom of national sovereignty’. The official understanding of debt policy was that debt was not a problem, providing that it helped boost investment.

This logic would be reinforced by President Cristina Kirchner in April 2010, when she announced an agreement with three large banks (Barclays, Citigroup and Deutsche Bank) to swap some of the remaining defaulted bonds from 2001 in exchange for fresh credit. To meet this agreement, Congress retracted the Lock Law and allowed for the reopening of the old 2005 swap (Olmos

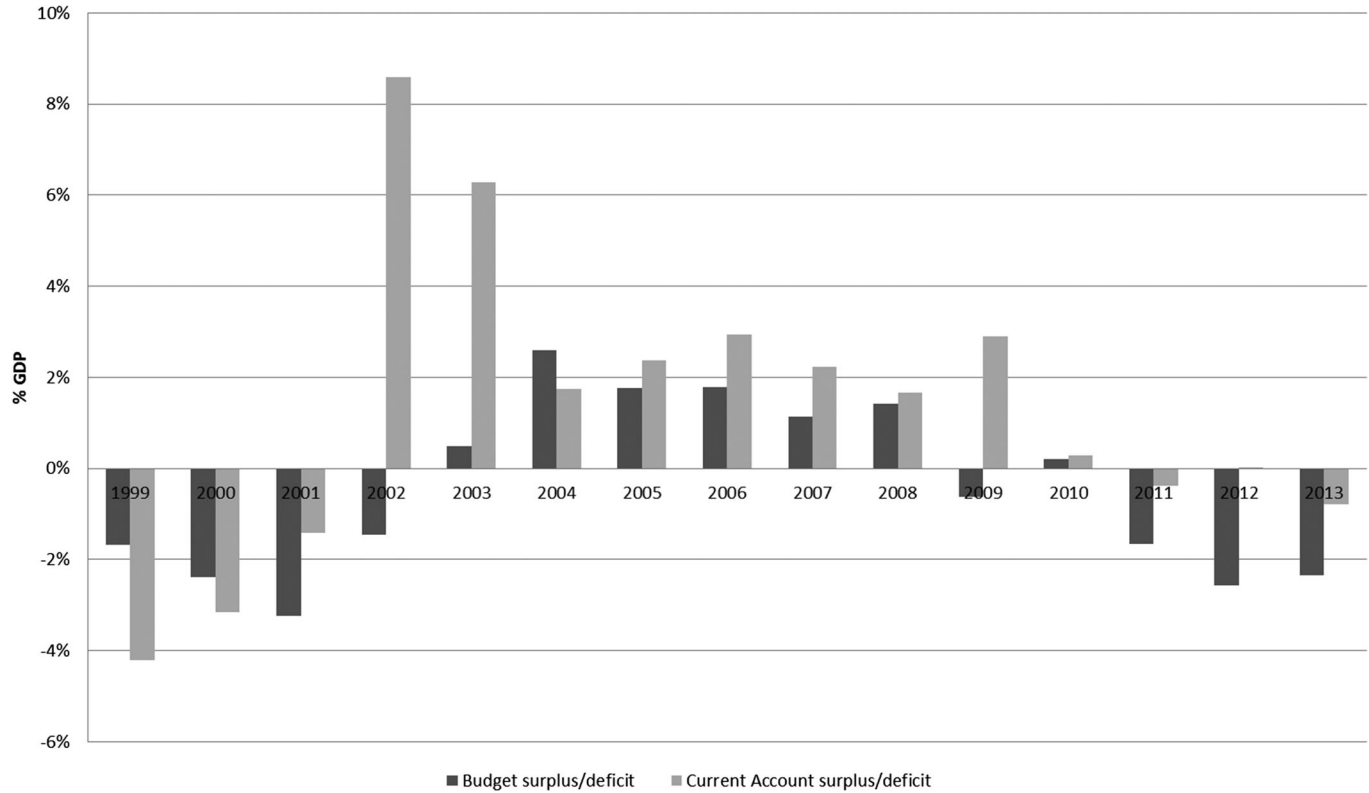


Figure 1 Evolution of Argentina's fiscal and current account positions.
Source: Argentina's Central Bank, INDEC (2015) and World Bank (2015).

Gaona, 2013). Having purchased the bonds at 20 per cent of their nominal value, these banks stood to make significant capital earnings by swapping them even after the write-downs. When this second swap was completed, nearly 93 per cent of the 2001 defaulted debt had been restructured and normalized. The government had reaffirmed that it was willing to change its own laws to meet the requests of influential financial agents.

3. The ultimate effects of the 'debt-reduction' policy

Since the 2008 global economic crisis, the logic under which IMF conditionality and structural adjustment programmes were tied to loans in Africa and Latin America in the 1980s and 1990s has provided the inspiration behind the debt bail-out packages that the 'troika' (IMF, ECB and Eurozone finance ministers) has attached to recent loans made to Spain, Greece, Ireland and Portugal.

The global crisis has itself also impacted upon Argentina's balance of payments in two ways: (i) by complicating short-term foreign direct investment opportunities; and (ii) through an immediate fall in external demand for the country's exports, which was ultimately accompanied by a collapse in world commodity prices. Argentina was disproportionately affected by this as it had previously enjoyed a windfall in terms of primary export revenues (CEPAL, 2013).⁵ These contributed to severely limiting Argentina's continued possibilities for growth. Such scenarios commonly occur in periphery countries due to conditions of 'dependency' under which reduced inflows of 'strong' currencies (i.e. dollars, euros) constrain domestic businesses' and consumers' ability to purchase goods and services that cannot be produced at home. In such situations, imports become prohibitively expensive, stunting economic activity. Further, such scenarios reduce the value of the national currency as an effective denomination in which to hold financial reserves. By 2013, after a decade of such policies, the hidden debt problem began to unveil itself again in terms of an economic slowdown. By 2014, the twin 'current account' and 'fiscal' surpluses upon which Argentinian growth was predicated had both turned negative. They have remained so ever since (Figure 1).

The contradictory nature of the government's debt-reduction policies has become increasingly transparent. Partly as a consequence of the change in global tendencies outlined above, 2014 witnessed a systematic social regression in terms of government policy. Domestically, a 25 per cent peso devaluation coincided with the halving of state subsidies for the supply of household gas, aggravating already high inflation (*The Economist*, 2014). This orientation was complemented with a rapprochement with foreign capital, in the hope of winning back trust and boosting investment. That is why the Kirchner administration met a wide array of demands from foreign capital; for example, after two years of litigation the government changed its strategy and announced that the Spanish energy company REPSOL would be paid US\$5.3 billion as compensation for its partial renationalization.

Equally, a ruling by the World Bank's International Centre for Settlement of Investment Disputes (ICSID) forced Argentina to pay US\$677 million to a consortium of corporations that had filed a complaint against it for protective measures that the state had implemented over the previous 15 years. The government obediently accepted this ruling without a challenge. ICSID 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 suggests a bias in favour of transnational companies and against states, as it has ruled accordingly in two-thirds of cases (ICSID, 2014). For this reason, Bolivia, Ecuador and Venezuela each decided to withdraw from it. Yet, although Argentina is the single country taken most frequently to these tribunals by international investors (ICSID, 2014), the path chosen by Cristina Kirchner's government diverged from these other Latin American states, accepting ICSID verdicts in order to demonstrate its investor-friendly business environment and to enable access to new sources of credit.

This policy of seeking to placate foreign investors was in further evidence a few months later when Argentina signed a deal with the Paris Club of creditor countries to repay a debt that was originally generated during the military dictatorship and the fraudulent 2001 debt swaps. Between that year's debt default and the payment settlement in 2014, the debt owed to the Club had grown by 60 per cent, reaching a total of US\$9.7 billion (2 per cent of GDP). Unlike the 2005 swap, this time no attempts were made to achieve any write-down.

Meanwhile, there was one issue that was proving almost impossible to resolve: the litigation being pursued by the 'hold-out' bondholders (largely North American hedge funds) who had refused to enter the debt restructuring process in what the *Financial Times* had described as the 'sovereign debt trial of the century'. This process took a dramatic turn in the US courts where two 'vulture funds'⁶ achieved several unprecedented legal victories. Judge Thomas Griesa's order that Argentina pay NML Capital and Aurelius Capital Management US\$1.3 billion in December 2012 was later upheld by different Appeal Courts. Yet throughout the case – and despite the fact that the Argentinian government consistently had demonstrated its willingness to repay its creditors – the judge treated Argentina as an 'incurable debtor'. In doing so, the judge ignored the reality of the country's 'repay-as-much-as-possible' actions that had defined the Néstor and Cristina Kirchner governments' stance towards the national debt since 2003.

However, while the case was preceding, the two vulture funds which had brought the lawsuit (but which themselves owned just 1.5 per cent of Argentina's bonds),⁷ relentlessly hounded the Argentinian government for payment, even establishing a lobby group in Washington DC to argue their case there. 'American Task Force Argentina' conducted a campaign against Argentina which included agitating for its ejection from the G20 and lobbying the World Bank not to provide any further loans. Indeed, it has spent US\$4 million persuading US congressmen to support these campaigns (Johnston,

2012), leveraging the bondholders' multi-billion dollar assets to subvert the democratic process in its favour.

Yet if Argentina had faithfully abided by the principle of 'repay-as-much-as-possible' to its creditors up until this point, why then did it stand firm in refusing to pay the vulture funds and appealing Judge Griesa's ruling? Payment of US\$1.3 billion was, after all, easily affordable for a country with US\$27 billion of reserves at the time. What explains the divergence from this aspect of its foreign and economic policy is that the government was bound by what is known as a *pari passu* clause (meaning 'equal treatment') – a standard part of most international borrowing agreements by domestic governments. In other words, all investors must be offered the same repayment terms by their debtor. However, Judge Griesa (and the US Court of Appeals) took a very broad interpretation of this clause, ruling that if Argentina made any further payments to the swap participants under their restructured terms, it would also have to pay what it owed to the hold-outs *in full*. However, because of another clause in the bond contracts – RUFO (Rights Upon Future Offers) – if NML and Aurelius were subsequently paid in full, then the 93 per cent of the country's bondholders that had agreed to debt write-downs would also be entitled to sue Argentina for the original amount of their debt bonds. If *pari passu* was applied retrospectively, it could have left the Argentinian state with an insurmountable bill of US\$200 billion (the total value of the 2005 and 2010 debt swaps plus interest and penalties) which would have forced it into a debt default again and ignited a crisis potentially as serious as that of 2001. While the RUFO clause expired in January 2015, Argentina's government did not rush to an arrangement with creditors, presumably because of the domestic political fall-out that would have ensued, given it had made the case the centrepiece of the role it was projecting to the Argentinian public as the defender of national interests against predatory attacks from foreign investors.

On 16 June 2014, the US Supreme Court rejected Argentina's final appeal, thus vindicating Griesa's original pro-creditor resolution. In the gambit that followed, when 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 its bank account, ready for transfer to them. However, Judge Griesa ruled that, given the government had not yet paid the hold-out funds, this move was a violation of his court ruling. He therefore blocked the transfer, and on 30 July 2014, despite Argentina's willingness and capacity to make repayments, credit ratings agency Standard and Poor declared the country to have fallen into partial debt default for the second time in 13 years.

It should be said that the outcome of the trial had several major repercussions for the global debt system. Firstly, it established a precedent in international financial law under which the right of speculative hedge fund managers to pursue multi-million dollar profits by suing sovereign governments supersedes the latter's right to protect their people by instead spending such resources on health, education, social programmes or other public goods. Secondly, it may render future debt restructurings impossible anywhere in the world because

it removes any incentive for creditors to agree to debt swaps, knowing that they can now successfully pursue full payment for the original promised sum in 'friendly' foreign courts in New York or other financial centres (Ozarow, 2014). It is worth noting that vulture fund Dart Management has already made a €100 million profit on Greek debt and at least a dozen other such funds are currently speculating on it (Porzecanski & Verlaine, 2015). Meanwhile, Puerto Rico represents the latest battlefield for these investors, and the Ad Hoc group of hedge funds alone owns US\$4.5 billion of its debt (Dayen, 2016). Many 'vulture funds' like Aurelius operate internationally and have become a common enemy of indebted governments, whether in the global South or North.

Finally, the ruling not only jeopardizes debt-swap negotiations that are currently taking place in Greece and other European countries, but also impacts upon any indebted countries' future access to credit. In the face of threats to switch off their credit taps, Argentina has not only garnered the support of moderate heterodox scholars such as Paul Krugman and Dani Rodrik, but also that of the neo-classical laureate Robert Solow as well as the Organization of American States, President Obama and even the IMF and the World Bank. Their concern that such a move would paralyse credit and, simultaneously, the motor of neoliberal consumerism, prompted such support from these unexpected quarters. It would after all be self-defeating for global finance, which requires injections of credit for the wheels of the system to keep turning.

Argentina therefore found itself returning to a debt crisis, with the 2001 episode having never been fully resolved. The limits and internal contradictions of the official policy of 'debt reduction' have been exposed, and the government will at some point be obliged – by its own logic – once again to restructure its debt. The following section elaborates on how financial capitalism's global architecture has ensured structural continuities pre- and post-2001 which help to explain the default's (re)occurrence in Argentina.

4. Serial payers, serial losers

Fourteen years after Argentina's monumental 2001 default, the country once again finds itself with rising levels of debt, running out of currency reserves and in a so-called 'technical' debt default. So what did the Kirchner government's 'debt-reduction' policy accomplish? It can point to three achievements: (i) a fall in the debt-to-GDP ratio from 127 per cent to 46 per cent between 2005 and 2014 (INDEC); (ii) a reduction in the proportion of public debt owned by foreign creditors (from 25 per cent in 2005 to 13 per cent in 2012); and (iii) a dramatic increase in the proportion of debt owned by state agencies such as BCRA and ANSES (Argentina's social security agency) as opposed to private investors. This proportion now totals 60 per cent and represents an enormous increase from just 8 per cent in 2005 (all figures from INDEC). Here, the

Kirchner government's claim that Argentina has thus achieved greater 'sovereignty' will be interrogated.

With regard 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 honoured. In fact, this figure was only 65 per cent just before the 2001 default (INDEC), but was nevertheless sufficient to spark a profound crisis. The actual proportion of Argentinian bonds that are currently held by privately owned companies which have the option of pursuing litigation against the state in the event of non-payment stands at 40 per cent. This figure is smaller than in 2001 but does not prevent the possibility of a crisis.

In relation to the second argument, the considerable reduction of the burden of foreign-held debt merits further attention because it is this which represents an important and historic point of departure from previous episodes of national debt crisis. Indeed, this has meant a reduction in the need to earn foreign currency to meet debt repayments. Yet, important questions remain about this change in the debt's composition.

It must be highlighted that the fall in this ratio largely results not from the Argentinian government's design, but due to the impossibility of obtaining external sources of credit, given that the country has been locked out of international capital markets since the 2001 default. To this end, the government's 'debt-reduction' policy failed, because throughout the last decade it was unable to regain access to global financial markets. This was the case despite Argentina's doing all it could to persuade international financial institutions of its reputation as a 'serial payer'.

On the third 'achievement', the reconstituting of the debt from foreign to domestic sources has actually proved enormously costly for Argentina. Exceptionally high interest rates were charged on its domestic, peso-denominated bonds even when these were converted into dollars due to the daily inflation adjustment (known as the Stabilization Reference Coefficient). Meanwhile, the GDP-linked payment bonus that its post-restructure creditors now enjoy has seen the Treasury deprived of hundreds of millions of dollars. Financial agents (both national and foreign) have thus generated extraordinary profits in Argentina and continue to constitute the country's most profitable sector. To ensure debt payments to creditors, the government has issued a series of new bonds via various state agencies, including BCRA, ANSES, the National Bank and even the National Lottery. Whilst the government correctly claimed that transferring national debt to public agencies would facilitate future negotiations, the detrimental effects of such a scenario were that state agencies lost resources that should have been dedicated to the services they provide to the public. For example, instead of buying government bonds, ANSES could have directed resources to paying higher pensions in a context in which almost three-quarters of Argentina's pensioners are paid sub-poverty line pensions. Instead these resources are now at least partially channelled into paying what will later be described as 'an illegal debt'.

A further element of the debt-repayment policy was added when the Argentinian Senate changed the Central Bank statutes in 2012 so that its reserves could be used to repay public debt whenever the government decreed. This diminished the Bank's 'independence'. As Figure 2 illustrates, it also eroded the national currency reserves that back up the peso – which fell from US\$52 billion in 2011 to US\$27 billion in 2014.

The effect since then has been perpetual currency devaluation,⁸ and, aside from having suffered speculative attacks, the peso has been further weakened by the simultaneous haemorrhaging of reserves and outflow of dollars in the form of debt payments to foreign creditors. The need to return to a trade surplus and export competitiveness on global markets in order to obtain foreign currency in a context of low investment seems only achievable through successive peso devaluations. Yet this has also seen wage-earners' purchasing power erode (as imported goods become more expensive to buy and increased production costs are also passed on to the consumer).⁹

As the Kirchner government struggled to balance the books and tighten its budget deficits to help reduce the debt, it was forced to cut public spending elsewhere. The political and social costs of doing so were extremely high. It became increasingly frugal in its wage negotiations; public-sector wages remain 35 per cent below their real-terms levels compared to 2001 (López & Cantamutto, 2013), and, although the government began to clamp down on corporate tax evasion towards the end of its mandate, attempts to fulfil debt-repayment obligations inevitably involved attacks on workers' rights and wages, eventually facing general strikes from its former union allies in 2012 and 2014.

Yet perhaps the most important reason why the supposed 'increase in sovereignty' bestowed by a shift in Argentina's creditors from foreign to domestic sources is exaggerated is the extremely high foreign ownership of the country's productive infrastructure. Often its domestic debt-buyers are local subsidiaries of large transnational firms like Citibank, BBVA, Deutsche Bank and Barclays. That is to say, in reality some of the debt is now owned by the very same foreign creditors who supposedly no longer own it. This has had a negative impact on the current account and balance of payments.

In a series of public addresses from 26 August 2013, President Cristina Kirchner boasted that her government had elevated the country to the status of 'serial payer' of its debt liabilities and would thus honour *any* justifiable financial claim made by a creditor. She explained that Argentina had made US\$192 billion in repayments since 2003 (which, the authors note, represents 125 per cent of the full repayment of the nominal debt value). However, using official INDEC figures, the debt still rose in absolute terms from US\$145 billion in 2001 to US\$200 billion in mid-2014 and remained at approximately the same level in real terms (Figure 3). In other words, the central 'achievement' of paying off the illegitimate debt has been the accumulation of more debt. It is worth remarking that this official estimate of the current debt does not include numerous liabilities such as the multi-billion dollar debts of Argentina's provincial government administrations, provisions for interest and GDP-linked

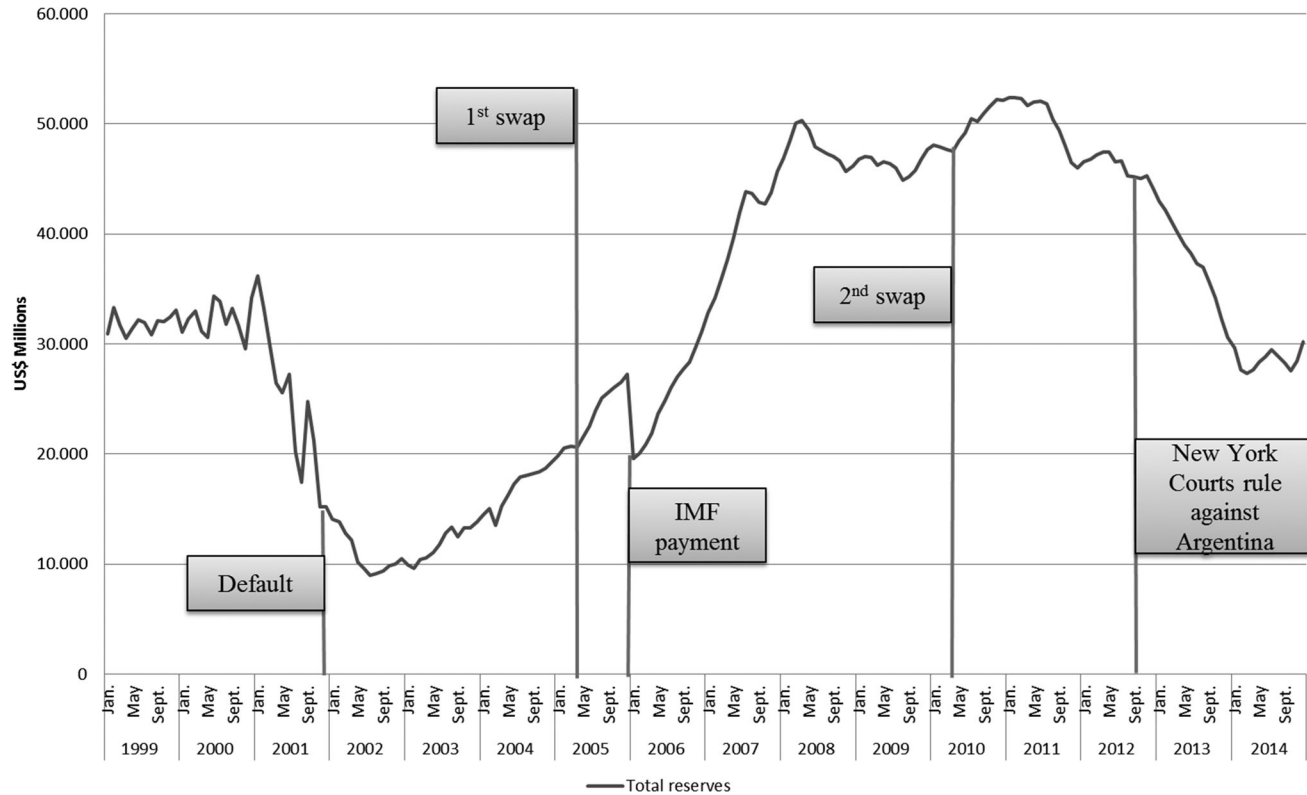


Figure 2 Argentina's currency reserves (US\$ millions).
 Source: INDEC (2015).

bonus payments, as well as the debt liabilities of publicly owned enterprises. Further, the debt calculation does not account for the amount owed to the vulture funds following their victory in the US courts. Héctor Giuliano estimates the real debt (including these liabilities) to be closer to US\$300 billion, far higher than in 2001.¹⁰

A reflection should be offered here on the implications of the recent election of President Mauricio Macri for the prospects for Argentina's debt. First, Macri has recognized the Kirchners's debt-policy achievements (i.e. the ones referred to in this section) but has also said that a rapprochement with foreign capital would enable the state to regain access to the credit markets. Secondly, one of his first announcements was the securing of a new series of loans, including at least US\$5 billion from private banks (JP Morgan, Citibank, Deutsche Bank, HSBC and Goldman Sachs) and US\$2 billion thanks to a new dollar-denominated bond, for which Argentina will be charged 7.8 per cent annual interest. The Economy Minister, Alfonso Prat-Gay, and Finance Secretary, Luis Caputo, both former managers – of JP Morgan and Deutsche, respectively – are responsible for these negotiations. Perhaps most significantly of all, at the time of writing they were promising a US\$6.5 billion payment settlement with New York 'vulture funds' (Gillespie, 2016).

5. Challenging an illegitimate, illegal and odious debt

One of the most significant consequences of the outcome of Argentina's legal battle against the 'vulture funds' – with other recent global struggles – was that it heightened awareness within civil society and among governments globally about the dangers of the unregulated nature of international financial capitalism. In particular, it became evident that indebted economies and those facing debt crises were being increasingly exposed to attacks by vulture speculators. Congo, Peru, Zambia and several others have discovered this to their cost in recent years. In an almost unprecedented show of strength, in September 2014 the governments of the 133 countries belonging to the G77 Group of Nations united with China to demand profound changes to how the international debt system functions. Led by the Argentinian government, these countries forced through a UN General Assembly vote to establish a multilateral framework to regulate excessive financial speculation and rewrite national debt restructuring rules. A year later, on 10 September 2015, the General Assembly approved a draft resolution on 'Basic Principles on Sovereign Debt Restructuring Processes' (A/69/L.84) in which nine principles were established that should be respected when restructuring sovereign debt: sovereignty, good faith, transparency, impartiality, equitable treatment, sovereign immunity, legitimacy, sustainability and majority restructuring (UNCTAD, 2015). It is hoped that the Principles will ensure that, when national debts can no longer be paid, scenarios under which prolonged debt crises and expensive bank

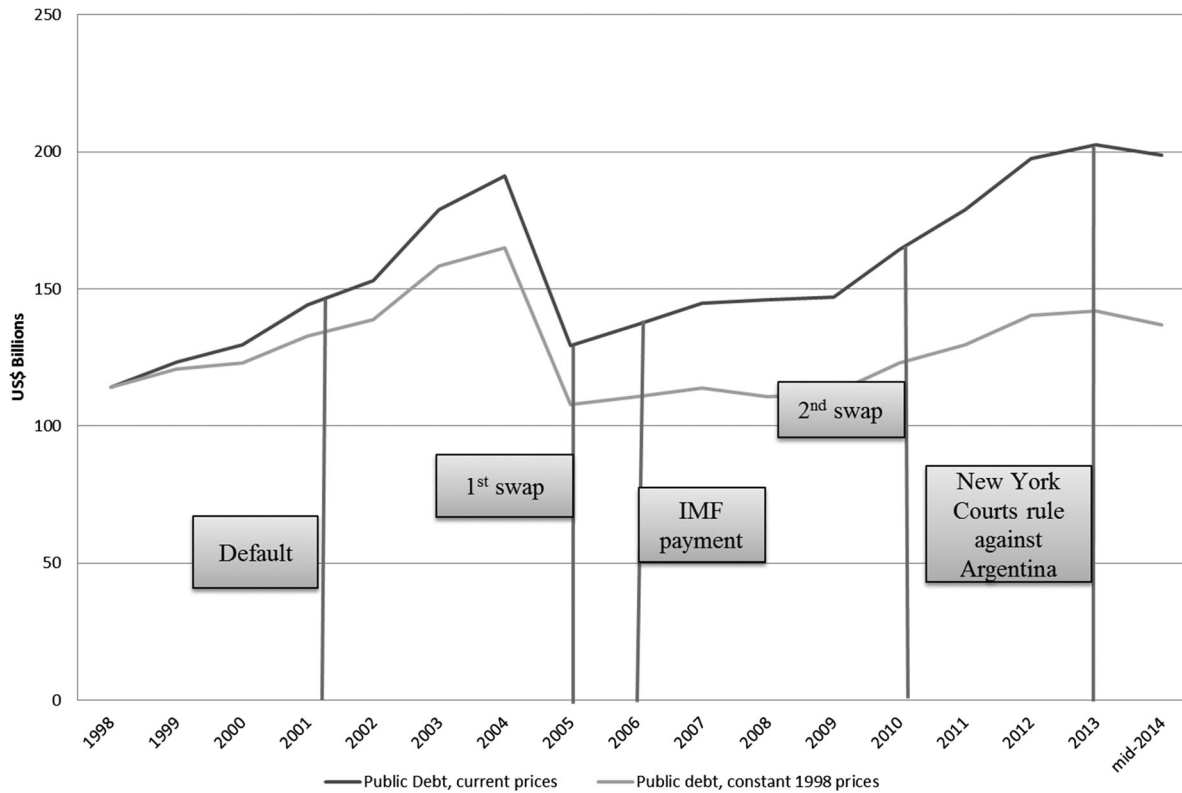


Figure 3 Argentina's public debt 1998–2014 (US\$ billions).
Source: INDEC (2015).

bail-outs result might be avoided in part by proscribing vulture funds' extortion of governments.

Yet this development does little either to (i) reverse the mounting existing debt burden of developing countries – which has doubled to US\$5 trillion since the 2005 G8 Summit debt write-offs (World Bank, 2014, p. 2), or (ii) permit semi-peripheral states like Argentina to seek the necessary external finance to uphold its central role as a health, education and social protection provider without perpetuating the dependence upon Western institutions like the IMF, the Paris Club and the hedge funds that have so profoundly harmed their country's development.

Of the alternatives, Argentina is faced with four options (Ozarow, 2014). Its favoured approach appears to match that of many global south countries: closer trade and investment co-operation with China. Indeed, its Eastern ally recently displaced the United States and European countries to become Argentina's second largest trading partner after Brazil. In 2014 it also received a US\$7.5 billion loan from the China Development Bank, with a further loan of US\$11 billion pledged over three years to bolster its ailing currency reserves (*World Politics Review*, 2015). However, as China asserts its political and economic authority in Argentina and Latin America, it presents the danger that policy continuity will mean that past relationships of dependence on Western financial institutions and G8 countries will simply be replicated.

The second option is the recently-founded BRICS development bank. However, as details emerge of its borrowing arrangements, debtor countries like Argentina would be left with little room to change its financial status or dependence on Western international financial institutions. According to Article 5.d.ii of its July 2015 Contingent Reserve Arrangement, requesting parties would require an existing 'on-track-arrangement' with the IMF 'based on conditionality' in order to qualify for 70 per cent of possible financial assistance (BRICS, 2015). The BRICS bank certainly would not represent the counter-hegemonic institution that many development economists hope for. Both these options depend upon Argentina's implementation of neoliberal market reforms, which would ultimately reaffirm its position as a peripheral state in the global division of labour.

A third, more politically palatable alternative would be to seek financing from the Bank of the South (*Banco del Sur*). Argentina established this alternative lending institution in 2009 alongside its regional and political allies Venezuela, Brazil, Paraguay, Ecuador, Bolivia and Uruguay as a direct response to their rejection of the World Bank and IMF's enforcement of free market reforms as a condition of emergency loans. Whilst favourable lending terms would be offered for infrastructure projects and financing of social programmes, progress towards establishing this alternative regional banking project has stalled as it awaits ratification by several states. These difficulties were compounded by the ascendancy of Mauricio Macri as Argentina's President in December 2015. His hostility to the project, his attempts to get Venezuela ejected from regional trading block Mercosur and the defeat of President Maduro in

Venezuela's recent legislative elections have placed *Banco del Sur's* future in serious doubt. Macri's agenda is explicit: to seek an improved trade and investment relationship with the United States and the European Union which will be prioritized over Argentina's Latin American partners.

The remaining possibility – one that this paper supports – was first proposed by Argentina's social organizations in the post-dictatorship milieu¹¹ and was partially recognized by former President Raul Alfonsín in the 1980s: a national public audit of Argentina's debt to determine the amount that can be deemed to be 'illegitimate' or plainly illegal. This would activate Judge Ballestero's long-neglected 2000 court ruling, whilst additionally accounting for the potentially fraudulent 2001 mega bond swap. The resulting figure would then be cancelled. Alleviating the debt burden in this way would help the government regain sovereignty over its political and economic affairs.

Federal Judge Jorge Ballestero's ruling in *The Olmos case* (Ballestero, 2000) confirmed the 'illegal, predatory and illegitimate' character of the borrowing process of Argentina's debt, initially accrued under the military dictatorship (1976–1983). The government at the time had no constitutional right nor popular mandate to acquire foreign debt as it did not observe its constitutional obligation to consult Congress before doing so. Also, as civil society organizations have claimed, the loans financed a military government engaged in acts which breached international human rights law, further bringing the legitimacy of the original loans into question. Finally, missing legal documents and incomplete registers of debt commitments provide further arguments for the non-payment of foreign debt on the grounds of its illegitimacy and potential illegality (Ballestero, 2000).

The debt's illegitimate jurisprudence and anatocism (usury which consists of charging interest payments upon existing interest) mean its questionable origins 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. On that premise, if the original debt-swap bonds are deemed illegal, this nullifies the value of investments made in the debt, including NML Capital and Aurelius bond purchases after Argentina's 2001 economic crisis (Olmos Gaona, 2011).¹²

Yet, although Judge Ballestero's ruling was remitted to the National Congress to consider the judgment and legislate on the matter by constitutional mandate, 14 years passed without any action being taken. That was until September 2014 when the new Sovereign Payments Law (Law No. 26,984), ordered the establishment of a Permanent Bicameral Commission to Investigate the Origins of the Nation's External Debt. However, the Commission had two weaknesses. On the one hand, its remit does not cover the period of the Kirchnerist debt swaps from 2005 onwards, and, on the other, this Commission was created under a law that declares the paying of all debt to be 'in the public interest' before its findings are even known. This suggests that it has not been established with the end of 'non-payment of illegitimate debt' in mind. However, in the current *belle époque* of innovation with respect to global debt regulation, momentum is building

among civil society actors for such an audit. One umbrella group of campaign organizations and trade unions (The Assembly for the Suspension of Payments and Investigation of the Debt) organized a major international conference in June 2015 to contest Argentina's repayment policy and demand that a full audit be performed. By December 2015, the unworkable Commission had no results to show, as one of its member denounced (ACTA, 2015).

Yet the undertaking of public debt audits has not only proved feasible, but has also resulted in successful outcomes in recent years. In Ecuador, Rafael Correa's administration created a debt-audit commission in 2008 which confirmed two-thirds of the national debt as being illegal and illegitimate. Much of this debt was thereafter unilaterally cancelled and, through partial default and selective bond buy-back, the country's debt burden was slashed by US\$3 billion (Denvir, 2008). Contrary to the predictions of international markets, Ecuador represents one of the fastest-growing economies in the region (CEPAL, 2013). Meanwhile, in June 2015 the Greek Debt Truth Commission (established by its government) found the debt accumulated between 2010 and 2014 to be 'illegal, illegitimate and odious' in character¹³ and thus concluded that it should not be paid. Its findings have yet to be acted upon by the Syriza government.

6. Concluding remarks: the case for moving from 'repayment' to 'non-payment'

Argentina's overall public debt burden has increased during the last 15 years. Notably, its transfer from external to domestic holders is spurious following a financial sleight-of-hand by which the shift in the debt burden from private external creditors to domestic creditors was made by paying 'as much as possible' in order to begin a new round of indebtedness. This presents a serious danger to the country's long-term economic sustainability.

The argument supported in this paper is that only by challenging the legitimacy and the legality of the debt on the grounds already discussed can the seemingly irreversible trajectory of debt accumulation be countered. Yet Kirchnerist government policy at best repeatedly failed to question the debt's dubious origins (and legality) and at worst was actively complicit in reaffirming its legitimacy through its 'debt-reduction' policy. Accepting the transfer of jurisdiction to foreign courts during the debt swaps was also an error in this regard. Responsibility for Argentina's spiralling debt crisis has been as much due to Néstor and Cristina Kirchner's failings as it has been to the pressure of international capital.

What was once a political taboo among the *establishment* parties in Argentina – unilaterally to declare a debt default, suspend all payments and force new negotiations – was gaining political traction until the election of President Macri in November 2015, although away from elite actor level momentum continues to grow among the country's religious, labour and civil society organizations. Unsurprisingly, Argentina's Debt Commission had nothing to show.

Further, while the Sovereign Payments Law questions the debt's legitimacy, paradoxically it also reasserts the government's obligation to repay it. Rather than accepting the domestic court's already-established findings about the debt's illegitimacy dating back to the Olmos case (Ballester, 2000), this Law calls for a re-auditing of the debt once again on entirely different terms. Given the Commission's failure to investigate, a 'citizens' audit' might be more opportune. It would also serve both as an educational tool for the population to understand the illegitimate, odious and illegal character of the nation's debt as well as to aid citizens in exerting political pressure on their government unilaterally to cancel part of its debt.

Greece's default on an IMF loan repayment in June 2015 and Puerto Rico's January 2016 default highlight the increasing concern that debt crises pose in Europe and North America. Support for public debt audits as a means by which citizens can start to emancipate themselves from the debt burden – as the international coalition Jubilee 2000 has proposed for many years – is also growing in the global North. In Iceland, citizens voted to refuse to nationalize their banks' foreign debts, and they have gained significantly. The economy is currently booming and unemployment is down to 2 per cent (Valdimarsson, 2014). Norway's government recently conducted an audit into debts owed to it and has cancelled those arising from loans it made for other countries to purchase its exports which were deemed potentially 'dangerous' at the time they were made. 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. Of course, to perform these audits and advocate non-payment, the structures of national and global power must simultaneously be radically reformed. This presents its own problems, which must be dealt with elsewhere. The audit is offered as a starting-point for this discussion.

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Notes

1 Although 'neoliberalism' has been criticized because of its conceptual ambiguities and contradictions (Venugopal, 2015), and described as a sequenced, fragmented and politically indeterminate process (Molyneux, 2008), the term can still be defined within certain parameters. In this paper, 'neoliberalism' refers to the specific stage of late capitalism which started in the late 1970s, whereby transnational firms won economic and political power over labour – i.e. a reassertion of capitalist class power (Harvey, 2005). This historical shift was framed by market-friendly structural reforms (mainly external account liberalization, the state's withdrawal from its productive role and from providing labour and welfare protections). Notwithstanding various setbacks, in terms of achieving its aims it has proved a largely successful model, although the project remains unfinished.

2 It has been argued that these reforms naturalized citizens' beliefs in the idealized market (Fridman, 2010).

3 Unless another source is quoted, the data included in this paper are based on official data available from Argentina's National Statistics Institute, INDEC. For a discussion of their accuracy, see Giuliano (2015).

4 Throughout 2002, President Duhalde explained his policies to the nation in a short weekly intervention on National Public Radio, named 'Talking with the President'.

5 Two 'impossibility theorems' have delayed a more consequent and aggressive fiscal expansion in the core economies, exerting a negative effect on global economic growth (Lysandrou, 2013), which in turn has lessened their demand for peripheral economies' goods.

6 'Vulture fund' is the term their detractors use to describe hedge funds that speculate on the distressed debt of countries which face defaults by purchasing bonds with the specific intention of suing the debtor country for the full bond amount in order to make exorbitant profits years later when restructuring negotiations begin.

7 In total 7 per cent of all Argentina's bondholders were 'hold-outs', including those who did not directly pursue litigation.

8 The official exchange rate against the US dollar fell from 4 pesos in 2011 to 9.60 pesos in November 2015 (x-rates.com) while the 'blue' (unofficial) dollar rate stood at 14.50 pesos. After President Macri took office, both exchange rates were unified, at approximately 13.30 pesos per dollar. This followed an official devaluation of 30 per cent in December 2015.

9 We are not trying to explain the Argentinian inflationary process due to currency devaluation alone; the reasons are clearly multi-causal.

10 For further details on debt values and proportions, see Giuliano (2015).

11 Human rights organizations and left-wing parties denounced the military dictatorship for having engaged in external debt accumulation to part-finance its repressive policies. They claimed that the loans were used to fund a regime that engaged in widespread torture, murder and genocidal practices against the population as part of the National Security Doctrine under which 30,000 citizens were 'disappeared'. Later, a judicial investigation would substantiate these claims (Ballestero, 2000).

12 Some studies have since sought to explain the existence of international law jurisprudence in order to claim the illegal and illegitimate character of debt (Toussaint &

Millet, 2010), but this effort has yet to win the attention of researchers and – moreover – of politicians.

13 An executive summary may be found at <http://cadtm.org/Executive-Summary-of-the-report>.

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