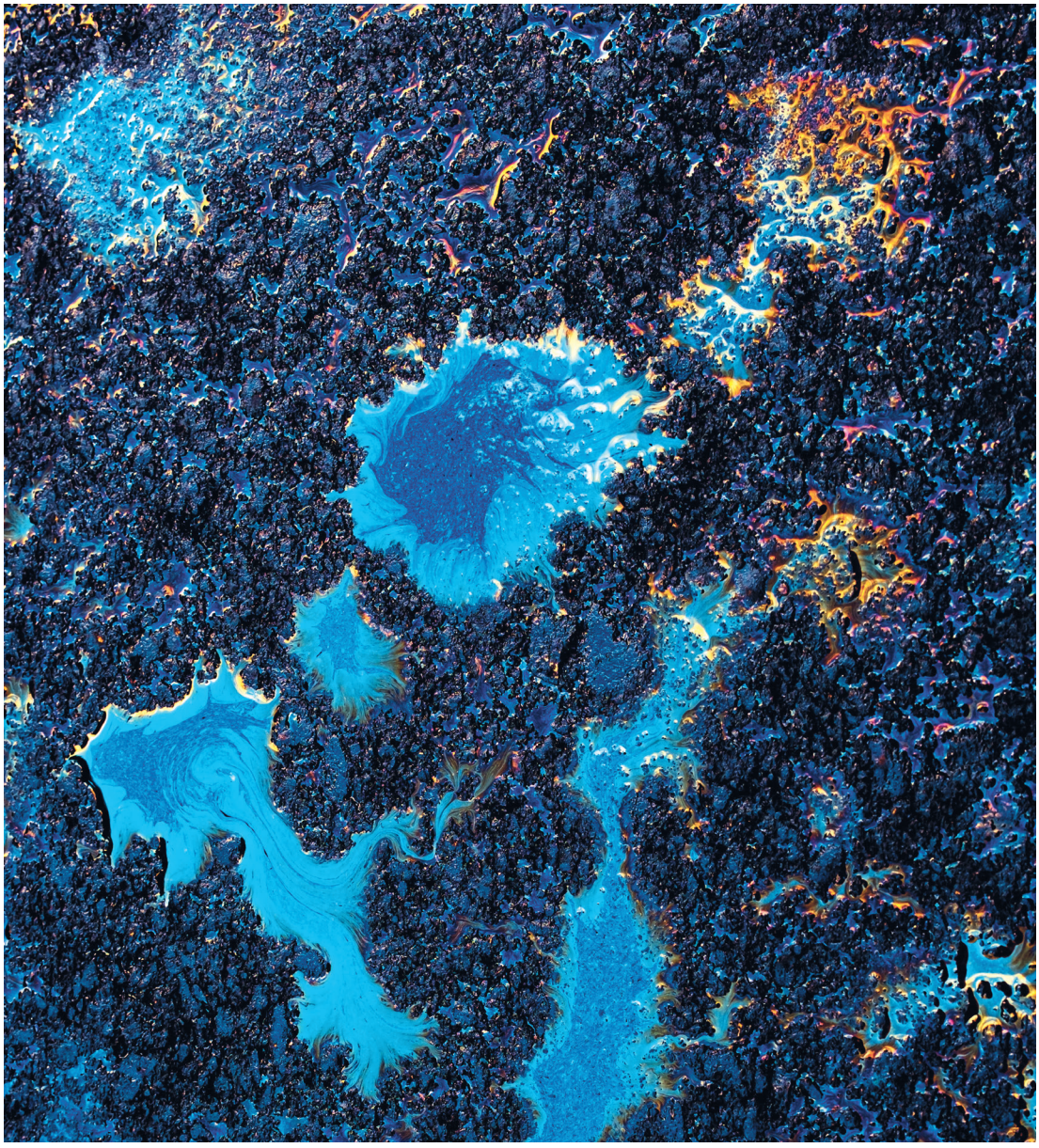
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ÉDITIONS DE LA SORBONNE

Anti-fracking mobilisation and the "ordinance movement" in Argentina

Notes on the legal repertoire of contention in the Vaca Muerta formation

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ABSTRACT

This paper presents a sociological and legal analysis of a mode of action – municipal regulations promulgation – within a legal repertoire of action employed by opponents to Vaca Muerta's unconventional hydrocarbon formation exploitation using the technology known as hydraulic fracturing (fracking). The inductive approach favoured here (textual analysis and comparison of the ordinances, information collection through semi-structured interviews) seeks to demonstrate that the choice of such a mode of action responds, on the one hand, to structural constraints of a political-legal nature and, on the other, reflects an attempt to foster a biocentric turn that is rooted in reflexive activist practices.

KEYWORDS

fracking, activism, collective action, law, Vaca Muerta, Argentina

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Introduction

The Vaca Muerta unconventional hydrocarbon formation in Argentina has been exploited since the late 2000s in the Patagonian region of the provinces of Neuquén, Río Negro and Mendoza by several national and international companies. Over the past decade, it has generated multiple controversies on the strategic issues of energy, economic-financial packages, the technology itself (hydraulic fracturing or fracking) and its impact on the rights of indigenous peoples and local communities, environmental risks, human health, etc.

A heterogeneous coalition of socio-environmental and indigenous peoples' organizations, recognized or not by the Argentine state and the provinces, entities with diverse social aims, and individuals, rallied against extractive projects, with varying degrees of success and different ways and means of resistance depending on the region (as a territorial unit) or the province (as a political unit).

Those conflicts made calculated use of conventional modes of protest action – awareness-raising campaigns, use of social networks and interviews in the press, publication of academic works, demonstrations, pickets and roadblocks, *muralismo*, or the incorporation of protest into popular and traditional festivals, as well as other collective actions. At the same time, a "repertoire of contention" (Tilly, 1978) that mainly took the form of attempts to enact laws and ordinances (municipal regulations) to halt the expansion of unconventional hydrocarbon exploitation in the Patagonian region, as well as in other areas of the country, was built up in the legal field.

This paper[1] aims to delve into the reasons for investing in this particular "repertoire of contention" by addressing three crucial points. Why did opponents of the Vaca Muerta project and fracking find it necessary to invest their meager resources in the legal arena? How can the divergent strategies

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of movements at the provincial level, some of which managed to pass laws, while others settled for ordinances at the municipal level, be explained? And finally, what sort of social compact governs the principles of these texts?

To assess the relative effectiveness of this "repertoire of legal actions", we will first synthesise the existent literature to set out the theoretical framework that allows us to evoke such a repertoire, and to present the Argentinian legal framework. Secondly, we will provide an overview of the numerical evolution of what can be termed the "Anti-fracking ordinances movement" in the provinces of Neuquén and the adjoining areas of the Río Negro's Alto Valle and Mendoza. On the qualitative side, this analysis aims to identify the variables explaining the success or failure of the ordinances to stop or slow down Vaca Muerta's exploitation. Thirdly, we will analyze the content of these local ordinances in order to determine how they participate in a revision of the social contract, suggesting a biocentric and multicultural turn that seeks to reconstruct the social bond based on a "natural contract".

1. Law, Collective Action, and Vaca Muerta

The legal aspect is often mentioned to point out the existing framework or stakeholders' shortcomings with regard to the law in the Vaca Muerta studies. In this section, we seek to better delineate this aspect through consideration of the conceptual tools of the sociology of mobilisations and the Argentinian legal framework.

1.1. Addressing a Blind Spot in "Vaca Muerta Studies"

The literature on the Vaca Muerta formation and the socio-technical controversies surrounding fracking is substantial. In Argentina, it is largely based on the legacies of dependency theory (Amin, 1973), infused with reflections in terms of subcontinental political ecology (Alimonda, 2006, 2011), which converge with Eco-Marxist perspectives more focused on a critique of extractivism (Svampa & Viale, 2014; Gudynas, 2009).

In the first category, we find, for example, considerations on global and national energy geopolitical dimensions (Svampa, 2012; Bachetta, 2013; Pérez

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Roig, 2016; Di Risio, 2016; Scandizzo, 2016; Freier & Schaj, 2016) that transform power relations and their territorial inscriptions, down to the provincial level as, for example, in Mendoza (Salomone, 2020; Wagner, 2021).

In the second, a research agenda has developed around subterranean struggles (Bebbington & Bury, 2014). These works question how power relations penetrate the logic of space and environment use by insisting on the way exchanges between material flows and geological strata impact human activities (Postigo *et al.,* 2014) or how the territorialities that participate in the justification of extractivist projects meet other imaginaries carried by national power (Perreault, 2014), civil society organisations (Bury & Norris, 2014) or subaltern subjects (Bebbington & Scurrah, 2014). Other investigations focus on questions of justice concerning issues of wealth redistribution, recognition, and community representation in natural resource governance bodies (Haarstad, 2012). They concentrate on the capacity of populations impacted by extractivist projects to influence the management of such resources exploited on the territories they use and sometimes own (Okamoto & Leifsen, 2012; McNeish, 2012). In Neuquén, they deal more specifically with conflicts concerning Mapuche communities (Agosto & Briones, 2017; Aguirre, 2017; Radovich, 2017; Maraggi, 2017; Hadad, 2022), often emphasizing their historical roots (Balazote & Radovich, 2001).

While studies on the normative framework exist, they only comment on the legal framework from a constitutional (AAdeAA, 2013, 2021; Castillo Argañarás, 2017) or fiscal (Giustiniani *et al.*, 2017) perspective, without questioning the social imaginaries that may underpin them. Moreover, municipal texts are mentioned but not studied in depth. This article aims to analyse those texts considering them as another performance within what we call, following Charles Tilly (2008), a "legal repertoire of contention".

According to the American scholar, a "repertoire of collective action" refers to the set of actions that individuals or organised collectives are capable of mobilising to assert their claim before a third party, in a given place and at a given time. These repertoires are relatively stable, insofar as a collective will tend to maintain and reproduce the same action from one protest episode to the next. Such performances, therefore, constitute a rather

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conventional, known, and mastered catalogue from which individuals and collectives choose the most appropriate action for the situation. Although innovations remain rare, actions may adapt or be adapted according to historical structural and cyclical constraints.

Tilly initially focuses on statist and static facts to explain the structure of such repertoires of action. However, in response to criticism, he reinjected a cyclical and processual dimension (Tilly, 2006). Thus, he reintroduces medium and short term by making links between repertoires, political opportunity structures, and events more explicit. In particular, his approach emphasises the role, nature, and actions taken by political regimes in dealing with protests. Depending on the degree of democratisation and governance capacity of the regime, and the stance it adopts (repressive or facilitative), and the courses of action it implements (anticipatory or reactive), the repertoire of action may be more or less open and innovative.

In this sense, a "legal repertoire of action" can take on different meanings. Either the law becomes the target of the protest as part of the structure of domination or it is an instrument of contention and a tool to promote demands. It can be embodied thus by interest groups that denounce the iniquity of the existing regulatory framework, demonstrating its harmful consequences on people's moral sense; by protest groups using the law as a tool to advance their cause, pointing to their opponents as offenders in order to delegitimise their actions; by collectives mobilised to change normative structures stigmatising against a specific group, or to promote new sets of rights. All in all, these tactics range from legally targeting some people – mostly civil servants – to redesigning regulatory framework.

Taking the legal route presupposes a combination of factors (Agrikoliansky, 2010): the existence of a political system that allows legal action to be taken; public perception that law is an effective way to change the situation; a militant willingness to use the law, either because it is the organisation's preferred mode of action or because individuals have access to legal knowledge and competence; and the availability of time (personal, professional, political) to explore this avenue.

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On methodology, the ordinances studied here have been retrieved either following their publication in the official bulletin of the province of Mendoza or through activist informants, especially when draft ordinances are concerned. Our census was then cross-referenced with that of the Observatorio de los Conflictos sobre Recursos Naturales (OCRN) to establish whether our list was complete. We then proceeded to compare and analyse both recitals and articles of the ordinances, and to compare them with the legal-political philosophies – those relating to the rights of nature and *buen vivir* – that have emerged and percolated through activist circles in Latin America since the wave of constitutional reform at the end of the 20th century. Where and whenever possible, we have asked individuals about the processes through which these ordinances were drafted, the intention behind them, and ultimately the "spirit" of these texts, through semi-structured interviews carried out in 2018 and 2019 (Etienne-Greenwood, 2020). Additional data was collected through experience as a lawyer acting for the human rights association Xumek (Escobar Blanco & Sanchez Mendoza, 2018) and the Centro de Estudios Prospectivos de Cuyo (CEP de Cuyo) and during administrative and environmental litigation related to hydraulic fracturing in the province of Mendoza (CEP de Cuyo, 2017; Escobar Blanco, 2018).

1.2. The Argentinian Legal Structure and Collective Action

Argentina adopted a federal system of organisation in 1853 that was confirmed by the 1994 constitutional reform. Within that framework, the Argentine National Constitution (CNA, 1994) recognises the right to a healthy environment and determines that it is a concurrent competence between the Nation, the Provinces, and Municipalities (Gabay, 2018). It is incumbent on the Nation to establish the minimum environmental law safeguards, while the provinces are responsible for complementary standards as long as they enhance and do not diminish the requirements. Therefore, substantive legislation is a national competence and formal legislation devolves to the provinces.

According to the 1994 Constitution, the natural resources belong to the original domain of the provinces. The right to exercise lawful industry – and within this, the extractive activity – is limited by the regulations in the Mining Code (CM, 1886) itself and hydrocarbon legislation, as well

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as other regulations derived from the CNA art. 41. This article guarantees a healthy environment protected by the environmental public order and regulated by the General Environmental Law (LGA, 2002), the Hazardous Waste Law (LRP, 1991), as well as the principles of intergenerational equity, prevention and precaution, public responsibility, and duty to compensate environmental damage.

The legal scheme may appear convoluted if one considers the web of rights and guarantees of CNA and international treaties, LGA, provincial constitutions, complementary provincial laws, and municipal regulations. Suffice it to understand that at each level there are national, provincial, and municipal enforcement authorities; and that federal and provincial courts act to safeguard legality and legitimacy. This state of affairs structured the repertoire of social organisations' actions in defence of the environment towards legislative and judicial frameworks of action.

Despite this environmental rule of law, Argentina is also characterized as a "country on the fringes of the law" (Nino, 1992) that has benefitted the extractive industry since the colonial era. The Spanish regal system was not adaptable to Latin American realities, enabling the Viceroys to issue indulgent local regulations for exploitation. The Latin American legal tradition inherited from the Spanish administration when the King's mandates did not correspond to the colonial reality gave birth to the adage *"se acata pero no se cumple"* ("it is obeyed with but it is not fulfilled") (López Medina, 2014). This principle permeated eras and governments, and compliance with the law saw many oscillations. In places far away from the administrative powers or in federal countries, where the local authority maintained strong control, legislation was adjusted according to local traditions and the *caudillo's* ("chieftain's") will. The extractivist elites inherited this state of affair and thrived to maintain lax regulatory compliance, formally obeying the taxation system, with little compliance to labour matters and almost none with incipient proto-environmental regulations – e.g., Law 2797 of 1892 prohibiting the dumping of untreated sewage waste. This contempt for the law generates the "Saladeristas" leading case of the Corte Suprema de Justicia de la Nación (CSJN, 1887) protecting health, the first indirect reference to environmental issues in Argentina (Zudaire, 2013).

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Notwithstanding this "legal tradition", the human right to a healthy environment has had its moments of brilliance in Argentina. To cite just one relevant milestone, we can refer to the "Mendoza Beatriz" leading case (CSJN, 2008). In that instance, pollution impelled judges to establish concrete measures in the face of environmental crises of all sizes and scales, to find a way to enforce environmental sanitation of the Riachuelo, the most polluted river in Argentina (Cafferatta, 2009). While not the first environmental leading case, it required that the public powers enforce the strongest mandatory order and sent a message to stakeholders, in the sense that the CSJN enforced the State of Environmental Law. This evolution is concomitant to the recession of the authoritarian state supported by capitalism during the 1980s and 1990s, giving way to democratic governments as well as environmental legislation and greener constitutions. A less visible phenomenon was the advent of a new generation of legislators and judges that decided to apply the rules of the third and fourth generation of human rights, in new laws and sentences that reflected the spirit of international treaties (Radovich, 2018).

However, just as collective action modifies the interests of the actors and their collective identities (Tilly, 1978), the containment repertoire of extractive companies and "captured states" was oriented in a direction (Durand, 2016) creating regulations that anticipated exceptions and obtained derogatory court rulings (SCJMza, 2019). Under the pressure of attractive investments deemed necessary to face chronic deficits and indebtedness, democratic governments in the 1990s slowly made concessions to extractivism by relaxing environmental controls and through exorbitant subsidies and tax exemptions (Anonymous, 2019 December 22) or official state advertising campaigns that strongly influenced the press towards a pro-extractivist bias while jeopardizing free and deontological press, a situation that had to be resolved in court (CSJN, 2007). In this context, environmental actors also overlooked the phenomenon of generational turnover in the public authorities, especially in the legislature and judicial branches, whose appointment mechanisms were partially captured by government factions allied to extractive industries, predominantly during the Menemist era. Certain new officials became receptive to requests to relax protective legislation on the environment, affecting the socio-ecological rights of the most vulnerable people. Those decisions then serve as a precedent to evict native peoples, peasants, and

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pastoralists, and free the land to develop extractive activities in a more or less legal fashion (Anonymous, 2019 May 9).

Thus despite formal progress toward an environmental rule of law, this complex legal system engenders confusion for many environmentalists and stakeholders seeking to understand its proper dynamics. Firstly, these actors did not foresee that the weight of the captured regulatory state, with its political-economic strategies, and how the coercive use of judicial, legislative, executive, and police functions could affect their opportunities and power (Tilly, 2008). Secondly, the legal path remains highly ambivalent. The multiplicity of controls and competencies allows for a panoply of tools and bodies that are entitled to examine the request of social actors. Nevertheless, this labyrinth is often used to dilute responsibilities and wear down those who file suit; while civil servants, legislators, and judges susceptible to hearing such cases and reluctant to be captured are removed or harassed by any means necessary (Nievas, 2019).

2. The Anti-Fracking Ordinance Movement (2012–2020)

Vaca Muerta constitutes a unique problem as a block of extractive activity through hydrofracturing. It must be approached in its various politico-territorial dimensions as it covers three provinces and encompasses distinct cultural, historical, and political realities. How then can the divergent strategies of the movements according to the provinces be explained? Why have some managed to pass ordinances and others not?

2.1. Provincial Dynamics and Legal Grounding

The confrontational context due to the exploitation of Vaca Muerta is a typical environmental conflict: a complex system wherein people who understand reality in diverse ways interact, where there are disparities in the status quo and living of those affected, and disputes arise from novel situations often unknown to the stakeholders, and eventually breach the pre-existing conventional rules (Escobar Blanco & Gómez Rey, 2021).

Among the various initiatives to stop the exploitation is the use of a local regulatory tool – the enactment of municipal ordinances (municipal

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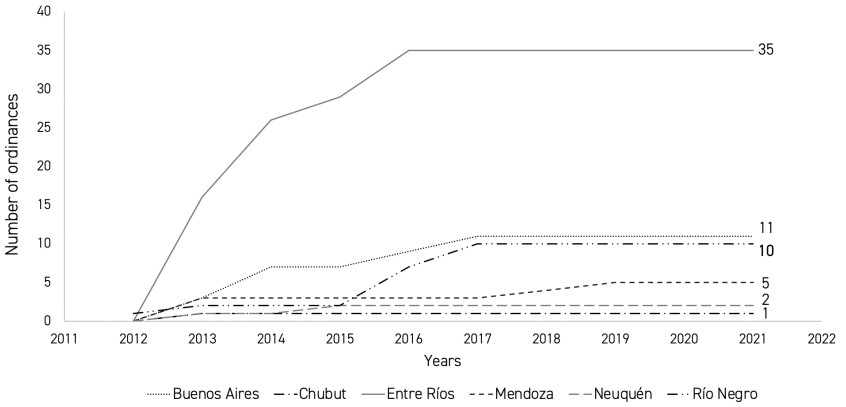
regulations) – that has had varying degrees of success and failure in different provinces. This use of municipal regulatory power has been encouraged by the Argentine Association of Environmental Lawyers (AAdeAA), which has drafted an opinion in which they propose an interpretation of the Argentinian environmental regulatory framework (AAdeAA, 2013), based on Argentinian legislation (Gabay, 2018) and CSJN jurisprudence that supports the increased power and responsibility of municipalities. Among others, it mentions the Laguna Llancanelo decision by the Supreme Court of the Province of Mendoza, which recognises the dynamic nature of environmental law, i.e., the need to interpret it in the light of advances and changes in scientific knowledge, so that an activity that was once permitted and later proved to be risky can, and should, be prohibited in the light of this new knowledge (Escobar Blanco & Sanchez Mendoza, 2018). Similarly, in 2014, the investigative journalism organisation Observatorio Petrolero Sur (OP Sur) developed and published a downloadable model ordinance to ban fracking (OP Sur, 2014). Between 2012 and 2021, more than seventy municipalities enacted "*Fracking*-free municipalities" ordinances[2] (fig. 1)[3].

The movement started in the Alto Valle del Río Negro. The municipality of Cinco Saltos was the first in Latin America to enact such a prohibition, although the mayor intended to veto it. Subsequent comparable attempts in the province were thwarted. In Allen, a similar ordinance was passed but was declared unconstitutional by the provincial Supreme Court of Justice (STJ). It also overturned the Fernández Oro attempt with a more severe sentence as it furthermore imposed a fine (Riffo, 2018; Novas, 2018). It is notable that anti-fracking ordinances in other Rio Negro municipalities outside the Vaca Muerta area are still in force.

2. This work excludes the case of Entre Rios since it is not comprised in the Vaca Muerta hydrocarbon block and is located on the Guaraní aquifer – the largest groundwater reservoir of South America. Although more than half of "Fracking-free municipality" ordinances were enacted in the province, the movement stopped after the approval of Law 10477 (2017) (Novas, 2018: 292-298). Entre Rios was then joined by the province of Santa Fe, which banned the use of hydraulic fracturing by Law 13740 on the use of water.
3. The table summarises data published by the OCRN, completed with field collection. This data refers only to municipalities that have issued ordinances that are still in force. Complete data can be consulted: https://ocrn.info/pages/normativa/

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Figure 1: Ordinances "Municipio Libre de Fracking" promulgated between 2012 and 2021 in Argentina



Source: Authors' elaboration based on OCRN data and field collection, 2022.

In the province of Neuquén, the pro-ordinance movement benefitted temporarily from the dynamics of the referendum against the Loncopué open-pit mine after the town was shaken by a *pueblada* (Hadad, 2017). Since then, three localities (Zapala, Junín de los Andes and Vista Alegre) have passed anti-fracking ordinances, and at least three other municipalities (San Martín de los Andes, Centenario, and San Patricio del Chañar) have considered such measures. The first two ordinances remain in force at this time. Vista Alegre's ordinance 783/16 was challenged for unconstitutionality by the STJ of Neuquén and the court overturned it on the grounds that it exceeded municipal competencies.

In Mendoza, the ordinances of San Carlos (1431/13), General Alvear (3934/13) and Tunuyán (2917/18), enacted in May 2013, June 2013 and May 2018, respectively, were mostly initiated by local assemblies with the support of municipal councillors while others were introduced through the citizen's bench, a tool of direct democracy (Eliecer, 2014). In 2013, Tupungato enacted a similar ordinance, which was quickly vetoed, and a legal battle ensued between pro-fracking coalitions, led by the mayor, and anti-fracking coalitions led by assembly members and neighbours, who pressured the municipal executive to pass a second ordinance. The municipality of Lavalle also voted two anti-fracking ordinances; the first one was attacked as unconstitutional, so

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a second was redrafted without legal flaws. Finally, the province has a series of projects supported by the "Fracking-free municipalities" movement in six more municipalities, as well as a provincial bill backed by a May 2018 camp and a petition signed by more than 40,000 people (Salomone, 2020).

2.2. Explaining the Ordinances' Different Fates

The cultural and socio-economic construction of the Neuquén, Rio Negro and Mendoza societies determined that the movements differed, marked by their own structures and modalities. Following Novas (2018) in this section, we sum up some of the explanatory factors for the successes or failures of the coalitions of actors against fracking that are closely linked to the regional productive matrix, the non-dependency on a one-commodity sector, controlled levels of state employment and scarce hydrocarbon trajectory – to which could be added the existence or non-existence of a structured anti-extractivist movement.

In 2008, the start-up of the Vaca Muerta pilot wells took environmental actors in the Neuquén basin by surprise. Since its elevation to provincial status in 1955, Neuquén has been characterised by a political scene dominated without interruption by the Movimiento Popular Neuquino, a hegemonic party with a strategy of clientelist control that implemented a rhizomatous state (Favaro, 2002), with an economy based on hydrocarbon exploitation (Burton, 2017; Blanco, 2018). The lack of diversification of the productive fabric and the absence of alternative political projects did not hamper the formation of a coalition hostile to the Vaca Muerta project, which came together within the Multisectorial against hydrofracturing in the early 2010s. This coalition, based on the existence of a "counter-culture of protest" (Petruccelli, 2017), led by well-structured political parties and unions, was joined by communities of indigenous peoples, self-organised neighbours and NGOs, amongst others. However, the few successes of the Multisectorial suffered a heavy setback when a compromise between Yacimiento Petrolíferos Fiscales (YPF) and Chevron was approved by law in July 2013 to exploit Loma Campana, the most important field in the formation, thus legalising unconventional exploitation in the province.

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In Río Negro, the primary structural factors behind the failure of the anti-fracking movement have to do with the alignment between the national and provincial executives (both Peronist), economic business interests, and the legal support of the provincial STJ. This occurred despite the existence of an important and deep-rooted agricultural sector (albeit divided) and the strong mobilisation of both self-organised neighbours and farmers and their representative organisations in the Alto Valle (Novas, 2018).

In both cases, attempts to oppose hydrofracturing were stopped by the legal backing of the political apparatus in favour of Vaca Muerta's exploitation and the mobilisation of several social organizations embedded in Peronist networks. The Kirchnerist politicians (left-Peronists) who have been plucking the strings of national power in Argentina since 2002 (excepting 2015-2019) have historically been linked to class organisations (Levitsky, 2003; Szwarcberg, 2010) through which they have been able to implement their societal views at the political, bureaucratic, and economic levels (Ostiguy, 1997). Their extensive experience in social struggles was deployed at the service of the repertoire of containment, proceeding to penetrate territory, erode local powers, and undermine any resistance by exploiting the weaknesses of opposing groups (Cruz, 2018). Once in control of the executive and with a majority in Congress, Kirchnerism mutated its social objectives into political-economic goals since it is not guided by "[…] the 'topographies of the social' in the style of vulgar Marxism but by the political and social logic of the 'party', of 'hegemony', of the 'war of positions' and cultural hegemony" (Patrouilleau, 2009). Thus, Peronism was able to give a syncretic response to the political and economic challenges of the new millennium (Ostiguy, 2007), taking advantage of the rise in price of commodities on the international market to bolster pro-extractivist policies, legitimised by the ability to implement new welfare programs for the poorer – in what has been styled as an *Estado compensador* (Gudynas, 2009) – and to award benefits to staunch stakeholders (De Jesús, 2021).

This phenomenon did not occur in Mendoza with the same intensity. Firstly, in the early 2010s, the provincial government did not identify politically with the national government, sharing only the political and economic interests in supporting local extractivist companies. While conventional oil

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exploitation in Mendoza is an historic industry, the confrontation between the state company YPF and the provincial government has been constant, so that the power of the extractive industries until 2010 was limited. The 1986 Llancanelo ruling (Anonymous, 2005), revoked YPF rights to exploit an oil field in a natural reserve. Furthermore, the province has a tradition of socio-environmental movements that oppose extractivism, originally organized against open-pit mining (Wagner, 2014). In the case of hydrofracturing, a contributory factor was the work of individual "cause lawyers" or NGO lawyers (Escobar Blanco & Sanchez Mendoza, 2018) who provided their services free of charge, contributing formal knowledge and competence in environmental law in support of informal knowledge thus levelling the asymmetry of power. The existence of a powerful wine industry (COVIAR, 2021) and other agricultural activities of significant economic importance has been another obstacle to Vaca Muerta's full development. Therefore, although there was intent from the extractive industry to move forward through positive instruments of containment – regulations that relaxed environmental controls or eliminated them[4] – and negative ones – closing off access to environmental justice (Maíz Suárez, 2011) –, the coalition of actors was strong enough to generate an effective barrier to defend water resources, biodiversity, and economic activities dependent upon them until 2020.

In short, the dissimilar results obtained through the ordinances reflect the greater or lesser capture of democracy by political-economic interests (Durand, 2016), allowing protective municipal regulations to have greater scale or more territorial scope in administrative-political units that have resisted state capture by extractivist interests. In the cases of Neuquén and Río Negro, contrary to Mendoza, there was no possibility of obtaining a better result with the strategy deployed because socio-environmental collective action did not have a parallel political-environmental strategy to overcome state capture and corporations' strategy to disable local democratic instruments.

4. We refer mainly to decrees 248/18 and 485/19 of the Government of Mendoza, resolution 249/18 of the General Department of Irrigation, and resolution 387/18 of the Secretariat of Environment and Land Management.

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3. Towards a Natural Contract?

Beyond the diachronic and morphological analysis of a repertoire of action, it is also necessary to return to approaches that are attentive to ongoing action (Fillieule, 2010). A close study of the ordinances shows that they embody modalities of justification (Boltanski & Thévenot, 2008) inspired by different political ecology trends (Lafaye & Thévenot, 1993; Latour, 1995). Those norms are often related to territorial ascription and local identity and challenge the appropriation of the commons, while also promoting demands of a civic character (Merlinsky, 2018). It seems to us that the ordinances foreshadow a "natural contract" (Serres, 1992) that seeks to (re)construct a collective integrating both humans and non-humans as sentient beings (Escobar Blanco & Gómez Rey, 2021). We will focus on the ordinances of the province of Mendoza to determine what kind of social contract and citizenship emerge.

3.1. Biocentric and Multicultural Turn

This legal repertoire endeavours to revitalise the biocentric turn which culminated in the promulgations of the Ecuadorian and Bolivian constitutions that enshrined the rights of Nature, conjoining environmental justice with "ecological justice" (Gudynas, 2014: 135-146). This turn is not only about defending and preserving natural entities because of their value to human life, but also because it is deemed legitimate and necessary to recognise that non-human entities have a right to maintain their integrity and dignity. All sentient beings, not only Humanity, have the right to follow their normal and evolutionary course.

In this respect, all municipal regulations place the element "water" at the core of their arguments, sometimes in an instrumental and anthropocentric perspective, sometimes in the name of the need to preserve its purity, i.e., the absence of pollution, and thus its integrity in a biocentric perspective. These observations on the vital condition and inherent scarcity of water naturally lead to an appeal to the principle of responsibility and the preservation of this common "water" for present and future generations. Thus, in terms of territorial identity and struggles for recognition, while all emphasise the provincial water culture, the ordinances insist on municipal

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cultural and legal idiosyncrasies rooted in other socio-environmental struggles, especially the one against the open-pit mine of the 2000s. Water, its purity, the absence of pollution, and its culture is reflected as follows:

- Ordinance 1431/13 of San Carlos states "That the people of San Carlos are pioneers in the defence of their common goods, especially 'water' and expresses the symbiosis between the human and non-human", "[…] 'Water', property of the people who cohabit and guard it";
- Tunuyán Ordinance expresses "that our Department is privileged to have pure natural spring water" and refers to previous declarations that made it "Capital of Pure Water of the Province of Mendoza" (Declaration 406/12) or the "National Capital of Natural Mineral Water of the Province" (Declaration 419/13)";
- Alvear recalls that "this Honorable Deliberative Body, together with the people and the different Environmental Organisations, have defended the natural resources, and our most precious asset – Water – so that future generations can grow up in a healthy, clean and unpolluted environment. […] that guarantees a sustained projection of our common goods";
- Ordinance 1065/18 of Lavalle is an example of a bifurcated tendency when it says first "That water is a limited vital resource, essential for all forms of life, and therefore a priority for our community" – biocentrism – "That access to pure and healthy water is a fundamental human right that the state has the obligation to guarantee" – anthropocentrism. Referring to the disappearance of the Guanacache lagoon, the ancient epicentre of the Huarpe culture, it stresses "that the citizens of the department of Lavalle have a memory of the historical events that have led to the tragic loss of the water balance in our territory, destroying entire ecosystems and associated ways of life".

Firstly, the objective is not to elaborate a uniform legal scheme based on abstract themes. It is always anchored to the very fabric of life, specific to a place and therefore requires the opening of a debate around this sense of justice, which is materialised in the interplay of the enactments and vetoes of these ordinances.

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Secondly, the norms pose the dual imperative of responsibility towards the anthropic and the biocentric, recognising fundamental and minimal conditions of existence that validate human development.

The norms are evidence of a change in our relationship with the world and make their own Serres's motto for our time "either death or symbiosis". Here, the act of valuing is vividly biocentric and anthropogenic. Although the act is a human action, the anthropogenic nature of this assessment does not mean that the viewpoint is anthropocentric. Since what is appraised is the element "water" and because it involves the recognition that its integrity is its worth, then the vision will be biocentric in its approach. The underlying principle of the ordinances is to allow goods to retain their inalienable and non-transferable potentiality; i.e., their capacity to pursue their ecological and evolutionary course unimpeded.

3.2. Ecological Citizenship in the Making

The municipal regulations bear witness to the emergence of a sense of citizenship that perceives itself not only as environmental but goes beyond and towards an "ecological citizenship" (Gudynas, 2014).

In their ordinances, the activists display a reflexivity that is far from what oil companies denounce as purely ideological and zealot actions. For instance, a public relations officer of the Instituto Argentino del Petróleo y del Gas states: "In Entre Ríos […] I have spoken to some of the councillors who banned it and they told me: 'No, well, we downloaded the ordinance from the Internet' […] So they download it from the Internet, sign it and approve it" (F, PR officer, CABA, 2018).

The analysis of ordinance recitals and testimonies involved in their drafting cast another perspective on their method of research and learning. An assembly member from the Uco Valley recounts the drafting of such a text:

> It was […] using the citizen's bench. Taking charge … of our democracy in the Deliberative Council […]. It is the first time it was used in T., [it] was through us presenting the draft ordinance against fracking, in other words, citizens using the spaces, let's say, of power. And that process took months.

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> I remember drafting the ordinance. Some people had the knowledge to facilitate legal issues. The boys were able to understand the processes, let's say, the physical, chemical processes of what fracking means. It mattered. You had to read. And the ordinance was based on a San Carlos ordinance. What's more, we started looking for all the anti-fracking ordinances in the country. We tried to put together the best ordinance [with] the recitals, the points, the observations and it was a job […] for all the members of the Assembly (CA, assembly member, Mendoza, 2019).

While they often mobilise the same environmental regulatory framework, the content is not entirely homogenous. For example, all ordinances cover the whole department as the area of application, and not only the urban area as occurs in other provinces, but the prohibitions have different objectives. In Tupungato it is the technique itself that is prohibited. In San Carlos, it is "the use of the common good 'Water' in all types of activities […] through the technique of Hydraulic Fracturing (*Fracking*)" that is prohibited. Lavalle prohibits the use of water in exploration and exploitation, while adding a clause that anticipates the development of new technologies. Alvear's combines the provisions of the previous ones and recalls constitutional and international standards. Tunuyán's ordinance includes references to provincial laws.

This type of action challenges the classical definitions of a citizen as an individual who is assigned rights and duties within the political framework of the nation-state that provides and guarantees them. It is above all, and in its own right, an environmental citizenship that manifests itself in its proactive dimension in the face of environmental risks and hazards. Nevertheless, and at the same time, this environmental citizenship goes beyond the political subject because it acknowledges that these rights and duties depend, on the one hand, on this legal fiction of the individual and, on the other, on the supports of his or her concrete and material existence. It is a subject of law and of matter. This brings us closer to what Gudynas calls "ecological citizenship", for

> as long as a landscape, territory or habitation of its own persists" it preserves the possibility of "plural meta-citizenships [that] operate in different cultural, ethical and also environmental dimensions […]. This plurality determines

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> that no single pattern can be established for all human communities and ecosystems. Their multiculturalism must be understood for each social group and each ecosystem, unique and in harmony. In other words, people deploy different socio-environmental interactions that lead to meta-citizenships specific to each case and territory (Gudynas, 2014: 153).

Conclusion

Contrary to the comments of certain promoters of the hydrocarbon industries, it appears that these texts are unquestionably the fruit of exchange and mutual aid between different groups, a reflexive enterprise, and proof of technical skill enhancement. At the same time as the texts reveal the existence of networks, they make it possible to appreciate the evolution underway in the societal redesign projects of these movements, in which political theories and philosophies percolate in line with the global issues of the 21st century. They demonstrate how social paradigms relating to the path of development are recast within a framework that reconsiders nature-culture relations. Citizens and civil servants, humans and non-humans alike are immersed in the same socio-environmental reality. They cannot avoid this legal-political debate and, in turn, deliberations must recognise the need to be grounded in legal and material situations. As Francisco de Vitoria wrote, with Aristotle in mind, "We are all led by nature to communication". Ergo, the man who rejected communication "would cease to be a man". *Ius societatis et ius communicationis* is the same thing (Desantes Guanter, 1989).

The different fate of the ordinances, depending on their province and municipality of enactments, demonstrates that this mode of action needs to take into account the legal-political dynamics at work. On the one hand, this mode of action is confronted with a scenario in which environmental protection legislation is permanently informed or deformed by provincial regulations, as a result of permits granted by a captured state, greater closure of access to justice, and judicial rulings of provincial superior courts that guarantee development at all costs (Rosatti, 2012). On the other hand, it proved successful when supported by popular mobilisations and legal experts who were able to outmanoeuvre local authorities aligned with the federal government, thus ensuring the Environmental Rule of Law. Nonetheless,

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this scenario is undermined by recent events such as demonstrations against the CSJN to weaken its strong defence of the Environmental Rule of Law (Anonymous, 2022), and because of liberties taken by some local judges about higher decisions in the constitutionality block (SCJMza, 2019) which often remain unaddressed as such (Tribunal, 2022).

The present study focused on the ordinances of the province of Mendoza and shed new light on this legal tool of socio-environmental protest, on its potential as well as its limiting factors. However, a more systematic analysis on a national scale should be undertaken although it would require the removal of obstacles concerning the availability of these texts, which are not always accessible or even known to both citizens and the municipal executives in charge.

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