



ENERGY IN THE AMERICAS: CRITICAL REFLECTIONS ON ENERGY AND HISTORY

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The Expropriation of YPF in Historical Perspective: Limits of State Power Intervention in Argentina, 1989–2015

Esteban Serrani

Law No. 26,471 of *Soberanía Hidrocarbúfera* (Hydrocarbons Law), enacted on 3 May 2012, represented a transcendental change of the dominant conception in Argentina regarding the exploitation of natural resources in general, and oil and gas in particular. This law declared both the achievement of internal energy supply as well as the activities regarding exploitation and industrialization of hydrocarbons in various segments of the industry to be of national public interest, in order to ensure “economic development with social equity.” In this context, hydrocarbons became a strategic resource for the country’s productive activities. They had been regarded as a simple exportable commodity “uncoupled” from the dynamics of local production (which were governed by the logic of the international market). In this sense, the law ordered the expropriation of 51 per cent of the assets of YPF (Yacimientos Petrolíferos Fiscales), the continent’s first state oil company and one of Argentina’s most important businesses for seventy years. The main objective of this chapter is to analyze YPF from its privatization in 1989 until its renationalization in 2012. It analyzes national particularities to explain why YPF was completely privatized in

the 1990s (contrary to the regional experience in Mexico, Venezuela, and Brazil), and how, only twenty years later, the same company came back under a process of expropriation and state control, a reversal that had vast popular and parliamentary support. In this regard, this chapter analyzes the consequences of deregulation and financial liberalization of the oil industry from the acquisition of YPF by the Spanish multinational Repsol in 1999, until its nationalization in 2012.

Brief Description of Yacimientos Petrolíferos Fiscales

The early search for oil in Argentina is a paradigmatic example of the industry's roots in Latin America. The first efforts date back to the mid-nineteenth century (1855), when the federal government asked the French geologist Antonio Martin de Moussy to conduct a study on the country's mineral characteristics and fossil fuel potential. However, it was not until 1907 that the first oil fields in Comodoro Rivadavia were found, thanks to the federal government's interest in developing a vital industry to sustain the growth of both agricultural and transportation industries and industrialization.¹ This is how, in 1922, the federal government established the first state oil company in the continent, Yacimientos Petrolíferos Fiscales, which was vertically integrated in the oil supply chain. YPF was developed as a public oligopoly, increasing its production as the participation of private companies, which had operated in the country since the late nineteenth century, gradually decreased. The state's control over the oil sector through YPF deepened to the extent that the process of import substitution industrialization—a trade and economic policy that required a permanent energy supply at low cost—was consolidated after the Second World War.

The development of YPF was favoured by the advent of Peronism and the rapid increase of internal oil demand. However, the route taken by the state oil company was not free of controversy, whether that was from supporters of a full state monopoly or those who defended the participation of private oil companies in the market.² Following the military coup against Juan Perón in 1955, this tension was expressed strongly under the government of Arturo Frondizi, well-known for his program of

“developmentalism.” Frondizi, in order to expand oil exploration, signed a set of construction and service contracts with several of the most important multinational companies in the country, such as Standard Oil of California, Exxon, and Shell. In 1967, after the coups against Frondizi in 1962 and Arthur Umberto Illia in 1966, General Juan Carlos Onganía sanctioned the Hydrocarbons Law No. 17,319, which was still in force in 2012.

Yet the liberalization of the sector only began in earnest in 1976 with the sixth civilian-military coup in Argentina’s history. At this time, the peripheral privatization of YPF began, through the increasing participation of local companies in the operation of the oil fields and service contracts to perform tasks that YPF executed at a lower cost.³ Furthermore, the process gave rise to a policy of unfavourable prices for YPF. The company’s use as holder of foreign loans for financial investments in the domestic market left it with a critical debt situation when democracy returned in 1983. In this way, the debt was established as the reason for starting a policy of openness toward the private sector, as the oil plans (Huergo; Houston; Olivos; Petroplán) established by constitutional president Raúl Alfonsín demonstrated.⁴ Despite the increasing liberalization of the domestic oil sector and the privatization of important peripheral activities, YPF remained toward the end of the 1980s a key instrument for energy planning and the control of prices and domestic supply. However, the 1990s brought new ideas and the government’s decision to restructure the company.⁵

Neoliberal Reforms and the Privatization of YPF, 1989–2001

After the premature departure of President Raúl Alfonsín early in 1989, a process of deep social change took place in Argentina, accelerated by the economic and energy crisis, as well as hyperinflation. At this time, some mainstream economists argued that much of the economic crisis of the 1980s in the region was due to the existence of an inefficient state unable to regulate monopolistic forms of economic action.⁶ In order to sustain public spending, the state had to resort repeatedly to the reprinting of paper money, gradually reproducing the inflationary spiral. In accordance with

the neoliberal ideology dominant in economics at the time, as well as the design of state policies, structural reforms in Argentina were carried out. In line with the definition offered by Pablo Heidrich in this volume, the policies deployed in this period took energy as a “market good.” This differed from the Brazilian experience with Petrobras in the 1990s (see Gail D. Triner in this volume). The privatization of YPF was the largest sale of a public company in the history of Argentina, not only because of the magnitude of its worth, but also because of the depth of both the macroeconomic and social impacts.⁷ In this sense, it is possible to organize the analysis of YPF’s privatization in three stages, differentiated mainly by the various qualitative components. The first stage extends from the enactment of the first laws of structural reform to the implementation of domestic price deregulation (September 1989–December 1990); the second goes from the domestic deregulation of fuel prices to the privatization of YPF SE (January 1991–August 1992); and the third is the actual privatization of YPF (starting in September 1992 and lasting until May 1999).

From September 1989 to December 1990, both the federal government and private oil companies had no doubts about the need to advance toward a full deregulation and privatization of YPF. However, the question in those days was what assets to privatize from YPF and how. To do this, a set of laws and decrees allowing further deregulation of the sector was established. These changes in the sector-specific legislation fitted out the conversion of oil contracts with the private agents YPF had so far (many of them originated during the last military dictatorship and the government of Raúl Alfonsín between 1976 and 1989). The State Reform Act of 1989 (Law No. 23,696) initiated the structural transformation of the sector that enabled the renegotiation of oil contracts. The new legislation assured the private agents greater power to decide over the reserves of oil fields already tendered.

Additionally, the old contracts for extraction and exploitation of oil were converted into concessions and associations for a twenty-five-year period, to which was added the additional advantage of the free disposition of the products obtained. Concurrently, the Economic Emergency Law of 1989 (No. 23,697) deepened the structural changes in the sector, suspending allowances and tariff discounts to the industry, affecting the National Energy Fund, and discouraging the state control over prices until

the market was fully deregulated. Finally, this law set the general guidelines on oil royalties that the state would receive once YPF was privatized. The government of President Carlos Menem issued three decrees specific to the oil industry just a few days after taking office in 1989, paving the way for the privatization of YPF. The first was Decree No. 1,055 of 1989, which defined the need to increase the productivity of oil exploitation through a “necessary deregulation.” In this way, the state ceased to have any strategic influence over the sector by transferring the mechanisms of control over supply and pricing to the “market.” In addition, the decree initiated the process of concession to private companies in secondary areas and association in the core areas of YPF.

Decree No. 1,212 of 1989 deepened the dismantling of YPF by reconverting the concession contracts and extending the offer of free availability. The federal government transferred the “private oligopoly”—the authority of assigning the price, the amounts allocated per company, and the values of transfers and subsidies—to the actors involved in the industry, thereby increasing the deregulation. Moreover, sought to adjust domestic prices to international prices and allow the fluctuation of the former to reflect the evolution of the latter. It also ratified the freedom to import and export oil. Finally, Decree No. 1,589 of 1989 consolidated the previous provisions and extended certain deregulatory mechanisms, ensuring the elimination of tariffs and export duties, and the free availability of 70 per cent of the foreign exchange obtained from the sale in the international market.

In the second stage, from the deregulation of prices to the beginning of the privatization of YPF (January 1991–August 1992), the federal government sought to restructure the company along the lines of a private firm. To achieve this objective, the company was divided into different business units by selling assets considered non-strategic for the new business structure desired for YPF. Decree No. 2,778 of 1990 propelled the “Plan of Comprehensive Transformation” that transformed the state oil corporation into a public company for which a timetable was established for the sale of its assets. In article 18, the market was reconfigured so as to distinguish between two types of units to tender: the primary and the secondary market. The valuation of YPF’s oil and gas reserves was left to the international consulting firm Gaffney, Cline and Associates, which undervalued the price by 28 per cent.⁸ The process of analysis and the

proposed transformation of YPF were delegated to the international consulting firm McKinsey & Company. This project included the sale of company assets and partnerships with private companies to exploit some areas and to achieve the rationalization of the oil industry's workforce. Of the 51,000 workers (direct and indirect) employed by YPF at the end of 1990, only 7,500 remained three years later, resulting in a payroll reduction from \$51 million to \$17 million by the end of 1993.⁹

The advent of oil businessman José Estenssoro's directorship of YPF in August 1990 deepened the pro-market transformation of the state enterprise.¹⁰ The measures taken by Estenssoro a few months after he took over direction of the company were aimed to denationalize forms of organization and internal management and restructure the production chain. It was necessary then to resize YPF through disinvestment in certain assets, which according to McKinsey & Company were "non-strategic."

Specifically in the primary market segment, important assets of the central areas of YPF (where there were the highest reserves) were transferred to the private sector. Through Decree No. 1,216 of 1990, private companies were called to a prequalification to access in partnership with YPF the 50 per cent of recoverable oil and gas reserves in the four core areas. Four consortiums were awarded with contracts of association, three of which were formed by some of the same firms that had served as contractors since the beginning of YPF's peripheral privatization, although this time they were associated with major multinationals.¹¹ Yet, far from receiving the minimum of \$800 million projected from the sale of the four main oil areas tendered, the federal government only received about \$550 million. The loss of about \$250 million was a direct result of the pricing policy implemented by YPF.¹² Instead of placing the oil in the local market for \$20 per barrel (international prices), it was sold for \$14. At the same time, between 1990 and 1991, 86 other marginal areas (in addition to the 105 existing) were adjudicated for a total of \$470 million.¹³ In the secondary market segment, all the country's refineries were privatized, including San Lorenzo, Dock Sud, Campo Durán, Luján de Cuyo, La Plata, and Plaza Huincul. Important assets of the naval fleet, naval workshops, ports, and other state oil plants were transferred as well. This process of transferring stocks and the sale of non-strategic assets from YPF meant revenue for the

state of \$2.059 billion, and a decline of 40 per cent in YPF reserves and 25 per cent in oil extraction between 1991 and 1993.¹⁴

Finally, the third stage relates to the very process of YPF's privatization (September 1992–May 1999). Once the state company had been restructured to resemble a private oil company, the only thing remaining was “to close” the process by trading YPF shares on the stock market. At that time, the government of Carlos Menem, pressured by the weight of the foreign debt, expected that the sale of YPF would allow the cancellation of pension debt by using assets to pay current liabilities. After many twists and turns regarding the official privatization project, in September 1992 the Law No. 24,145, the Federalization of Hydrocarbons Law, was enacted. From this law, the federal government reserved 51 per cent of the shares of the new corporation that would replace the state company. On 29 June 1993, YPF shares began trading on the local stock exchange. For 43.5 per cent of the shares, \$3.04 billion were received at a rate of \$19 per share. Of the total sales, the federal government received \$1.7 billion, and the rest was for the shareholding provinces, company staff, and bondholders of pension liabilities. After the initial public offering, the shares were structured so that 45.3 per cent were held by the private sector and 54 per cent by the federal government, provinces, and the company personnel; the distribution by nationality was 34 per cent for foreign shareholders and 66 per cent for Argentine shareholders.

One unique technical aspect of the privatization of the state oil company was the fact that the revenue from the sale was not intended to cover expenses or deficits but to consolidate public debt. By cancelling provisional debt and the purchase of debt, the so-called bonds of security debt consolidation and other debts in cash, for a nominal value of nearly 3 billion Argentine pesos, were rescued.¹⁵ However, considering the valuation that the Ministry of Economy set for every action, there is no doubt that they were heavily undervalued.¹⁶ In this manner, the state gave away 80 per cent of its shares over time (despite the law passed in 1993 stipulating that the state should reserve for itself 51 per cent of the shares). The decoupling of public agencies from the oil company was progressive until 1999, when Spanish multinational Repsol bought a 98.23 per cent stake in YPF, taking immediate control over the company's business strategies.

The 2000s and the Reorientation of Oil Policies

After the traumatic events of December 2001 and the crisis of democratic institutions—five presidents were elected between December 2001 and January 2002—the Legislative Assembly appointed as interim president Eduardo Duhalde, a Peronist who at the time served as senator for the province of Buenos Aires. A few days after taking office, the new government enacted the Law of Public Emergency and Exchange System Reform No. 25,561, which marked—through the devaluation of the national currency—the end of the exchange convertibility of “1 Argentine peso equal to 1 US dollar.” This measure changed the structure of costs and internal relative prices, deepening the financial crisis by bringing about a 10 per cent drop in gross domestic product, with a marked loss of employee purchasing power of around 30 per cent on the profits of large companies because of the “pesofication” of dollar debts. Finally, the law gave special powers to the executive to run the economy, given the situation of systemic crisis throughout the country.

However, it was not until the governments of Néstor Kirchner and Cristina Fernández de Kirchner that a shift in state intervention in the economy became evident. This reorientation, which aimed to boost productive processes, led to a rate of economic growth rarely seen in the history of Argentina; this was especially the case between 2003 and 2008. An aggressive policy of job creation and wage recovery energized the domestic market while substantially reducing rates of poverty and destitution. This dynamic economic structure was safeguarded by macroeconomic balance (fiscal and trade surpluses) in addition to a successful restructuring of the defaulted debt carried out in 2005 and 2010.¹⁷ However, the central part of the oligopolistic economic structure of large price makers and the concentration and foreign ownership of the economy changed little from previous decades. This structure had a strong impact on the dynamics of the oil industry and decision-making in the sector. In this sense, the change in governmental orientation in energy policy, prone as it was to practise state intervention in the economy, transformed the conception of energy from a “market good” to a “common good,” to once again borrow Pablo Heidrich’s definition (see his chapter in this volume). Far from considering energy a “political good,” with a state

monopoly over the entire sector, Argentina faced constant energy crises in 2003, due to at least two concurrent processes: the sustained growth in domestic demand for energy, and the establishment of private oligopolistic control throughout the YPF supply chain and in the energy sector in general.

As for oil policy, the 2000s marked a change in the role of the state in the dispute over rent with private companies, as well as an end to the completely unregulated market of the 1990s. First, a fiscal policy of income capture was developed, accompanied by internal pricing management. With Decree No. 310 of 2002, the federal government re-established export duties of 20 per cent on crude oil and 5 per cent for refined products. This tax was modified in May 2004, when export duties were increased to 25 per cent (Resolution No. 337 of 2004), and then again in August of that year, when it became “movable.” This meant that if the price of West Texas Intermediate (WTI) was below \$32 per barrel, the aliquots were 25 per cent, but if the international price was above \$32 per barrel, the aliquots were between 3 and 20 per cent. In January 2007, the government enacted Law No. 26,217, which extended for five years the validity of the export duty on mineral oils. Thus, there was a new scheme, much more aggressive in terms of oil rent capture, based on three fluctuating determinants: (1) if the international oil price (WTI) is between \$45 and \$61 per barrel, the export duty is 45 per cent; (2) if the oil price is lower than \$45, the federal government has ninety days to define a new system of aliquots; (2) if the international price exceeds \$61 per barrel, the formula assumes that no matter the increase of the price per barrel in the international market, exporters receive only \$42 per exported barrel (value cut-off), with the difference being captured by the federal government.

Second, it carried out a deepening of provincial control over the deposits. In October 2006, the “Federal Oil Agreement” was reached, which resulted in the enactment of Law No. 26,197, the Federal Hydrocarbons Law, in December of that year. The Federal Hydrocarbon Agreement was settled with the signature of the president of the nation and those of the governors of the producing provinces. This was done in order to enforce the second paragraph of article 124 of the Constitution (which had already been extended by Decree No. 564 of 2003), where the domain of the provinces over natural resources in the case of hydrocarbons is enshrined.¹⁸

In this way, both the agreement and the law deepened the policy of fragmented sovereignty regarding the decision-making and policy guidance on oil, which started with the constitutional reform of 1994.

In the third place, fiscal incentives to productivity in the context of a prolonged decline were implemented in both oil extraction and private investment in exploration. In November 2008, the government, under Decree No. 2,014 of 2008, launched the “Oil Plus” and “Refining Plus” programs, seeking to stimulate investments in exploration, mining, and refining, and to promote the incorporation of reserves. The first plan, Oil Plus, looked for new investments that increased the levels of production and reserves. Tax incentives would be used to cancel export duties. The aim was for the transfer of the costs of production to indirectly impact the improvement in end crude oil prices for the domestic market. Meanwhile, Refining Plus sought to expand idle oil refining capacity, stagnant for many decades. This plan also fostered tax incentives for new refineries or the expansion of refining capacity in diesel and premium gasoline. Additionally, a special regime of benefits for small non-integrated refiners was established. However, these goals went unrealized due to the reluctance of private companies to risk investments in infrastructure while seeking to explore in areas with proven reserves, discovered by YPF.¹⁹

Finally, the federal government sought an extension of state participation and the “Argentinization” of public services. With the intention of restarting state participation in productive activities in the oil industry, the company Energía Argentina Corp. (ENARSA) was established by Law No. 25,943 in December 2004. ENARSA was granted the ownership of exploration permits and concessions for all offshore blocks in order to attract venture investment strategically associated with the new state company. Nonetheless, according to company information, by the end of 2012, the three consortiums formed for all offshore oil exploration have not yet achieved the main goal of expanding proven oil and gas reserves. At the same time, toward the end of 2007 and the beginning of 2008, boosted by the federal government, the Petersen Group Corp., owned by the Eskenazi family, bought 14.9 per cent of the shares of YPF, with an option to acquire an additional 10 per cent within five years (by the end of 2011). The operation was performed for a total of \$2.235 billion (the group contributed \$100 million). It was funded almost entirely by debts contracted by

the buyers, \$1.017 billion through a loan from Repsol itself, and another loan of \$1.018 billion from a pool of banks that included Credit Suisse, Goldman Sachs, BNP Paribas, and Itaú.

The resulting Argentinization of YPF shares with the Petersen Group's entry was a bid to halt the industry's decline. The government considered it easier to discuss, discipline, and negotiate with domestic entrepreneurs.²⁰ However, Repsol had already begun disinvestment in YPF, and the Petersen Group's entry with a large debt assumed by the company of which it was now shareholder contributed to the draining short-term profit-seeking strategies by which the company sought to assume financial commitments, fund investments that Repsol had elsewhere (which were considered strategic), and transfer much of the profits to the shareholders. Clearly, the efforts of the Eskenazi family ended up failing, generating huge financial costs for YPF. So, what course did YPF chart under the management of the Spanish Repsol?

Repsol in Argentina and the Dismantling of YPF, 1999–2012

The analysis of Repsol's performance in Argentina allows us to understand and explain a central part of the course and outcome of YPF. The purchase in 1999 of the entire stake enabled Repsol to integrate a large stock of hydrocarbon reserves that in turn enabled it not only to vertically integrate (balancing its upstream business with the downstream), but also to position itself as one of the world's ten largest oil companies in terms of reserves and market capitalization.²¹ However, the arrival of the Spanish company meant an aggressive restructuring plan of strategic assets and a set of planned disinvestments in order to capitalize Repsol's headquarters in Spain, which was highly indebted, to the detriment of companies that it now controlled around the world. From an analysis of the company's balance sheets from 1999 onwards, it can be said that YPF developed two major mechanisms of capitalization via the asset disinvestment that Repsol considered "non-strategic." The first was the transfer of assets from controlled companies to its headquarters; and the second was the sale of assets to third parties that would end up representing revenues of \$3.5 billion for the Spanish company. Regarding the first mechanism, between 1999

and 2001, Repsol-YPF successfully transferred to its Spanish headquarters holdings in Peru (YPF Peru and Refiners of Peru) and Brazil (YPF Brazil Corp.), as well as those in Ecuador and Colombia, totalling approximately \$535 million. Repsol-YPF also disposed of its assets in Venezuela through Maxus Venezuela and Maxus Guarapiche, totalling \$70 million. Finally, Repsol-YPF transferred in 2002 its investments in Bolivia (Andina and Maxus Bolivia), for a total of almost \$900 million.

Regarding the second mechanism, in 2001 Repsol got rid of the YPF stake in Crescendo Resources L. P., a US gas-producing company, for \$624 million. The assets that YPF had in Chile (the Trans Andean Pipeline) were also sold for \$66 million. The same happened to YPF shares in International Canada when the Bitech Petroleum Corporation was sold to the Russian Lukoil, and in Indonesia when the company got rid of its holdings in YPF Blora, YPF Maxus Southeast Sumatra, Java Baratlaut YPF, YPF Madura Barat, YPF Poleng, and PT IIAPCO Services, which in 2003 sold YPF Indonesia for \$139 million. In Argentina, it first sold YPF's stake in Electricidad Argentina Corp. and then transferred to Eg3 investments (assets leased at Petrobras), such as PBB Polisor Corp. and Petroquímica Ensenada Corp.

Both mechanisms resulted in a decrease in the capitalization of YPF and the end of its international integration strategy (expanded during the 1990s since the administration of former president José Estenssoro). Through YPF, Repsol reflected the development of a strategy for over-exploitation of natural resources as a mechanism of capital accumulation in Argentina deployed by transnational capital. This strategy can be translated into concrete terms. In relation to oil drilling between 1999 and 2011, it fell 39,637 barrels per day (32 per cent), while YPF's extraction suffered a decline of 20,126 barrels per day (40 per cent). In this sense, Repsol-YPF explains the 51 per cent decline overall of extraction since Repsol-YPF took control.

During the same period and taking into consideration the natural gas market, while the country increased its production by 466 cubic feet per day, the production of Repsol-YPF fell 221 cubic feet per day. That is, if the performance of Repsol-YPF in the period is excluded, the remaining companies of the Argentine gas market increased production at 689 cubic feet per day (26 per cent). Between 1999 and 2011, the country lost 31 per

cent of its proven oil reserves (963 million barrels), while YPF's proven oil reserves fell 45 per cent (344 million barrels). The downfall of YPF's proven oil reserves explains the 36 per cent drop in the country's total reserves. In this sense, if in 1999 YPF represented 25 per cent of total proven oil reserves, in 2011 it only accounted for 20 per cent.

The maturation of the company's main sources could explain part of the decline in production and reserves. But if this geological factor was not associated with the strategy of capital accumulation deployed by Repsol-YPF in the short term (extracting at a higher rate than reserves stocks were replenished), no one could explain the declining performance of the company in the long run. Associated with these processes, between 1999 and 2011, YPF invested in an average of 11 exploration wells per year, compared to an annual average of 110 wells during the 1980s (for a 90 per cent reduction).²² Finally, the jolts to the YPF imports meant a very high cost in terms of the surplus oil trade balance, and energy in general, which would worsen as time went on. According to official statistics from the Ministry of Energy, while YPF did not import energy products in 1988, ten years later it had imported energy products worth \$96 million. In 2011, the amount rose to \$1.18 billion (a 1,125 per cent increase between 1999 and 2011). Indeed, the country's largest oil company developed a scheduled disinvestment in extraction and exploration, resulting in a significant reduction of reserves not only for the company but for the market as a whole. Much of YPF's strategy was focused on the most profitable segments of the industry, such as sales of liquid fuels to the domestic market (especially expensive fuels such as premium gasoline and diesel), in which it controlled at least 50 per cent of total sales. The systematic decline in oil extraction, refining, and investment in exploration was compounded by the pressure exerted by energy imports on the national trade balance. In 2011, this totalled \$9.397 billion, an amount almost equal to the total trade surplus. Also, the relationship between imports and exports of energy ended up being negative, at \$2.931 billion in 2011. In this sense, the decline in energy production, the impact of the deterioration of the trade balance, and the renewed political power of the federal government, which obtained 54 per cent of the votes in the 2011 elections, were circumstances that hastened the economic course already adopted. President Kirchner could then take steps to reverse the decline of the productive sector. In this context, the

state recovered YPF, its historic flagship company, and regained the ability to exert sovereignty over energy resources.

The Expropriation of YPF and the Road to Energy Self-Sufficiency

The ongoing transformations in the national oil sector reflect the revitalization of the state's role in planning and economic development. After twenty years of structural reforms in the oil industry, which included the sale of the most important state company in Argentina's history, the laws and decrees enacted since late 2011 represent an attempt to reverse the neoliberal trend of full deregulation in the field of hydrocarbons. The way to end the institutionalized privileges accorded to oil companies in the process of capital accumulation, the result of the neoliberal structural reforms described above, began in October 2011 with the enactment of Decree No. 1,722. The decree ended the differential regime, which since 1989 exempted the settlement of up to 70 per cent of foreign exchange earned from commodity exports of mining and oil activities. Having changed the circumstances that gave rise to the tax exemptions, it was necessary to re-establish mandatory income and trading on the exchange market for all foreign exchange coming from export operations of oil and mining companies, in accordance with Decree No. 2,581 of 1964. This policy was of the utmost importance since the projections of capital flight for 2011 were estimated to reach the historical record of 2008, close to \$23.165 billion, almost half of the reserves of the Central Bank.

Several studies demonstrate that the objective of the private energy companies in the country, after the deregulation and privatization of hydrocarbons, has been to favour the maximization of profits in the short term and the remission of profits abroad.²³ This logic of capital accumulation is structurally incompatible with the need to have enough energy available to ensure the development of national production, at a cost that ensures the competitive advantage of products produced in the country both in the domestic market and abroad. To meet these goals requires national long-term planning and the rational exploitation of resources, the search for new energy sources, and energy diversification ensuring these sources' future availability. As part of these social and economic concerns,

two transcendent laws were sanctioned in order to reverse the pro-market organization of the industry.

Law No. 26,741, the Hydrocarbons Law, was approved in May 2012 with the support of a large majority in both parliamentary chambers. This law declared the achievement of “self-sufficiency in oil and exploration, exploitation, processing, transportation and marketing of hydrocarbons seeking to ensure economic development with social equity, the creation of jobs, increased competitiveness of the different economic sectors, and the equitable and sustainable growth of all provinces and regions” of national public interest for the country. Overall, the priorities and the principles of the national oil policy established by the law sought to reverse the long cycle of neoliberal dominance in the exploitation of hydrocarbon resources in Argentina, giving the state a central role in the organization and development of this industry. The same law declared the expropriation of 51 per cent of the assets of YPF and YPF Gas (owned by Repsol).²⁴ YPF is a state instrument to revive entrepreneurial activities in the sector, in line with other major industrial countries in the region (Brazil and Mexico), as well as the rest of the countries with reserves of oil and gas (Ecuador, Bolivia, Venezuela, and Colombia). At the same time, a Federal Board of Hydrocarbons composed of the Ministry of Economy, the Ministry of Federal Planning, Public Investment and Services, the Ministry of Labour, the Ministry of Industry, and the provinces, was created for the federal development of a national energy policy. According to the federal government, it was necessary to reverse the trend toward venture investment in oil exploration shown by the private oil companies, especially those controlled by Repsol-YPF.

Thus, in June 2012, Decree No. 1,277 was sanctioned. It sought to regulate Law No. 26,741, and to advance an issue that that law had not addressed. In order to comply with the principles of the new rules in the national oil industry, the Commission for Strategic Planning and Coordination of the National Hydrocarbons Investment Plan was established to carry forward its work. The commission was tasked with ensuring and promoting the necessary investments to reach self-sufficiency in hydrocarbons and establishing measures to control domestic prices. Up until the enactment of the law that expropriated 51 per cent of YPF, domestic prices were set by the logic of the oligopolized operation of private

firms. The commission seeks to integrate public and private, national and international capital in strategic alliances aimed at the exploration and exploitation of conventional and unconventional hydrocarbons. It is tasked with the promotion of industrialization, the marketing of hydrocarbons with high added value, and the protection of consumer interests when it comes to the price, quality, and availability of hydrocarbon derivatives. In short, the new orientation of the national hydrocarbon policy entails the enormous challenge of reversing two decades of full decline in the performance indicators of the industry and over-exploitation of hydrocarbon resources as a strategy of accumulation for private enterprises. In the very short term, however, the new legal structure of the oil market and the shareholding structure of YPF have resulted in some attenuation of previous trends. If YPF oil extraction fell, between 1999 and 2011, at an annual cumulative rate of -4.1 per cent (higher than the -3.0 per cent for the whole country), the extraction of YPF rose +4.5 per cent between 2012 and 2015 (while the other companies fell at a rate of -4.2 per cent per annum), thereby breaking the downward trend of the thirteen previous years since Repsol's arrival. As for the extraction of natural gas, between 1999 and 2011, the decline in YPF was -1.5 per cent per annum (when the country's total was -0.9 per cent), but since 2012, the trend has reversed. Between 2012 and 2015, YPF's natural gas production grew at an average annual rate of 8.4 per cent (showing a clear change of direction as the rest of the companies in the local market fell -4.0 per cent per annum in the same period).

Limits of State Energy Intervention

Economic development is closely linked to the availability of energy to power the production sector. To sustain accelerated growth rates, it is necessary to have abundant energy. At the same time, this energy must be provided at costs that allow for a transformation of the energy equation in a vector of competitiveness for the rest of the economy. In the 1990s, it was argued that globalization needed a minimum level of state intervention in the economy to expand the market logic, which will allow the internationalization of companies and the opening of national economic boundaries for increased trade, greater global integration, and higher

levels of development. Far from fulfilling these “prophecies,” financial globalization allowed the advance of multinational companies from the core countries over peripheral markets, implying a deterioration of national states’ capacity to control large corporations. In this sense, Spanish companies found an opportunity to extend their reach by participating in the privatization of public companies in various Latin American countries. The case of YPF’s purchase by Repsol is a perfect example of this process. No doubt, when the federal government lost control of YPF, it was failing to comply with the strategic production objectives that gave rise to it. Since it was created in 1922, YPF had managed to expand oil extraction and the supply of energy in all its forms, developing a robust industrial and technological production system that was recognized not only nationally, but also regionally. It was also responsible for expanding the national hydrocarbon border after decades of exploration investment. In addition, YPF acted as a witness company in all segments of the oil industry, controlling domestic prices and seeking energy self-sufficiency, which was achieved for the first time in the early 1980s. Neoliberalism left its mark on the national oil industry and the region. After the obvious failure of the model of private management in Argentina, the country is again facing a double challenge: first, to achieve energy self-sufficiency and sustain industrial demand, resolving the deficit in the balance of trade and sustaining economic growth; and second, to discipline private companies that developed a system of sub-scanning and exploitation, based on the new guidelines of the national hydrocarbon policy.

After the expropriation of YPF, did the federal government take strategic control of this industry? No. YPF was able to reverse the decline of its production and, with strong state support, deploy an extensive process of profit reinvestment to reverse its poor sector performance indicators, while the company embarked on a learning curve aimed at shale resources exploitation. However, YPF’s performance was not matched by the rest of the private oil companies, which together continued to diminish their production, thereby slowing the recovery of the sector. With the change of government in December 2015, the new state administration abandoned energy self-sufficiency as a priority objective of the energy sector, and returned to the logic of free trade liberalization and sector deregulation. Again, the pendulum has swung in the Argentine political system, leading

to the denationalization of the main and most important companies in Argentina. Economic power and the lack of stability in the orientation of public policies has emerged as a (old and persistent) structural obstacle to economic development.

NOTES

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- 1 Comodoro Rivadavia is a city located in the province of Chubut, in the southern part of the country. This city is well-known as the capital of the Argentine oil industry.
- 2 Ignacio Sabbatella and Esteban Serrani, “A 20 años de la privatización de YPF. Balance y perspectivas,” *Voces en el Fénix* 2 no. 10 (July–December, 2011): 8.
- 3 Ana Castellani and Esteban Serrani, “La persistencia de los ámbitos privilegiados de acumulación en la economía argentina. El caso del mercado de hidrocarburos entre 1977 y 1999,” *H-Industri@* 4, no. 6, (January–June 2010): 12.
- 4 Gonzalo Calleja, “La política energética del gobierno de Alfonsín (II),” *Realidad Económica*, no. 214 (2005): 114–17.
- 5 This chapter only analyzes the transformations of the Argentine oil market. For a comparative analysis of the major changes in the Latin American oil matrix generated by the structural reforms of the 1980s, and their economic and institutional impacts, see Esteban Serrani, “América Latina y su política petrolera frente a las últimas tendencias internacionales. Perspectivas regionales a partir del análisis de Brasil y Argentina,” *Foro Internacional* 53, no. 1 (January–March 2013): 182–213.
- 6 World Bank, *World Development Report 1987* (New York: World Bank/Oxford University Press, 1987).
- 7 For a detailed analysis of the macroeconomic impacts, see Esteban Serrani, “Estado, empresarios y acumulación de privilegio. Análisis de la industria petrolera argentina, 1988–2008” (PhD diss., Universidad de Buenos Aires, 2012), and Mariano Barrera, Ignacio Sabbatella, and Esteban Serrani, *Historia de una privatización: Cómo y por qué se perdió YPF* (Buenos Aires: Capital Intelectual, 2012). Regarding the social and employment impacts, see Hernán Palermo, *Cadenas de oro negro en el esplendor y ocaso de YPF* (Buenos Aires: Antropofagia, 2012).
- 8 The concessions of YPF deposits represented less revenue than the actual cost of the company. YPF’s assets were estimated at \$20 billion, despite the fact that the consultant valued them between \$3 and \$4 billion. However, Decree No. 2,778 of 1990 estimated only \$1.17 billion, significantly less than the consulting firm Gaffney, Cline and Associates. See Roberto Kozulj and Víctor Bravo, *La política de desregulación petrolera*

- argentina. Antecedentes e impactos* (Buenos Aires: Centro Editor de América Latina, 1993).
- 9 YPF, *Memoria de YPF 1993* (Buenos Aires: Library of the Ministry of Economy, 1994). Note: all dollar figures given in this chapter refer to US currency.
 - 10 José Estenssoro was related to Bolivian president Víctor Paz Estenssoro, who carried out a deep reform of that country's oil industry in 1955, the so-called Petroleum Code that allowed the entry of private capital into the oil business.
 - 11 The Vizcacheras site in Mendoza was adjudicated to Perez Companc (in partnership with Occidental Exploration of Argentina); El Tordillo in Chubut to Tecpetrol (with Santa Fe Energy); and Puesto Hernández in Neuquén and Mendoza, and Astra (in partnership with REPSOL). The remaining site, El Huemul (Santa Cruz) was left to Austral Total (of France).
 - 12 More prudent investigations assured that the four areas, representing only 18 per cent of the total production of the contracts converted, generated a loss of \$150 million for the state. Nicolás Gadano and Federico Sturzenegger, "La privatización de reservas en el sector hidrocarburífero. El caso de Argentina," *Revista de Análisis Económico* 13, no. 1 (June 1998): 75–115. Besides the \$150 million in the most conservative projections, or \$250 million in the least conservative ones, it is clear that the strong undervaluation of state assets held by the various interest groups represented a net income transfer to the players concentrated in the industry.
 - 13 Roberto Kozulj, *Balance de la privatización de la industria petrolera en Argentina y su impacto sobre las inversiones y la competencia en los mercados minoristas* (Santiago de Chile: CEPAL, 2002)
 - 14 Kozulj, *Balance de la privatización de la industria petrolera en Argentina*; and YPF, *Memoria de YPF 1993*.
 - 15 YPF, *Memoria de YPF 1993*.
 - 16 Mariano Barrera, "Subexploración y sobreexplotación: La lógica de acumulación del sector hidrocarburífero en Argentina," *Apuntes para el cambio*, no. 2 (March–April 2012): 22–5; Kozulj, *Balance de la privatización de la industria petrolera en Argentina*, 22–4; Daniel Montamat, *La energía argentina. Otra víctima del desarrollo ausente* (Buenos Aires: Editorial El Ateneo, 2005); Ignacio Sabbatella, "La política petrolera de la posconvertibilidad: De la herencia neoliberal a la expropiación de YPF," *Argumentos*, no. 14 (January–June 2012): 168–9; Serrani, "América Latina y su política petrolera," 198–9. In fact, the clearest sign of the undervaluation of shares in YPF was the fact that a day after the initial public offering, they cost 13.9 per cent more, reaching \$21.87 per share on the New York Stock Exchange. This meant an immediate net transfer of resources to the new YPF shareholders of about \$420 million.
 - 17 In both restructuring processes (2005 and 2010), the Argentine government managed to normalize the situation with 92.4 per cent of default debt. However, the remaining 7.6 per cent, mostly "vulture funds," were henceforth litigated in the New York courts, and they were able to deploy their lobbying power to collect 100 per cent of their claims plus interest, even though they bought default bonds at auction price. In 2015, a New York court ruled against Argentina, and in an unprecedented interpretation of the *pari*

passu clause—it granted the vulture funds the right to collect 100 per cent of their claim plus interest, even against the other 92.4 per cent of the creditors who had accepted a withdrawal, interest reduction, and extension of terms in the debt restructuring of 2005 and 2010—allowed it to collect nearly \$10.5 billion—that is, a global return of up to 1,270 per cent compared to its initial investment.

- 18 These hydrocarbon-producing provinces are Tierra del Fuego, Antártida e Islas del Atlántico Sur, Santa Cruz, Chubut, Río Negro, La Pampa, Neuquén, Mendoza, Salta, Formosa, and Jujuy.
- 19 Serrani, “Estado, empresarios y acumulación de privilegio,” ch. 5. However, none of these surplus production incentive schemes were effective, as they failed to halt the decline in domestic supply that led to the loss of self-sufficiency in 2011.
- 20 Alice Amsden, “Diffusion of Development: The Late-Industrializing Model and Greater East Asia,” *American Economic Review* 81, no. 2 (May 1991): 282–6; Robert Wade, *El mercado dirigido: La teoría económica y la función del gobierno en la industrialización del este de Asia*, trans. Mónica Utrilla de Neira (Mexico City: Fondo de Cultura Económica, 1999).
- 21 The business network that acquired the capital stock of Repsol Spain allowed it access to \$15.5 billion worth of credit for the purchase of YPF, which was offered by a consortium of financial institutions, many of them shareholders of the Spanish company, such as the BBV and La Caixa, along with others like Goldman Sachs, Merrill Lynch, Citigroup, and Union Bank of Switzerland.
- 22 While YPF was still a state company.
- 23 Barrera, “Subexploración y sobreexplotación,” 32–3; Kozulj, *Balace de la privatización de la industria petrolera en Argentina*, 74–6; Sabbatella, “La política petrolera de la posconvertibilidad,” 155; Serrani, “Estado, empresarios y acumulación de privilegio,” chs. 5 and 7; Serrani, “América Latina y su política petrolera,” 201–3.
- 24 The expropriation of YPF did not imply a strong public discussion about the negative impacts on the environment or climate change of an energy matrix with strong dependence on fossil fuels: around 85 per cent of primary energy is produced by hydrocarbon sources. However, since the expropriation of YPF in 2012, environmental issues linked to the oil industry were underscored by two situations. The first was raised by the minister of economy, Axel Kicillof (2012–15), who in April 2012 initiated a public discussion about the environmental liabilities that Repsol had left in Argentina. However, an ex-post analysis shows that the Argentine government used the claim regarding environmental liabilities as an instrument to discuss the price of compensation to be paid to Repsol for the expropriation. In the second case, while the federal government was seeking to regain energy sovereignty, in 2013 it encouraged YPF to sign a strategic agreement with Chevron for the development of the field named Vaca Muerta (one of the world’s largest unconventional reservoirs). Opposition deputies in the Legislative Assembly denounced the agreement because the text of the agreement was not public (the text was only known by the two companies), and because it could imply damages for the country, as Chevron had caused, years ago, in the Ecuadorian Amazon. The complaint was resolved by the Supreme Court, which forced YPF to publish the agreement. The company objected that the contract had “confidential

information and sensitive operational data, and its publication could harm YPF's economic performance on the market." In a paradox of history, one of the Opposition deputies who in 2014 had filed a complaint against YPF, was nominated, after the change of government in 2015, to run the Anti-Corruption Office. From her new position in government, she blocked the publication of the contract, now employing the same arguments that YPF presented in 2014.

