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Illegalisms of the Powerful in Argentina's Energy Sector: Selectivity, Social Harm and Accumulation by Dispossession

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Abstract

This article examines how the illegalisms of the powerful, perpetrated by financial actors in the Global North, inflict significant social harm on peripheral economies operating with legal and social impunity. This dynamic is investigated through a qualitative case study focusing on the litigation financed by the Burford Capital fund against Argentina for the expropriation of the oil company YPF SA, as well as through the analysis of a documentary corpus composed mainly of the fund's own annual reports. It is argued that these actors transform legal systems into a technology of power to execute a contemporary form of accumulation by dispossession, thereby shaping a (neo)colonial geopolitics of impunity. The findings reveal the specific mechanisms of this dispossession: "litigation investment" is characterised by its inherent asymmetrical nature, due to low risk and extraordinary profit. Furthermore, the "creation of secondary markets" for legal claims enables funds to secure profits and reduce their exposure to risk even before a final judgment is made. The article's primary contribution to the field of critical criminology is twofold. First, it offers a strategic theoretical hybridisation of Foucauldian analytics, Latin American critical criminology and zemiology to analyse harms that are not classified as crimes according to criminal law. Second, by shifting the focus from the concept of "crime" to that of "illegalism" and "social harm," the work provides empirical content to concepts such as "accumulation by dispossession" and strengthens a criminological perspective from the Global South.

Keywords: Selectivity; impunity; social harm; energy sector.

Introduction

This article addresses an urgent research question: How do the illegalisms of the powerful, implemented by financial actors in the Global North, use legal systems as a technology of power that produces accumulation by dispossession and extremely high social harms in peripheral economies? The litigation over the expropriation of YPF, Argentina's largest oil company, led by Burford Capital, is a paradigmatic case when it comes to approaching these issues, as it allows for an analysis of the specific mechanisms of this dynamic and reveals a (neo)colonial geopolitics of impunity.

To answer this question, the article argues that financial actors such as Burford Capital use the legal systems of the Global North as a sophisticated technology of power to execute a contemporary form of accumulation by dispossession. The purpose is to extract wealth from peripheral economies such as that of Argentina, causing social harm of proportionate magnitude with minimal risk, total legal impunity and complete social immunity. This main argument is based on two pillars: first, that the legal system operates as a mechanism of dispossession rather than justice; and second, that the "commercialisation of litigation" is the key tool for this dispossession, through two interconnected strategies: investment in litigation and the creation of secondary markets.

From a methodological viewpoint, the research adopts a qualitative design and is part of a case study approach. This article is the result of participation in a broader research project on the relationship between the illegalisms of the powerful, new forms of colonialism and the production of social harm in three strategic sectors in Argentina: energy, agro-industry and fishing.[1] Specifically, regarding the work carried out for this article, the main technique used was the construction and analysis of a documentary corpus, focusing on the annual reports of the Burford Capital fund. Since 2010, the Burford hedge fund has published an annual report detailing the results obtained for its investors. In addition to systematically addressing the entire collection of annual reports, the analysis is complemented by the study of other sources such as regulations and court cases, as well as semi-structured interviews with key informants[2]. Foucault's (2005) archaeological perspective was used to interpret the material, which allows for the analysis of discursive practices in their materiality.

To develop these issues, the article is structured in five parts. Section 2 reviews the relevant literature and theoretical frameworks that combine Foucauldian analytics, Latin American critical criminology and zemiology – which is the study of social harms. Section 3 describes the context of the case and the key landmarks of the litigation. Section 4 presents the empirical analysis, highlighting the mechanisms of commercialisation of the legal dispute. Finally, Section 5 discusses the findings in relation to the dynamics of global accumulation and offers some concluding considerations.

Literature Review and Theoretical Framework

As Alessandro de Giorgi (2016) reminds us:

> The capitalist principle of exchange of equivalents provides ideological legitimation to imprisonment through the same mystification that makes labour a 'fair' contract … The legal fiction of punishment as retribution conceals the disciplinary dimension of prison, just as the economic fiction of the labour contract as an exchange of equivalents conceals the exploitative dimension of wage labour. (p. 19)

Following the reasoning proposed by de Giorgi, it is possible to affirm that traditional criminological analysis and criminal justice operation are based on a series of fictions: (1) all socially relevant harm is criminalised by criminal law; (2) every crime shall be subject to the application of a penalty; (3) the penalty will retribute the damage caused; and (4) the penalty will prevent the commission of future crimes and thus prevent further harm.

In the pioneering work of Edwin H. Sutherland (1999), it was observed that traditional criminology had focused almost exclusively on the forms of criminality associated with the poor and the dispossessed, with scant attention paid to the phenomenon of white-collar crime. But it is the Foucauldian distinction between "illegalisms" and "delinquency," and the subsequent function of criminality, that destabilises some of these fictions. First, the distinction between illegalisms and delinquency undermines the idea of equality before the law and shows the articulation between criminality, selectivity and the invisibilisation of the illegalisms of the powerful (Foucault, 2002). Contrary to the fictions of legal and classic criminology, the penal system is not purely and simply oriented towards repressing illegalisms. On the contrary, it differentiates between them, ensuring their general economy. Above all, it is a way of managing illegalisms selectively, drawing limits of tolerance and giving certain freedoms while putting pressure on others. It is a way of excluding some and making others useful. In short, it is a way of neutralising the former and taking advantage of the latter (Dallorso & Seghezzo, 2025).[3] In this sense, the legal system becomes a kind of technology of power (Foucault, 2008) – that is, a set of mechanisms, a network of relationships between heterogeneous elements, including rituals, times, discourses, institutions, regulations, laws and administrative measures, that produces a differential administration of illegalisms with selective and asymmetric effects.

The field of criminology has focused principally on the illegalisms of the powerless – studies of what may be called "low-level crime," "everyday crime" or "street crime" – and estimates suggest that publications dealing with illegalisms of the powerful in the most prestigious criminology journals are absolutely marginal (Michalowski & Kramer, 2006; Moosavi, 2019; Rothe & Kauzlarich, 2016; Tombs & Whyte, 2003). Furthermore, the relatively limited literature on illegalisms of the powerful has serious limitations. Like other subfields of criminology, research on illegalisms of the powerful remains largely Global North-

centric, often drawing on Global North concerns, perspectives and literature. Therefore, while it is true that, in recent years and specifically in critical criminology, there has been a renewed, sustained and growing interest in the illegalisms of the powerful (Bittle et al., 2018; Minkes & Minkes, 2008; Pontell & Geis, 2007; Rothe & Friedrichs, 2018; van Erp et al., 2015) – characterised precisely by denouncing the silences and absences in this field of knowledge – it is symptomatic that these investigations have focused on case studies and perspectives produced in the Global North for the Global North. The role of academics from peripheral countries in these debates has been marginal (Faraldo-Cabana, 2018; Iturralde, 2023; Liu, 2009; Zysman-Quirós, 2019).[4]

However, and regarding the illegalisms of the powerful, some early contributions of Latin American critical criminology have been an exception to this Global North-centric rule. The concerns of Latin American critical criminology update the critique of these fictions and their effects on the functioning of the penal system: when we speak of the illegalisms of the powerful, we are talking about practices that, although profoundly harmful, in many cases are not typified in the normative plexus. If they are typified, they are almost never criminally prosecuted, and if they are criminally prosecuted, they almost never lead to convictions (Anitua, 2025; Pegoraro, 2015; Seghezzo, 2024; Zaffaroni, 2022).[5]

The works of Juan S. Pegoraro, a leading figure in Latin American critical criminology who writes on organised economic crime in Argentina in particular and in neoliberal regimes in general, are an undisputed reference point for this same strategic ensemble (Sozzo, 2010). In his vast academic output, Pegoraro has foregrounded how the illegalisms of the powerful fulfil a positive function for the social order and its reproduction. He explicitly points to the need to question the legal-illegal binary opposition (Pegoraro, 1985, 1989, 1999).[6] On the one hand, such practices cannot be identified based on codified offences, as they are frequently not prohibited by the law and their harmful effects are often not acknowledged. On the other hand, organised economic crimes function in a legal-illegal continuum and, at the same time, produce extremely high social harm with new forms of accumulation and colonial relations. However, these practices, which cause significant social harm, benefit from a high level of legal impunity and social immunity.

In recent years, the study of social harm, or zemiology, has gained ground. This approach challenges traditional criminological analysis. Rather than emphasising the investigation of harmful behaviours that are defined as crimes under regulations, or the practices of penal agencies that manage them, it problematises a particular type of social relationship within specific spatial and temporal coordinates. These relationships can have deeply damaging social effects, but they are not necessarily classified as crimes.[7] In this sense, this perspective is particularly concerned not only with the harmful practices carried out by states, but also with economic and financial practices (Alvesalo, 1999; Canning & Tombs, 2021; Copson, 2011; Hillyard & Tombs, 2017; Pemberton, 2007; Soliman, 2019).

But addressing the harm caused by the illegalisms of the powerful in the Global South also requires a perspective that is sensitive to its (neo)colonial dimension. Recently, critical criminologies, and more specifically "counter-colonial," "postcolonial," "decolonial" and "Southern" criminological perspectives, have shown renewed interest not only in producing archives of and for the Global South, but also specific analytical frameworks (Aas, 2012; Agozino, 2003; Alagia & Codino, 2019; Aliverti et al., 2021; Brown, 2017; Carrington & Hogg, 2017; Ciocchini & Greener, 2021; Cunneen, 2018; Goyes, 2019; Lee & Laidler, 2013; Medina, 2011; Zaffaroni & Codino, 2015).

By neo-colonialism we understand the economic, political and cultural processes that configure asymmetric power structures and economic relations, between the countries of the Global North (most of them former colonial powers) and the countries of the Global South (former colonies) (Aliverti et al. 2023; del Olmo, 1975; Zaffaroni, 1988). The colonial matrix of power is not just a remnant of the past but "an acting force that profoundly affects the political economy of Latin American societies" (Iturralde, 2023, p. 54), and it is still felt nowadays through illegalisms of the powerful.[8] As we address in this work, one way in which neo-colonialism is vectorised today is through the illegalisms of the powerful – that is, the illegalisms of the powerful shape neo-colonial forms of asymmetrical power relations.

Closely linked to the production of social harm, illegalisms of the powerful and neo-colonialism, the concept of accumulation by dispossession, introduced by the theoretical geographer and Marxist David Harvey (2000), refers to the use of methods of original accumulation to sustain and project the capitalist system, whereby areas previously closed to the market are commodified.[9] In this context, the term "methods of original accumulation" encompasses a diverse array of processes, including the privatisation and commodification of previously public goods and services, the appropriation of assets, the plundering of wealth, the conversion of diverse forms of collective property into exclusive property rights, theft, fraud, pillage, plunder through processes of indebtedness, the reduction of populations to servitude through indebtedness and numerous other practices. In its current neoliberal phase, capitalism succeeds in exporting and postponing crises from the centre to the global periphery through accumulation by dispossession. The concept of the "spatio-temporal fix" is employed by Harvey (2009, p.

63) to denote the methods through which capitalism addresses crises of over-accumulation. In the view of the geographer, in the absence of systemic devaluations, or even destructions of capital and labour power, alternative means of absorbing these surpluses must be identified. Consequently, the surplus of central capitalism is absorbed through medium- and long-term investments in peripheral countries. In this manner, the crises of the global core are absorbed by the global periphery. Accumulation by dispossession thus implies a new articulation between (new) mechanisms of wealth production unrelated to the optimisation of productivity, the consequent social harm/dispossession that these mechanisms generate on a global scale and a redistribution of global wealth. The case of the litigation against Argentina over YPF demonstrates a form of neo-colonial accumulation by dispossession vectorised through illegalisms of the powerful.

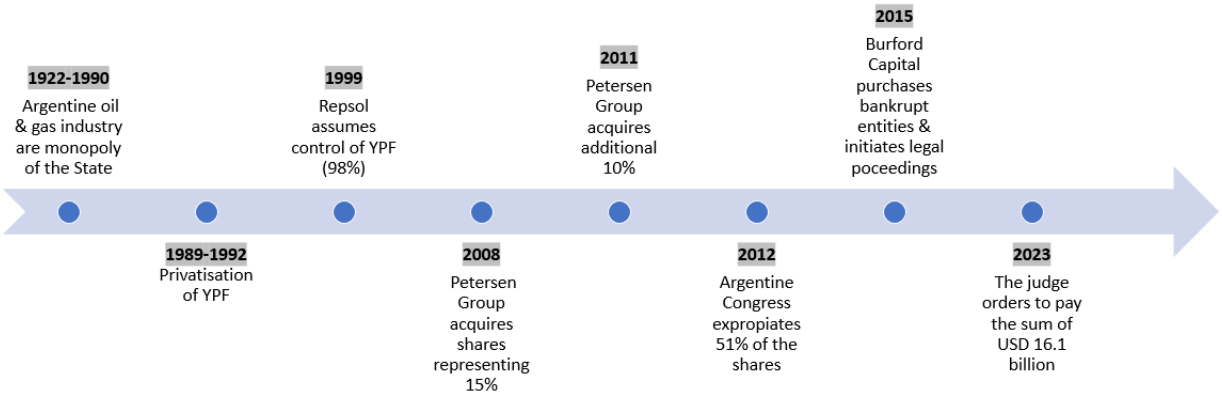
In the face of, *and against*, the fictions of traditional criminological analysis and the criminal justice system, and through a strategic hybridisation between Foucauldian analytics, Latin American critical criminology and the social study of harm, our work is oriented towards empirical research on the relationship between the illegalisms of the powerful, new forms of colonialism through mechanisms of accumulation by dispossession and the production of social harm in a peripheral economy, through a case study of the energy sector in Argentina. Specifically, through these approaches – which highlight how these harmful practices remain legally unpunished and socially immune – we will address the litigation process following the expropriation of YPF.

Case Context: YPF and the Burford Litigation

YPF, founded in 1922, is the most important oil and gas company in Argentina. From the 1920s until 1990, both the upstream and downstream segments of the Argentine oil and gas industry were monopolies of the Argentine state. In August 1989, as part of a neoliberal reform process,[10] Argentina enacted laws aimed at deregulating the economy and privatising Argentina's state-owned companies, including YPF (Figure 1).[11]

Figure 1

Timeline of the YPF Legal Dispute



The process of privatisation of YPF occurred between 1989 and 1992. The initial step was the alteration of YPF's corporate status, transitioning from Yacimientos Petrolíferos Fiscales Sociedad de Estado to YPF S.A. Subsequently, the requisite measures were implemented to facilitate the sale of the company. In 1999, Repsol[12] assumed control of YPF, acquiring 97.81 per cent of its shares through participation in the public tender offer. Repsol YPF held approximately 99 per cent of the share capital of YPF S.A. from 2000 until 2008, when Petersen Energía Inversora and Petersen Energía (hereinafter "Petersen Group")[13] acquired shares representing 15.46 per cent of the share capital. In 2011, Petersen exercised an option to acquire shares representing an additional 10 per cent of Repsol YPF's share capital. Therefore, by 2012 the Petersen Group held 25.46 per cent of the share capital of YPF S.A.

Nevertheless, a few months later – also during 2012 – the Argentine Congress enacted Law No. 26,741, colloquially known as the "Expropriation Law." This legislation declared the attainment of self-sufficiency in hydrocarbons, in addition to the exploitation, industrialisation, transportation and marketing of hydrocarbons, to be of national public interest and a priority for

Argentina. To guarantee the realisation of its objectives, the aforementioned legislation provided for the expropriation of 51 per cent of the shares of YPF S.A. that were owned, either directly or indirectly, by Repsol YPF and its controlled or controlling entities. The legislation did not provide for the expropriation of shares held by parties other than Repsol. It should be noted that the shares belonging to the Petersen Group were not expropriated.

In 2014, the Argentine Republic and Repsol reached an agreement regarding compensation for the expropriation of the shares of YPF S.A. under the Expropriation Law. Repsol accepted US$5 billion in Argentinean sovereign bonds and withdrew the judicial and arbitral claims it had filed, including the claims against YPF, and waived additional claims.

Although the Petersen Group was not subject to expropriation, questions arise regarding the reasons and circumstances that led to its involvement in the litigation. In 2008 and 2011, the Ezkenazi family, proprietors of the Petersen Group, financed the purchase of YPF S.A. shares with credits that they repaid with dividends obtained from YPF itself. Following the expropriation of the company in 2012, dividends ceased to be paid, resulting in the loss of shares to creditors, including such international and global investment banks as Credit Suisse, Goldman Sachs, Citi, BNP, Itaú, Standard and even Repsol. In this context, Petersen Energía and Petersen Energía Inversora went bankrupt.[14] The bankruptcy of the two companies of the Petersen Group fell to Madrid, Spain Commercial Court No. 3, which appointed a receiver and auctioned the right to litigate. Burford Capital bought that possibility.[15]

Burford Capital is a hedge fund that buys the litigation rights of bankrupt companies around the world and then initiates lawsuits for much larger sums. In 2015, Burford Capital purchased the bankrupt entities Petersen Energía and Petersen Energía Inversora in Spain, and subsequently initiated legal proceedings in New York courts on behalf of these companies, seeking compensation for the expropriation of YPF.[16] The foundation of Burford's legal action against YPF and the Argentine Republic is based on the assertion that, in accordance with Article 7 of YPF S.A.'s by-laws, any individual or entity acquiring a stake exceeding 15 per cent was obliged to extend the same offer to all shareholders, rather than solely to Repsol. The Argentine state's defence was based, among other arguments, on the assertion that the claims raised by Burford Capital impermissibly challenged the sovereign activity of the Republic. Moreover, the Argentine state advanced the position that it possessed the sovereign capacity to expropriate an asset that was beneficial to its population, and that this prerogative prevailed over a commercial regulation within the Argentine legal system.

On the other hand, through the same litigation investment mechanism, Burford provided financial backing for Eton Park's legal action against YPF and the Argentine Republic. At the time of the expropriation, the Eton Park investment fund[17] was the third largest shareholder of YPF S.A., after Repsol and Grupo Petersen. As previously indicated with respect to the Petersen Group claim, the Argentine state had not expropriated the Eton Park shares. In its 2019 annual report, Burford Capital (2019, p. 63) disclosed that it had invested US$26 million in the Eton Park claims, which were claims of a similar nature to those of Petersen. This investment entitled it to approximately 75 per cent of the proceeds recovered from the Eton Park claims, which were also being litigated in New York.

In a ruling handed down in 2023, Judge Loretta Preska of the Southern District of New York determined that the Argentine state was obliged to provide compensation to Burford Capital in relation to the expropriation of YPF in 2012. Subsequently, the judge ordered the Argentine government to pay Burford Capital the sum of US$16.1 billion in compensation for the nationalisation of YPF – roughly 2.5 per cent of Argentina's GDP – despite Burford's initial outlay of just US$18 million. As Burford affirmed in its 2024 annual report:

> To be sure, not every year will be like 2024 (or 2023, when we won the YPF case). But we have an enormous $7.4 billion group-wide portfolio, with more than a billion dollars of undrawn commitments waiting to go out the door. We feel very good about the future. (Burford Capital, 2024, p. 1)

Argentina's legal defence strategy is still centred on the notion of sovereign immunity under US law (FSIA), while also highlighting the prevailing Argentine expropriation law over the provisions outlined in YPF's articles of association.
Following the initial conviction by Judge Preska, the case is currently under review by the Second Circuit Court of Appeals. Argentina is seeking to have the ruling overturned in its entirety, arguing that the judge misinterpreted Argentine law. This position is supported by amicus curiae briefs from Brazil, Chile, Ecuador and Uruguay, among others. Alternatively, it seeks a substantial reduction in the amount, alleging an error in the date used to convert the award from pesos to dollars. Simultaneously, the plaintiffs are appealing the decision to exempt YPF from liability, seeking to have the company declared jointly and severally liable for the payment.

Empirical Analysis: Commercialisation of Court Litigation

What are the specific mechanisms that enable accumulation by dispossession in the case of YPF? What mechanisms facilitate the commodification of areas hitherto closed to the market, thereby reinforcing this (neo)colonial geopolitical dynamic? The legal proceedings concerning the expropriation of YPF reveal two interlinked strategic mechanisms: investment in litigation and the creation of secondary markets. As will be shown, the articulating thread between the two mechanisms is the pursuit of profit through judicialisation. To this end, an examination of these mechanisms will proceed through the analysis of Burford Capital's own annual reports.

Hedge funds such as that of Burford Capital are financial vehicles that allow a group of investors to combine their resources to invest in a diversified portfolio of assets. By purchasing shares in the fund, investors become owners of a fraction of the total portfolio, benefiting from the diversification and expertise of the fund managers. In return for this professional management, investors pay fees and expenses associated with the operation of the fund. The specificity of Burford Capital, however, is that it stands out in the financial field due to its exclusive focus on the legal sector. Indeed, it stands as a leading global financial management and legal-focused investment firm, operating in a variety of areas including litigation finance, risk management, asset recovery and a wide range of financial and legal advisory activities (Burford Capital, 2012).

In the "Insolvency Financing in Spain" section of the 2015 Annual Report, the YPF case is mentioned for the first time, as follows:

> We are engaged in two significant Spanish insolvency matters that became widely publicised during the course of the year … In both cases, we have been appointed under the authority of the Spanish bankruptcy courts to provide financing for insolvent Spanish companies that have significant claims to be brought in international arbitration or in US litigation … In one claim, Argentina expropriated the two leading Argentine airlines, Aerolíneas Argentinas and Austral Líneas Aéreas, from their Spanish corporate owners. … The other claim relates to the 2012 expropriation by Argentina of a majority interest in YPF, the New York Stock Exchange-listed energy company formerly owned by Repsol, the Spanish energy major. At the time of the expropriation, Repsol owned more than 50% of YPF and the Petersen Group, another Spanish firm, owned 25% of YPF. After suing, Repsol ultimately settled its claims and received a payment of approximately $5 billion from Argentina and YPF. Burford has been appointed to provide financing to the liquidators of the Petersen Group, which went bankrupt after the expropriation, which is proceeding with claims against both YPF and Argentina. Both of these claims are high value and if successful could yield significant returns for Burford. (They are also asymmetrical in their risk/ return profile, in that a loss would not be material to Burford, while a complete success could be lucrative). (Burford Capital, 2015, pp. 10–11)

It is important to note two things regarding this first mention of the YPF case in Burford's reports: first, that there is no reference to the fact that Argentina was not expropriating Petersen Group's shares, but only Repsol's; and second – an issue to which we return immediately – the highly lucrative – asymmetric "in their risk/return profile" – that Burford gives to this case.

Burford Capital, in its 2016 annual balance sheet, informed its shareholders that its initial investment for the right to litigate for 70 per cent of the proceeds of a favourable conviction in the Petersen case was US$18 million. In the balance sheet, the investment fund also explains the dynamics of the investment in hedge funds capitalising on the litigation:

> The Petersen investment is an illustration of a fundamental dynamic in litigation investing. Litigation is an inherently asymmetrical undertaking, which is one of the drivers of the economics of our business generally: the "investment" in a piece of litigation is often just the costs of pursuing the claim, and no rational actor pursues a claim in litigation that does not have a value significantly above those costs. Thus, losing a piece of litigation results only in losing the costs, whereas winning typically results in receiving a multiple of those costs. The Petersen matter exemplifies this principle because our investment thus far is around $18 million and (if the matter does not fail, which is of course always a risk) there is a credible path to a recovery of substantial multiples of that amount. (Burford Capital, 2016, p. 5)

As the above extract shows, the litigation investment mechanism tends to multiply investments, and is a low-risk investment: "just the costs of pursuing the claim." The commodification of the right to litigate enables the appropriation of assets and the depredation of the wealth of a peripheral economy such as Argentina's, through very low private investment. "Litigation is an inherently asymmetrical undertaking, which is one of the drivers of the economics of our business generally." The report expressly states. And the YPF case is a clear example of this unequal dynamic: "our investment thus far is around $18 million and … there is a credible path to a recovery of substantial multiples of that amount."

Conversely, the litigation investment mechanism has the effect of deepening the process of accumulation by dispossession through the creation of secondary markets. In addition to its focus on acquiring the litigation rights of bankrupt companies with

the objective of obtaining significant returns, Burford Capital has also explored the potential of new financial strategies, most notably the creation of a secondary market. This initiative seeks to capitalise by creating an environment where litigation rights acquired by Burford Capital can be traded and transferred to third-party investors. By facilitating the liquidity and transferability of these legal assets, Burford Capital aims not only to maximise its own profitability, but also to encourage the participation of other market actors in the litigation finance market. The mechanism of creating secondary markets highlights the spiral of financial commodification before the alleged pursuit of justice: the right to litigation is structured as a financial instrument that is sold and resold, and in the process generates profits. In the same 2016 annual report, Burford provides an account of the way it initiated the development of a secondary market for the trading of its litigation rights:

> We see a number of appealing characteristics of a secondary market to assist us in both risk and liquidity management and to increase the efficient utilisation of our capital. A model where we can originate investments using our skill set and then lock in some gain from our origination activities and moderate our risk profile is very appealing, and will also permit us to close larger investments if we are reasonably confident that we can reduce our own risk to a desired level following closing. (Burford Capital, 2016, p. 13)

In this same balance sheet, the hedge fund provides detailed information to its investors about the first case in which it chooses to trade a portion of the potential profits to be obtained in a secondary market. This information includes a comprehensive explanation of the judicialisation-capitalisation operation:

> The first transaction we closed, in the first half of 2016, was with respect to a single matter on appeal from a successful trial court judgment. As a result, quite a lot was known about the matter and a prospective buyer could engage in meaningful diligence based on the court record. We had entered into a financing arrangement with our client some time before and we were content with the level of risk we were holding in our portfolio. However, as time passed, the client was interested in obtaining more capital and we did not have the risk tolerance to increase our own position. The client was, however, offering significantly more lucrative terms for the incremental capital. Thus, after some exploration of a possible secondary transaction, we ultimately agreed to increase our capital commitment and take advantage of the increased pricing on offer … We then turned around and sold a piece of the investment to a major investment fund, structured so that we averaged the new and old pricing across the entire capital commitment – thereby increasing significantly the effective pricing on the portion of the investment we retained. (Burford Capital, 2016, p. 13)

A successful first-instance judgment – that is, a non-final court intervention – is a sufficient condition for initiating the mechanism of selling a percentage of the litigation rights and thus making a profit. From there it is even possible to sell part of these rights to an investment fund, as the following extract shows, "thereby increasing significantly the effective pricing on the portion of the investment we retained." It is evident that success in the judicial domain yields considerable financial gains, even prior to and after the issuance of a favourable verdict. In the next section of the same report, Burford discloses the implementation of a comparable strategy of commodification of the right to litigate, namely the establishment of a secondary market. This strategy was employed in the case of Petersen's litigation against Argentina:

> With that successful transaction under our belt, we then turned to the Petersen investment … So, faced with a large and potentially valuable (but risky) matter, is it better to hold 100% of the interest and see what happens, or is it more prudent to lock in some gain now and reduce our risk? We decided that prudence should prevail. Given the potential size of the Petersen claims, we spent considerable time exploring what we thought would be the best approach to offering a portion of the claims to potential buyers. Ultimately, we decided that we were willing to sell a minority interest in the investment at a $400 million valuation. We also decided not to be flexible on the price, so that if we were not able to secure a locked-in profit at a valuation of approximately 20 [times] Burford's cost, we would simply not proceed. (Burford Capital, 2016, p. 14)

In this case, the creation of the secondary market through the resale of a minority of the litigation rights, as can be seen from the above extract, should generate a profit of no less than US$400 million. Regarding this amount, two points should be emphasised: not only does the sale imply a profit equivalent to 20 times the initial investment, from the creation of the secondary market, but it is also 20 times greater than the initial investment for the purchase of a smaller share of the litigation rights than the initial one.

According to the documents and interviews gathered in this investigation, there has been a significant change in the ownership of Burford Capital's original 70 per cent stake in the Petersen Group case. The company now holds only 35 per cent of this stake, while 27 per cent has been acquired by various investors and 8 per cent is being used to pay legal fees. In this sense, the commodification of litigation through the mechanism of creating a secondary market has been highly profitable for Burford.

Discussion and Concluding Remarks

Throughout this article, we have questioned how the illegalisms of the powerful, implemented by financial actors in the Global North, use legal systems as a technology of power to produce accumulation by dispossession and, consequently, extremely high social harms in peripheral economies. We argue that these actors transform legal systems into a technology of power to execute a contemporary form of accumulation by dispossession, which takes the form of a (neo)colonial geopolitics of impunity.

The analysis of the litigation financed by Burford Capital against the Argentine Republic for the expropriation of YPF S.A. has made it possible to examine the specific mechanisms of this dynamic, showing how the disconnect between social harm and the criminal justice system persists regarding the practices of the powerful, resulting in their legal impunity and social immunity. The social harm caused by accumulation by dispossession not only goes unpunished but is actively legitimised. Justice administration systems not only fail to punish abusive, risky and harmful practices, but also become guarantors of the consummation of dispossession and the associated accumulation.

A decisive element demonstrating that the legal system operates as a technology of power is that the lawsuit filed by Burford was not based on the expropriated shares. Law No. 26,741 affected only the shares of Repsol YPF. Nevertheless, Burford Capital litigated and obtained the conviction on behalf of the Petersen and Eton Park groups, whose shares were excluded from the expropriation. This fact reveals that the litigation was based on a sophisticated manoeuvre to commercialise legal claims, using corporate statutes to obstruct a sovereign act and obtain extraordinary accumulation.

Empirical findings revealed two specific and interconnected mechanisms of this dispossession, articulated by the pursuit of profit through litigation. The first was "investment in litigation." Burford Capital acquired the right to litigate for $18 million, which, following the ruling in 2023, resulted in a $16.1 billion judgment against Argentina, an amount equivalent to 2.5 per cent of the country's GDP. This is a low-risk practice with extraordinary profit potential. The second is the "creation of secondary markets" for legal claims. This mechanism allows hedge funds to secure profits and reduce their risk exposure even before a final judgment. Burford Capital, for example, sold a minority stake in the litigation rights to the *Petersen* case for a valuation that implied a profit of approximately 20 times the initial cost, obtaining a significant return on the fund's capitalisation through this secondary market.

These mechanisms confirm that the legal system functions as a mechanism of dispossession rather than justice. The case highlights the structural asymmetries of the global economy, where a sovereign decision to recover strategic resources becomes the basis for a massive transfer of public wealth to private investors in the Global North. This dynamic causes enormous social harm and sets the stage for new cycles of indebtedness. Considering the various financial mechanisms outlined in this article, and the clear consequences of dispossession and colonialism, it is important to emphasise that these practices are not recognised as criminal acts in either the legal or social spheres.

This article offers a double contribution to critical criminology. First, it proposes a strategic theoretical hybridisation that combines Foucauldian analytics (centred on the concept of "illegalisms"), Latin American critical criminology and zemiology, which allows for the analysis of harms that criminal law does not classify as crimes. This articulation is essential to promote a criminological perspective from the Global South, confronting the Global North-centric bias of the field and recovering the early critiques of authors such as Pegoraro, Del Olmo and Zaffaroni of how the selectivity of the criminal justice system guarantees impunity for the powerful in peripheral capitalism.

Second, by shifting the focus from "crime" to "illegalism" and "social harm," the research provides empirical content to concepts such as "accumulation by dispossession." In this sense, we propose a shift from the concept of organised economic crime to "organised economic illegalism." We understand these as "criminal organizations dedicated to legal-illegal businesses of a certain political-legal complexity with the necessary participation of state institutions and/or officials, which produce significant economic rewards" (Pegoraro, 2015, p. 18), and which enjoy social immunity and criminal impunity. The case analysed demonstrates that these organised economic illegalisms are a contemporary vector that allows financial actors in the Global North to obstruct sovereign acts and consummate (neo)colonial dispossession.

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[1] In order to carry out the research, we used an intra- and inter-method triangulation of the findings from the construction and analysis of a documentary corpus – composed of national and international regulatory norms, specialised newspaper articles, minutes of corporate meetings, accounting balance sheets, government reports, court cases and other official documents, among others; the construction and analysis of a corpus made up of in-depth semi-structured interviews with officials and former public officials, directors and former business directors of companies operating in the energy, agro-industrial and fishing sectors, workers and former workers of these companies, key informants and experts in the field; and a prosopographic analysis to identify common patterns around biographical and work trajectories that make up the background of a specific group of individuals, 'with the aim of making a study of their lives as a collective' (Stone, 1971, p. 46). In this case, this group comprised the informal cross-advisors – that is, mediators who link political, judicial and financial spheres (Dallorso & Seghezzo, 2025) and are key in these processes of illegalism of the powerful. See some of the results achieved on the different sectors analysed in Dallorso (2025), Podestá (2025) and Seghezzo (2025).

[2] Semi-structured interviews were used as a complementary source to documentary analysis to build enriching qualitative data within the framework of a broader methodological strategy. Key informants interviewed for this article include: (1) former executive of YPF Litio, a subsidiary of YPF S.A.; (2) former national director of macroeconomic programming at the Ministry of Economy and Finance of Argentina; (3) former director of the Central Bank of Argentina (BCRA). Given that the research focuses on illegalisms committed by powerful actors who operate with legal impunity and social immunity, a strict ethical confidentiality protocol was applied in the semi-structured interviews. This protocol included: informed consent prior to conducting the interviews; clear information about the exclusively academic purpose of the research; explicit notification that the interviews would be recorded; commitment to maintaining the anonymity of the source; and a guarantee that interviewees could request that the recording be stopped at any time they deemed appropriate.

[3] Similarly, continuities can be identified in the approach known as "Southern Green Criminology." This is grounded in the dynamics and contexts of the Global South – or, more accurately, in the differences between the Global South and the Global North. The former is typically impacted by environmentally detrimental investments initiated by the latter, reflecting a historical trajectory of resource transfer from the Global South to the Global North (Brisman et al., 2016; Goyes, 2018).

[4] As addressed in the empirical research by Valdés-Riesco (2021), in the field of studies on the crimes of the powerful, there is evidence of a dominance of productions from the Global North – and fundamentally from English-speaking countries – not only because there is a high level of concentration in the Global North compared to the Global South and non-English-speaking countries, but also because of the high level of influence of the knowledge that countries of the Global North have in studies on the Global South. But, in addition, in cases where the production of knowledge from the Global South is recognised, it is used as a resource in a narrative in which they are examples of backwardness, of the imperfect realisation of universal theories and laws of development, and that they must continue on their path to become modern, developed, and civilised (Carrington et al., 2016; Connell, 2007; Iturralde, 2023).

[5] As argued by Southern criminology (Carrington et al., 2016), the North/South distinction refers to the division between the metropolitan states of Western Europe and North America in contrast to the countries of Latin America, Africa, Asia and Oceania. That is, rather than focusing on geolocation, this distinction highlights the differential geopolitical roles that countries play in the world.

[6] In the same way, the Malaysian intellectual Syed Hussein Alatas also examined the crimes of the powerful in colonial and post-colonial societies that caused social harm. As early as the 1960s, as addressed by Moosavi (2019), Alatas was a precursor to what Frank Pearce later coined in 1976 "the notion of crimes of the powerful"; his contributions helped to overcome some of the limitations of these literatures, such as being almost entirely focused on the crimes of elites from the (Anglo-speaking) Global North and "not giving enough attention to topics like colonialism and corruption" (Moosavi, 2019, p. 235).

[7] Green criminology – a strand of critical criminological thought focused on harm to nature (Lasslett, 2010; Lynch, 1990; Natali, 2014; Ruggiero & South, 2013) – emphasises the need to address harmful practices even when they do not constitute crimes. In fact, green criminology (and, more recently, one of its internal strands, blue criminology) has highlighted the role of oil production – and oil companies – in environmental conflicts and the immense harm they cause to nature (Böhm, 2017; Brisman et al., 2016; Sollund, 2012). For a detailed discussion of both the potentials and inherent limitations of this critical criminological approach, see Goyes (2019) and Goyes and South (2017). However, in this case – and without disregarding the invaluable contributions of these works – we have focused on problematising the geopolitical and (neo)colonial dimensions regarding the privatisation of public goods, considering the particularity of the YPF case. The company itself is the arena of contestation between the population and the state of a Global South country, and international financial corporations and courts from Global North countries. The problematisation aims to explore – along the lines identified by Goyes (2019) regarding the types of power that are unequally distributed between the North and the South – the dispossession in the South by the over-accumulation in the North.

[8] The neo-colonial dimension of asymmetrical social relations had also been a central element in the analysis and empirical studies of Latin American critical criminology. The works of Rosa del Olmo (1975, 1981, 1990), but also those of the Argentine jurist Zaffaroni (1988,1989), place colonialism and neo-colonialism at the heart of their understanding of the history and present of criminology and penal systems in Latin America. As addressed in the compilation *Decolonizing the Criminal Question: Colonial Legacies, Contemporary Problems*, regarding Latin American critical criminology, "colonialism in its different forms has contributed to reproducing the dependence and submission of peripheral countries to those in the center, both in the production of knowledge and in the institutions and practices of social control" (Aliverti et al., 2023, p. 1).

[9] Along these same lines, numerous studies recover the analysis of accumulation by dispossession to examine different extractive sectors, and Massé and Lunstrum's (2016) and Barcella's (2025) works on "accumulation by securitization" are highly relevant to the developments discussed in this research.

[10] During the 1990s, Latin America experienced a wave of privatisations as part of the neoliberal structural reform process. This included the privatisation of YPF and the approval of a regulatory and legal framework that authorised the cultivation of glyphosate-tolerant genetically modified soybeans in 1996. As the specialised literature points out, this decade-long period of reforms, coupled with high international commodity prices, paved the way for the commodities boom of the 2000s (Arsel et al., 2016; Svampa, 2015). According to Svampa (2013, p. 36), between the "Washington Consensus" of the 1990s, characterised by structural adjustment and the predominance of financial capital,

and the "Commodities Consensus," or "Raw Materials Consensus," sustained by the large-scale export of primary goods, economic growth and the expansion of consumption, of the following decade, ties were formed 'to the maintenance of the normative and legal foundations that allowed the expansion of the extractivist model, by guaranteeing "legal security" to capital and high business profitability. This managed to configure a regional scenario of systemic vulnerabilities that contributed to expropriation processes and subsequent litigation. Further research is needed to develop the dialogue between literature on neo-extractivism and neo-colonialism in the region. This should include the contributions of Acosta (2011), Álvarez Leguizamón (2015) and Merchand Rojas (2016), as well as the concept of "ecological debt," which challenges the concept of external debt typical of countries that consider themselves "creditors": countries in the Global North (Avendaño, 2023).

[11] Law Nº 23,696 of August 1989 established the state of administrative emergency of the national state agencies and empowered the National Executive Power to proceed with the privatisation or liquidation of state enterprises or companies (Article 11), establishing as a prerequisite that they be declared "subject to privatisation" (Article 8).

[12] Repsol S.A. is a Spanish multinational energy and petrochemical company with headquarters in Madrid, founded in October 1987. It was originally formed by the grouping of a series of companies, previously belonging to the Instituto Nacional de Hidrocarburos, with activities in the exploration, exploitation, production, transport and refining of oil and gas.

[13] The "Petersen Group" is a conglomerate of Argentine companies. It focuses on areas such as engineering and construction, finance, fintech solutions, agribusiness and urban services. Founded in 1920 as an engineering and construction company, the Petersen Group has carried out a significant number of public and private works throughout its history in Argentina. In the mid-1990s, it began a process of transformation and expansion of its business, venturing into other strategic sectors of the Argentine economy. It is currently one of the most important economic groups in Argentina and is wholly owned by the Eskenazi family.

[14] In order to guarantee that Petersen would be able to repay the loans it had received from Repsol, an agreement was reached between the two parties, stipulating that 90 per cent of YPF's profits would be distributed as dividends, rather than being reinvested in the company. The Petersen Group, according to the Argentine government's defence strategy, purchased the shares without any risk, as it would pay the credits with the company's dividends, which it had secured due to its majority position in partnership with Repsol. As a result, it had decided to distribute 90 per cent of the profits to itself. In 2015, proceedings were commenced before Judge Ariel Lijo, and the case is still pending resolution. In the context of this case, a letter rogatory was transmitted to the Spanish courts with the objective of determining whether the Ezkenazi family retained any litigation rights or they had been acquired by the Burford fund in their entirety.

[15] In another article, we address the phenomenon of third-party funding (TPF) using the case of *Petersen v Argentina*. Specifically, we analyse how the abolition or attenuation of the *champerty* doctrine in various jurisdictions has transformed the landscape of global litigation and views this process as a selective administration of illegalisms. The judicial decisions in this case illustrate how the legal system permits a previously illegal practice (*champerty*) when it aligns with certain economic interests and the need to value indeterminate assets. This change has allowed the speculative accumulation of high-yield returns for funders, which in turn could transform the meaning of the administration of justice by linking it to an inherently financial logic (Dallorso, 2025).

[16] The controversy over jurisdiction centered on the US Foreign Sovereign Immunities Act (FSIA), a law that protects foreign states from being sued in US courts, with a few exceptions, such as "commercial activity." The Argentine defence's first argument was precisely to claim this sovereign immunity, arguing that the expropriation was an act of government and not a commercial act. The New York court rejected this defence. Its reasoning, which was upheld on appeal, was to separate the sovereign act of expropriation from what it considered a "separate commercial obligation": the duty to make a public takeover bid, which the court said was "triggered" by the expropriation itself. Once this argument on immunity was rejected and resolved on appeal, Argentina again requested dismissal of the case, this time relying solely on the doctrine of *forum non conveniens*, arguing that the Argentine courts were a more appropriate forum because the case had almost exclusively substantial links to Argentina. This request was also denied by the Preska's court.

[17] Eton Park Capital Management was an investment fund. Eton Park was founded in 2004 by Eric Mindich, who had previously been a partner at Goldman Sachs. In 2017, Mindich announced the fund's closure after incurring losses of 10 per cent in 2016. The firm invested in a variety of markets and products, including public equity, fixed income and derivatives. Eton Park had acquired a 1.63 per cent stake in YPF (then controlled by Repsol) in December 2010 for about $250 million and never sold its share.

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