A CRIMINAL COMMODITY CONSENSUS: THE COLONIALITY OF STATE POWER, STATE CRIME AND THE TRANSFORMATION OF PROPERTY RELATIONS IN MEXICO

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Abstract: Mexican human rights organizations accuse the Mexican military and federal police of having taken part in tens of thousands of forced disappearances in the last decade. Curiously, the regions in which people disappear are also sites of displacement and changing patterns of land tenure and production. Yet, property relations are seldom a topic of studies on illegal state activities. Through a state theory lens, including Aníbal Quijano’s notion of coloniality of power, this article examines conflicts between private property and communal land tenure such as ejidos in Mexico, as two different property regimes. The article aims to show how the state ensemble not only removes legal protection for communal tenure but also mobilizes legal as well as illegal means to force the change of communal lands into private property. Beyond that, the article also aims to show how these changes in land tenure regulation intersect with the Mexican War on Drugs.

Keywords: Mexico; land tenure; coloniality; War on Drugs; state crime; enclosures

Introduction

A new “commodities consensus” (Svampa 2015: n.p.) has economically and socially emphasized Latin American countries’ “orientation towards primary extractive activities or maquiladoras with little value added”. This “consensus” has transformed property relations in land, resources and territory. Its logic of acceleration and expansion favours large-scale and capital-intensive projects, favours mono-cultures and introduces new patterns of dependency. The inevitability of this adjustment and the absolute priority of private property regimes appear to be part of this government consensus. In Mexico, this priority has led to the commodification of land in communal tenure or state management.

Recent research focuses on so-called land grabbing and territorialization (Borras et al. 2012; Grajales 2011; Rasmussen and Lund 2018), forced displacement (Sandoval Palacios, Álvarez and Fernández 2011) or enclosures of the
commons (Neocleous 2014). This is occurring in the context of what Sassen (2014) describes as the global phenomena of expulsions. Political ecology advances the topic of land appropriation (Borrás et al. 2012; Kelly and Peluso 2015), while works from geography and anthropology link property, violence and the state (Correia 2013; Blomley 2008). There is also a growing body of literature on state–crime collusions (Cribb 2009; Grajales 2016; Jenss 2016). Yet, property relations are seldom a topic of studies on illegal state activities, and land acquisitions have hardly been defined in terms of state crime.

This article therefore examines conflicts between private property and communal land tenure in Mexico as two different property regimes. It aims to show how the state ensemble not only removed legal protection for communal tenure but also mobilizes legal and illegal means to force the transformation of communal lands into private property. Beyond that, the article aims to analyse the intersections of changes in land tenure regulation with the Mexican War on Drugs. Mexico is an emblematic case. Growing investment in land for agroindustry and mineral extraction takes place in the context of a “drug war” that according to official estimates cost the lives of 174,652 people between 2007 and 2016 (El País 2016). Mexican human rights organizations have accused the Mexican military and federal police of taking part in tens of thousands of forced disappearances between 2006 and 2012 alone (CMDPDH, AFADEM–FEDEFAM et al. 2011). Curiously, the regions from which people disappear are also sites of displacement and changing patterns of land tenure and production.

Against this background, I make three related arguments. First, the post-colonial state’s operational logic in making private property can be defined as state crime. Second, state institutions in turn employ contested concepts of crime and criminals when legitimizing the transformation into private property. Third, state crime usually attributed to unintended consequences of the War on Drugs is intimately linked to conflicts between private property and claims for communal land tenure. The result is what I call, adapting Svampa’s (2015) term, a “criminal commodities consensus”.

The article also examines conflicts between property regimes in Mexico through the notions of coloniality of state power (Quijano 2000b) and materialist state theory (Jessop 2008). Both have hardly been taken up in state crime literature yet promise a comprehensive understanding of state crime. Their combination lets us grasp the fundamental role the state plays for capitalist relations of production, based on unequally distributed private property. Thinking through state theory and coloniality highlights that illegality is integral to state practices. It also enables us to map out the coloniality of power relations and the hierarchy of different property regimes that respond both to requirements of capitalism and to racist constructions of difference and how these are then linked to the notion of state crime (see Ward and Green 2016; Grewcock 2008). The article thus contributes to developing a
post-colonial perspective on contemporary state crime (as opposed to a state crime perspective on historical colonialism) and adds a new approach to emerging scholarship on the role of the state in illegal acquisitions of land.

The arguments presented in this article are based in part on qualitative expert interviews held between 2011 and 2014. Their context was a comparative study on the production of security and insecurity, and grey zones of state violence, in military operations “against drugs” in both Mexico and Colombia (part of this work appeared in Jenss 2016). Interviewees were activists and human rights experts, some in the context of land conflicts in several regions of both countries (Mexico City, Guerrero, Oaxaca, Bogotá, Arauca, Cauca). Journalists, party politicians and NGO workers were also among those interviewed. This article only cites a small number directly. ¹

The article is structured as follows. First, it explains the theoretical concepts of the coloniality of state power and state crime, and second, the historical emergence of coloniality related to property. The third and fourth sections make the core argument that coloniality of state power defines land tenure management in Mexico and also highlight the role of land control and explain why this process of enclosure involves state crime. The fifth section links changes in land tenure to its context of the Mexican War on Drugs and narratives of crime. A short conclusion summarizes the findings on the intersections of state crime with land tenure and the War on Drugs.

The Coloniality of State Power and Definitions of State Crime

To achieve a comprehensive understanding of the role of state crime in land tenure, this article mobilizes Aníbal Quijano’s (2000b) notion of coloniality of state power, which goes beyond earlier notions of “internal colonialism” (González Casanova 1990). Quijano’s concern is the historical process of the making of Eurocentric power in post-colonial Latin American states. Historically, after 1592, European royal courts increasingly controlled important Atlantic transport routes and the Americas that became the sources of its raw material. “Europe” came into existence only in its social distancing from the inhabitants of that continent. Quijano (2000b) stresses how these colonial power relations established new collective social classifications (“Indians”, “Europeans”) and reduced the remarkably diverse societies of the Americas to one single, subordinated identity of “Indians”; thus, race was invented. Naturalizing the perception of people as “undeveloped” versus “civilized”, this legitimized the mode of domination that colonialism had established (Quijano 2000b). For Quijano (2000b), this has serious consequences for post-colonial Latin American states. The emerging capitalism and the colonial social classifications of people in post-colonial settings are thus two constitutive axes of a single system of domination.
Linking Quijano’s genealogy of *race* to materialist state theory is logical when we look at the theoretical base of both – a historical analysis of social forces. Quijano’s basis of state theory is a historical theory of social classification (Quijano 2000a: 367). The strategic relational approach defines the state as a (form-determined) condensation of the balance of forces in struggle (Jessop 2008: 126). Different state institutions assume varying, at times contradicting, policies as they represent different social interests and political projects, favourable to those of dominant sectors (Jessop 2008: 123; Poulantzas 2002). State projects can provide temporal coherence, and the state has an underlying, stabilizing function for capitalist economy.

Quijano’s consequence for the post-colonial Latin American state is its characterization as “rearticulating the coloniality of power over new institutional bases” (Quijano 2000b: 567). In this sense, his notion of coloniality modifies relational state theory’s conception of the selectivity of the state. The state selectively accepts claims, implements demands and omits others in its agenda-making, policies and sectoral programmes (Jessop 2008: 125). In post-colonial Latin America, where a long-term historical process of colonial domination naturalized these social classifications, this strategic terrain of the state provides a favourable space for “white creole elites” (Quijano 2000b). In practice, racialized hierarchies structure the access to the state and public goods. Simultaneously, the state’s structural mechanisms isolate and fragment political articulation by “indigenous” or “Afro-Latin” groups (see Poulantzas 2002: 171 ff.; Quijano 2000b). As racialized distinctions intersect with class hierarchies, particular social sectors today experience overlapping discriminations. In Mexico, for instance, the discourse of a post-colonial *mestizo* identity never erased racialized distinctions and structural racism (see the description of social hierarchies in Mora 2017). They are also particularly vulnerable to state crime as critical policing studies have exposed (Costa Vargas and Amparo, 2013; Moncada 2009).

One characteristic of state crime is state organizational deviance, understood as organized, not individual acts perceived to be violating a socially accepted rule (Green and Ward 2004: 4). This can be the violation of formally recognized human rights but also goes beyond. To define state crime solely as acts that violate the law would ignore the legal sphere’s contested nature (Chambliss and Seidman 1982: 6 f.). State crime is partly defined by action which “merits holding the perpetrators to account and subjecting them to some kind of sanction” (Ward and Green 2016: 222). Yet, another core characteristic of state crime is not just being condemned or its blameworthiness as such, but the demonstrable “social harm” (Agnew 2011: 31 ff.) or “analogous social injury” (Michalowski 2015) it causes. Not every state action that any given group condemns is state crime. Its consequences make it such. This is not to dissolve the distinction between social harm and serious state abuse (Grewcock 2008: 148 f.) but rather to focus on the relationships between the two. In the case of state crime in Mexico, some activities in the War on Drugs (e.g. homicide) are
indeed legally defined as crimes but discursive mechanisms that devalue the victims or deny state participation, often exempt them from legal prosecution. Other actions often attributed to officials are broadly perceived as abuse but not illegal. Forced disappearances, for instance, are formally illegal in Mexican law only since the end of 2017. Some activities causing social harm might neither be formally illegal nor perceived as problematic by society’s majority.

Latin American post- and decolonial approaches to the state (Tapia 2015) do focus on the relationship between state and social movements or the role of law and violence. Yet, literature that informs a post-colonial perspective on state crime in property is still scarce. Introducing the notion of coloniality of power into state crime literature therefore makes three fundamental theoretical contributions.

First, it highlights who defines (state) crime. In critical criminology, it is the consensus that those dominant social forces with most influence on agenda-setting in law enforcement and crime definitions are least likely to suffer from state coercion (see Michalowski 2015: 14) and even less from state crime. Even if dominant sectors do not control law-making, they will try to make their interests appear as universally beneficial. Coloniality highlights not just the influence of wealth and power on legal definitions but that of structural racism embedded in post-colonial states, that is, in their US-influenced legal systems. In Latin American states, the formerly colonized are often the marginalized majorities of today. Because their interests are not seen as universally beneficial, the coloniality of state power makes it less likely that the state exercises coercion in their interest. In its focus on the role of the state, this is more specific than highlighting the role of race as a variable in criminology (see Agnew 2011: 2).

Second, the approach highlights that the post-colonial state exercises coercion disproportionately against its marginalized majorities. The boundary between state coercion and state crime partly depends on their acceptance in society. The coloniality of state power implies that state crime against “some” (the formerly colonized) is more readily accepted than crime against those social forces that perceive themselves to be closer to the state and to hegemonic thought. The latter benefit from hierarchized social classifications, naturalized for centuries. These imply subtly or openly expressed perceptions of people according to their differentiated value. The coloniality of state power in crime thus begs the question: who is actually affected by state crime? In materialist state theory, specific processes tend to produce perceptions of coercion as legitimate to an overwhelming, even hegemonic, part of society, creating consent about the necessity of state coercion (see Poulantzas 2002; Jessop 2008). If successful, coercive state activities against certain groups appear as widely legitimate. If not, they are more likely to be denounced as deviant (Green and Ward 2004: 4), as human rights organizations have done in Mexico (CMDPDH, AFADEM–FEDEFAM et al. 2011).³
Third, Quijano’s (2000b) coloniality of power contextualizes state crime in two ways. It recognizes the conflictive nature and global structure of social relations. First, it recognizes the centrality of coercion to state power (Poulantzas 2002: 109; see also Green and Ward 2004: 3), beyond the post-colonial state, although it is particularly visible there. Second, coloniality in state crime speaks to global power relations. Crimes committed by Mexican state forces, be they legally prosecuted or not, cannot be understood without an analysis of global relations.

The coloniality of state power is thus useful for situating state crime within social power relations. To introduce the notion of coloniality in state crime offers definitions of state crime beyond International Law. This is particularly relevant in land tenure. The following section inquires about the coloniality of private property before turning to the relation between land tenure and the War on Drugs.

**The Coloniality of Private Property: México Profundo**

Fundamentally, property is not static, free of conflict or apolitical, but an utterly contested power relation. Correia (2013) shows how violence is at the core of property and how acts of sustained violence settle what is utterly contested, solidifying power relations in law. The asymmetrical implementation of land tenure rights may reproduce existing power relations. For this article, two aspects are particularly relevant: property law is harnessed by actual coercion (see Blomley 2008) and hegemonic thought about property is shaped by coloniality. To expand on the latter aspect, private property is usually seen as the modern variant of property, more productive and efficient for development than other forms of tenure:

[A] farmer who owns his own labour, land and other factor inputs, for example, is likely to see a direct relationship between investments and the level of benefit achieved over the long term. A farmer who belongs to an agricultural production cooperative, on the other hand, may see only a loose connection between personal contributions and benefits. (Ostrom and Hess 2007: 4)

Framed in this way, communal tenure can never achieve the productivity and efficiency private property generates for an economy. The lack of clearly defined property rights in communal tenure or open-access resources is feared to lead to overconsumption and fewer investments for improvement (Ostrom and Hess 2007: 7). Their basis in complex and interlinked forms of law and customary norms is often ignored, but a perspective on land tenure that aims to expose state coloniality needs to be legally pluralist (see Ward and Green 2016: 217 ff.).

Law on land tenure in post-colonial states has colonial roots. The historical analysis of property exposes “how the most banal of legal arrangements over land
ownership (a tenant farmer paying rent to the landowner) have their historical source in conquest” (Cowen 2014: 7). Property relations in Mexico today can still be traced to conflicts between the *hacienda* system, where large land owners absorbed what their tenants produced, small holdings and communal property.

International Law is still blind to some harmful and blameworthy acts (Agnew 2011: 34) due to its colonial foundations. In early Iberian and European legal philosophy, the alleged “difference” of those colonized was instrumental in denying them certain rights. In fact, the emerging international constructs of law saw only Europeans as legal subjects. Francisco Fray de Vitoria, who for many is the founder of International Law, gave top priority to trade routes and the access to goods for the colonizers in his philosophical world view. The colonial expansion appeared as unquestionable, unconditional and legitimate (Dussel 2005: 48–54). Vitoria explicitly denies the indigenous peoples of America the right to prohibit colonial presence, trade or land acquisitions (Dussel 2005: 52–53). Indeed, he constructs them as the “Other”, basing his idea of European superiority partly on the lack of the concept of property in the Mexica, Zapotec or Mayan societies in the Americas.

However, the dominant land tenure system is not just based on crimes committed in colonial conquest. The *post-colonial* state causes severe social harm through the “maintenance” of colonial social classifications throughout post-colonial history. More specifically, the coloniality of knowledge production (Quijano 2000b) carried a hierarchized imaginary on land tenure into the post-colonial state.

There are several reasons why the post-colonial state reproduced this asymmetry of colonial dominance. Independence for Mexico was not “revolutionary”; it left the existing social structures and modes of thinking mostly in place. This meant that access to the state’s decision-making and to land as means of production continued to be defined by social positions according to class, gender and race. In the historical process, race became particularly meaningful (Quijano 2000b). The hierarchy of social classifications became the basis for states dependent on plantation and mining economies, where large-scale land ownership coerced and free labour coexisted. While the Spanish Crown had legally recognized the figure of *ejidos* and communal pasture land, these suffered legal changes and dispossession under the post-colonial state. Land owners’ relations to the Mexican state also differed according to the different interests of agricultural industry, *haciendas* or cattle-breeding (Bobrow-Strain 2007: 77). Historically, they acted as state intermediaries, while at the same time repelling regulation and taxation. Property is thus intimately articulated through access to the state and the possibilities of exercising coercion.

Discursively, links between ideas of patriarchal responsibility and ethnically differentiated imaginaries of productivity are essential to the place of property in Mexico. On one hand, what Bobrow-Strain (2007: 43) calls the discursive “racialization of space” facilitated the continuation of fundamental mechanisms of colonial
haderna production well after independence. This perpetuated the hacienda’s economic base – ownership of large areas of land, patronage and labour regimes with strong elements of dependence, which resembled debt servitude long after its formal abolition. On the other hand, the representation of indigenous and peasant production as “unproductive”, facilitated capitalist accumulation in general (even though organizations such as the Food and Agriculture Organization frequently highlight their prominent role for food production; CEPAL/FAO/IICA, 2012). Despite that, some rural communities in Mexico were able to maintain their relatively autonomous economies based on the mixed land use of milpa-production.5

If property is deeply connected to colonial ascriptions, private property is associated with order, efficiency or usefulness (Bobrow-Strain 2007). The post-colonial state frequently introduced a process of enclosure and cultural transformation to constitute indigenous people as “productive wage-labourers and active economic subjects”, “improving” communal land by converting into private property (Neocleous 2014: 147). In Mexico, this was the case during the Porfirian dictatorship between 1884 and 1910, when indigenous communities lost more than 95 percent of their collectively administered land (Katz 1982: 26–32).

The Mexican Revolution between 1910 and 1920 seemed to partially reverse this colonial relation: Agrarian Reform became a main discursive element of the post-revolutionary era (Mallon 1994: 73). Article 27 of the post-revolutionary constitution of 1917 reintroduced land distribution and the legal figure of the ejido. Ejidos usually combined communal administration with individual cultivation (Vázquez Castillo 2004). Post-revolution laws protected peasant land at least partially from capitalist exploitation (Jenss 2016: 152). Ejidos were inalienable and could not be sold, partially taking up Emiliano Zapata’s ideas. This tells us that land ownership in the post-colonial state still structures and modifies the possibilities to influence state priorities. Land is a core problem of post-colonial state formation, and property a matter riddled with the coloniality of state power.

Privatizing Property at Modern Mexico’s Edges

Ejido protection by the Mexican state was highly symbolic, but temporary. The constitution of 1917 had exempted ejido land from capitalist economic cycles by inhibiting its sale. For the decades after the revolution, Mexico was the Latin American country with the least unequal land distribution, even though land distribution via ejidos made very slow progress and bound peasants to the increasingly autocratic state party system. Yet Mexico’s 1982 debt crisis created the imposing ideology that a profound economic restructuring was necessary. Financially strong and export-oriented entrepreneurs argued for and benefited most from it. The state party Institutional Revolutionary Party (PRI) still exerted
autocratic control over congress. In 1992, this congress changed Article 27 – and ended protection for *ejido* land, while formalization programmes led by the World Bank aimed at accelerating the transition from communal and ejidal land to private property (Vázquez Castillo 2004).

Yet, as interviews I conducted with human rights and land activists emphasized (see Methodology above), land is at the centre of popular struggles in Mexico. The indigenous Zapatista uprising in Chiapas in 1994 was at the forefront of protests against this second wave of decidedly unpopular neoliberal policies (Modonesi et al. 2011). Zapatistas directly reacted to this change of property law, and their struggle illustrates perfectly why access to land is a core element in the Latin American debate on coloniality of state power (Quijano 2000b):

The allocation of lands had always been an exit option for the campesino movement in general and for the indigenous. When this possibility is abandoned, displacements and fraud in buying contracts of lands increase. When *Ejido* land is privatized, big cattle-ranchers and farmers start appropriating land and will not only extend their pasture land or fenced-in meadows or kill people, but will use frauds in the buying and selling of terrain. When this legal possibility (of land distribution) is closed down, the Chiapanekan indigenous sees his death sentence. He says: They will kill me because they take my land from me . . .. Becoming part of the rural proletariat or emigrate and becoming a seasonal worker, is not a perspective for him. They are uprooting me from my history and culture, not only from the place where I produce and which I need to be able to live . . .. The very moment the allocation of lands is abandoned the indigenous campesino loses his means of production, but also loses his history (Zapatista spokesperson Marcos). (Cited in Fazio 1996: 132)

Certification programmes were not successful. Many *campesinos* and *Ejido* communities refused to participate in plot measurement and registration. In 2012, the Mexican statistics agency INEGI stated there were still 5,700,000 *ejido* members, and the National Agrarian Register still registered 31,628 *ejidos* on 100,473,830 hectares. Of those, 24,890 had been separated into “private” plots, but only a minority of core ejido areas are actually privately owned (INEGI in *La Jornada* 2012):

When they realized that this was a kind of trap or at least didn’t work for them, the process halted – but the government keeps insisting via [the certification program]. For example to receive state subsidies . . .. peasants are now asked to demonstrate that the land is theirs or that at least there is no *Ejido* control over the land. In the end, the *Ejido* commissaries are losing competences as the ones responsible for the land. (Human rights activist, 2011)
When the efforts to transform *Ejidos* into private property via certification programmes mostly failed and the land market never thrived (see de Ita 2006), Mexican governments devised their own explanation: apparently, *ejidos* lacked loans and capital, and legal restraints on *ejidos* still inhibited innovation (Calderón speech in *La Jornada* 2012). The main state aim, then, was to produce private property where *ejidos* and communal lands existed. Congress subsequently modified decisive articles 30, 80, 72 and 164 of the Agrarian Law between 2006 and 2012 (Cámara de Diputados (Diario Oficial Federal Estados Unidos Mexicanos) 2012) to allow the accelerated transformation of *Ejido* land into private property. This way, the state could lease larger areas to the expanding mining and agro-industrial companies.

The Mexican state (as heterogeneous as it is) seeks to play a key role in the global logic of the “commodities consensus” (Svampa 2015). Land activists and NGO workers I interviewed emphasized the decisive role state agencies played in transforming the existing variety of property regimes and the state’s increasingly reluctant recognition of legal pluralism. As one NGO worker observed, “the state . . . starts to generate a series of processes . . . of displacement and over-exploitation”. The latest legal changes frame former *ejidatarios* as actual property owners. These changes are a further rupture with post-revolutionary mechanisms of protection for small-scale agriculture. The coloniality of this solution, based on a free market for land that does not recognize the asymmetrical relations between its participants, is apparent in the adverse effects of the *ejido* transformation and the subsequent demand for land in Mexico’s highly stratified rural society. These have caused semi-forced rural–urban migration and ecological damage and increased conflicts over land and poppy cultivation. The North American Free Trade Agreement (NAFTA) and subsequent cheap imports also exert additional, structural pressures on small agriculture.

This state-facilitated process of making private property in Mexico tells us two things about the coloniality of state power in property. First, race, having emerged as a key category, translates into a hierarchy of forms of property in state policies. Communal land and *ejidos* can be interpreted as private property’s “other”. Various strategies of othering are at play: colonial social classifications value a commodities approach more than claims for commons and elements of customary law. Mexican National Development Plans exemplify this point. For example, government plans outlined in *Presidencia de la República* (2007) represent private property regimes as necessary and inevitable. This document, which summarizes the state’s overarching political goals, universalizes the interests of dominant social layers, who enjoy privileged access to the state.

Second, the state’s omission to protect, exposes the colonial bias that prevails in state land tenure policies in a society that knows diverse forms of ownership. For example, in Chiapas, the regional government apparently integrated urbanization and counterinsurgency strategies in resettlement programmes for peasants.
living in dispersed and fragmented communities. This programme for “rural cities” is clearly linked to the restructuring of tenure of their former plots and makes them mere users of state housing in a planned, semi-urban space (Interview with social movements researcher 2011). In urban restructuring in Yucatán, peasants who refused to give up their land for construction works, have often been detained. The state attorney (procuraduría) appears to have used falsified accusations against previous owners, in favour of projects the executive promoted (Grupo Indignación 2007: 31–44, 46). Kelly and Peluso (2015: 473) have emphasized the role of formalizations (making the uses of land and its claimants “controllable”, intelligible and adorned with authority) in conflicts over land. This aspect of the marketization of property exposes the post-colonial state’s essential role in these conflicts. Formalizing property is a step towards a society in which clear property rights are the base for and subsume social relations (Kelly and Peluso 2015: 474).

A twofold dimension of property therefore emerges. First, different regimes of property are continuously in conflict. Claims to protect ejidos and communal tenure by indigenous and campesino organizations confront state support for private property. Second, the ownership of private property underpins the political power necessary to influence state policies. This political power is riddled with coloniality as the range of property and land ownership regimes is hierarchized and ascribed to social groups classified according to race.

**From Privatization to Land Control and State Crime**

Taking control of land is a much broader practice within legal confines tolerated and even supported by the state. Experts have long noted that it is not necessarily the formal change of ownership which propels people to leave their plots. “Control grabbing” is the new catchword (see Grajales 2011; Kelly and Peluso 2015). Control over land is also riddled with the coloniality of power struggles, depending on social power relations in the post-colonial state.

Control over land is becoming more decisive than actual property titles, various interviewees insisted. One mechanism is tenancy, and examples are numerous:

> [In Nuevo León,] a municipality leases people’s land for a miserable price. Land which you will never be able to use again for agriculture, leased to the mining companies . . . today, many of the cases we are talking about is not the selling of land. (NGO worker 2011)

> In Carrizalillo, the mining company didn’t have to buy the land. It leased it! Under a scheme which didn’t benefit the peasants and didn’t include the buying or selling of land. (Land activist Guerrero 2011)
Apart from mining companies in Sinaloa or Nuevo León, tenancy regimes exist in agricultural production such as plantations in Veracruz or in Sonora, and in renewable energies in Oaxaca, some as “contracts of temporary use” (DPLf 2018: 45–50).

Tenancy has become integral to land acquisitions and reverses the relation between tenant and owner. Land control means tenants define the land’s strategic orientation towards certain products:

It links them [land and peasants] more closely to the major agrarian production through tenancy. Big land owners, well, they won’t buy if they have the possibility to rent at such a low price, and to utilize the people themselves as workforce. (Grassroots activist 2011)

By taking land control from ejidos, the state causes social harm in several ways. Municipal agencies commit crimes of omission when ignoring communal organizations’ claims. State institutions transfer decisions about land utilization to spheres where they cannot be democratically contested. The 1993 mining law, for instance, frames mining as an activity of public utility and thus gives it “priority against any other land use”; it also violates indigenous communities’ preferential right to mining concessions (Eslava Galicia and López Bárcenas 2011: 56, 71). In some cases, the state actively fragments former ejidos to make way for capital-intensive production regimes in vertically integrated chains of production. In 2012, the Mexican Official Journal listed expropriations of ejidos or small-holders on the basis of “public utility” at least weekly (Jenss 2016: 383).

State policies actively embrace global investors’ interests but endanger the sheer existence of small-scale rural communities’ livelihoods. The state agency Procuraduría Agraria emerged from the defunct Agrarian Reform Secretary, which managed land distribution and contacts between the state and comisariados ejidales – the form the state’s outreach to campesinos took for decades. The Procuraduría Agraria now draws up model contracts for land tenancy, provides support for mining companies seeking to invest in ejido lands and generally prioritizes investment attraction, following the guidelines of National Development Plans. A land activist described the process:

[... The Procuraduría ] tells the ejido commissioner: you have to summon an assembly. He is the one who does the dirty job in his own community, he convinces people to sign. The Procuraduría keeps the minutes, while he summons the meeting. The Procuraduría oversees that all the legal requirements are fulfilled, so that mining companies are legally permitted. (Land activist Guerrero 2011)

Communal property, by contrast, includes not only access but also control – the right to withdrawal, the right to determine people’s access, resources management
and the right to determine modes and content of production (Ostrom and Hess 2007: 11). For the communities, “property interest” (Blomley 2008: 316) is not monetary but rather defined by self-determination and the provision of collective livelihoods (Mora 2017: 71).

The coloniality of property in land then lies not only in the logic of “clearing” large areas of land to enable their commodification. It also emerges in the aim of transforming communal owners into market-oriented patrons of consumption (Zuñino et al. 2011). This cultural and colonial transformation is particularly relevant because symbolically, the ejido model had been deeply fixated in popular imagery, as a base for the autocratic state party system’s legitimacy. This protagonist role that the rural Mexican and the ejido play in local imageries, sometimes with a nationalist undertone, sometimes linked to notions of decoloniality, might, among other factors, explain ongoing resistance to changing property regimes in ejidos and communal lands (Mora 2017: 70).

Now, what relates this transformation of communal land to private property (or controllable production) so closely to state crime? To condemn state actions as “criminal” is to adopt a perspective that these actions are blameworthy and deviate from what a broad majority socially accepts and that they cause severe social harm (see Ward and Green 2016: 223; Agnew 2011: 33). The implementation of private property schemes itself is not “deviant” in terms of official law, partly because that law has been changed and there is no data on their acceptance across the Mexican society. But it has caused social harm. During the last decade, ejido, communal and peasant land, whether formal property or not, has often changed hands, sometimes coinciding with forced displacement. In these cases, communities and NGOs do argue that this constitutes breaches of International Law or binding texts such as ILO Convention 169 and indigenous norms of usos y costumbres, recognized in the Mexican constitution (Ward and Green 2016: 219 ff.). So, even if widely accepted, these enclosures still violate the state’s own claim to legitimacy based on its supposed protection of minority rights.

This is a failure of the justificatory claims of liberal democracy in the capitalist state. Yet, it is also state crime because the expulsions amount to the loss of (the right to) life. These policies of enclosure compromise the survival of rural populations (Blomley 2008: 316). Thus, the coloniality of power renders parts of society non-citizens.

Sections “Privatizing Property at Modern Mexico’s Edges” and “From Privatization to Land Control and State Crime” exposed the colonial operational logic of state institutions involved in making private property. This making of private property can also be interpreted as state crime. Enclosures and certification processes in Mexico were not widely denounced as organizational deviance; neither would that suffice to define them as state crime. But they do aggravate structurally violent conditions of
severe inequality and the loss of livelihoods. The harm they cause is demonstrably equivalent to acts that are condemned as human rights violations in International Law. Also, their link to “a core set of acts that threaten physical security and are viewed as harmful across the vast majority of societies” (Agnew 2011: 31) is a direct one. For instance, in 1990s Chiapas, paramilitary groups received state loans and transport licenses for their violence against indigenous zapatista communities that defended their right to land (see Bobrow-Strain 2007: 150).

I call this a “criminal commodities consensus”. The consensus implies that state institutions act coherently, if not in a strategically coordinated way (see definition by Green and Ward 2004: 5), to realize the overarching goal of attracting investment. This coherence is relevant as the state ensemble is not usually a unitary actor (see Jessop 2008). I argue that this coherent strategy involves state crime.

Concluding the section, I analyse the making of private property as state crime, when either state policies directly lead to the loss of any protection of ownership patterns other than private property or where some state institutions are themselves involved in violent acts of dispossession. Today, changes in land tenure are indeed intertwined with the direct violence of the War on Drugs. The following section focuses on this entanglement of structural conditions and direct physical harm.

Coloniality in Narratives of Property and Crime: Criminalizing the México Profundo

The War on Drugs provides the context in which the dynamics of land tenure in Mexico have unfolded since at least 2007. The conflicts between property regimes that are the focus of this article have been carried out via two competing narratives on crime. This section analyses the two, stressing the role of (colonial) knowledge production (Quijano 2000b) in defining criminal offence and state crime.

Mexican state discourse on crime is linked to land tenure in at least four ways. First, it constructs some forms of ownership as insecure. Second, the state does not protect or provide solutions to escape violence. Moreover, state forces downplayed their participation in violence and abuse, often depending on the victims’ social status. Third, state discourse defined who is criminal along racialized constructions of difference. Fourth, the state also neglected the role both criminal groups and legal business play in changes of land tenure.

Most importantly for the question of land tenure, state discourse extended the idea of crime towards peasant and indigenous activists, labelling them as “dangerous” (La Jornada 2010), and because they questioned the dominant concept of land tenure or control over land, they became a source of insecurity (Jenss 2016: 379). Dominant (state) discourse contrasted the perceived security of private property with an alleged insecurity of communal lands. However, this ignores the diversity
of land tenure in Mexico. Communities in fact have collective holdings *in addition* to privately owned plots, purely communal lands, or *ejidos*, administrated collectively but planted individually. The allegation of insecurity also criminalized communal holdings as such. When investment returns for global and Mexican investors alike were not guaranteed, state documents now labelled this a security risk. This is the case where land tenure is debated between private and communal property (Presidencia de la República 2007). Global investors have also framed small-scale and fragmented land ownership structures as “problematic” (Germany Trade & Invest [GTAI] 2011). Moreover, communities’ ways of life themselves were increasingly framed as security risks (Jenss 2016; Mora 2013).

This is particularly visible in the state of Guerrero, one of the centres of the War on Drugs and the state with most forced disappearances (HCHR Mexico 2018). A representative of rural movements describes how communities came to be framed as dangerous:

> All these movements for the defence of the land . . . these spaces the government abandoned for decades, because back there it’s only the indigenous, now it turns out that it is a big risk, because more autonomous processes are being initiated and guerrilla groups have emerged. (Land rights advocate 2011)

In Guerrero, land activists and human rights lawyers also described enclosures as “a brutal process” (NGO worker, land activist Guerrero, both 2011). They themselves invoked the coloniality of power in this process by contrasting the “indigenous” community with an occupation-like situation by the military. The significance of private tenure in this specific sense of “security” shows the structural bias of state institutions (Jessop 2008). In “coloniality of power”, Quijano (2000b: 533) stresses how in (post-)colonial Latin America, heterogeneous narrations tended to be reduced to single stories. Despite an existing counter discourse, the overwhelming discourse on organized crime either made conflicts over land disappear from view or framed them in terms of crime and security risks.

The official narrative did not deny that state forces killed people. It indeed perceived higher body counts of “dead criminals” (*bajas*) as success. Yet, governments overwhelmingly claimed that those killed by state agencies were “criminals” (Calderón Hinojosa 2010). In this imaginary, all those affected, killed or disappeared had been involved in suspicious activities (NGO worker 2011). This was the case when officials described student victims of forced disappearance as “unworthy” looters or criminals (Pavón Cuéllar 2014). Forced disappearances are often not investigated and relatives sent away with a dismissive “they’ve surely done something” (Human Rights Watch [HRW] 2013: 40; Interview social movements researcher 2011). Military officials, such as General Carlos Villa Castillo (Aristegui
2011) publicly justified killings and boasted about their iron fist approach to delinquency. They feared no penal consequences, as in Mexico, only military courts judge the military.

Human Rights organizations in turn accuse state forces of directly participating in crimes against humanity. The UN High Commissioner on Human Rights in Mexico (HCHR Mexico 2018: 77) states that evidence suggests that, in the 2014 case of Ayotzinapa, apart from the local mayor and local and state police, the military directly participated in the shooting of six and the forced disappearance of 43 students. When in 2010, the prison population shrank considerably, human rights organizations (Comité Cerezo 2012: 17) voiced the concern that extrajudicial executions might have replaced politically motivated detentions. In counter discourse, human rights organizations repeatedly condemned the military offensive in the War on Drugs as a failure (Camil 2011). They claim it led to at least 26,121 forced disappearances between 2006 and 2012 alone, which often affected lower-class segments (CMDPDH, AFADEM–FEDEFAM et al. 2011; Jenss 2016: 340).

State discourse dissolved the distinctions between organized crime and society. Its imprecise vocabulary created ambiguity on who was protected by the state and who, as a “criminal”, lost the right to physical integrity (Jenss 2016: 329). Since 2007, for instance, the penal code was modified to include much wider definitions of terrorist acts. Not only did state agencies perceive certain social groups, such as peasants with a strong connection to their land or those defining as “indigenous”, as suspicious, but also young male underdogs with “neither” work “nor” educational perspective were increasingly labelled “Ni-Nis” and assumed by the government of the time and the media to be prone to crime (Interview with social movements researcher 2011). The state’s denial of fundamental civil and political rights to these groups (CMDPDH, AFADEM–FEDEFAM et al. 2011: 28) exposes the coloniality of power in what Mexican “society imagines to be its ‘crime problem’” (Michalowski 2015: 17). In an intersection of race, class and gender, state discourse constructed them as unworthy of protection. Indeed, those with a lower position in society’s socio-economic stratification run greater risk of becoming a victim of crime (see, for example, HRW 2013).

Above, I argued that the indirect harm caused by the transformation of communal land tenure was intertwined with physically violent and thus directly blameworthy acts. In the War on Drugs, the state’s framing of any political action critical of the government as “dangerous” (La Jornada 2010), again facilitated such crimes. Peasant movements protesting against commodification, transcend the social classifications the coloniality of state power assigns them. Selective murder against these activists resembles a punishment for this transgression (for a similar interpretation, see Pavón Cuéllar 2014).
This means that peasant and indigenous communities are more likely to be victims of state crime in the War on Drugs (see Mora 2013; Jenss 2016). State coercion and pre-emptive disciplinary measures within the war often targeted small-holder communities. Scattered rural communities with autonomous agendas and demands such as the defence of territory came to fear militaries and marines. In Guerrero, activist Nestora Salgado (2013) famously declared she was much more afraid of the Mexican military than of the so-called cartels. The construction of criminals along racialized and class-based difference allowed upper-class Mexicans to use (colonial) strategies of “Othering” for victims and perpetrators alike. They were able to distance themselves from the war itself.

In the War on Drugs imaginary, the cartels’ quest for territorial control has become a powerful label to explain violence. Mexico’s illegal transit economy is clearly linked to their imagined territorial presence and near monopoly of force, as opposed to the state exercise of legitimate coercion. The Special Unit on Investigation of Organized Crime (SEIDO) has published maps which apparently show the affected territories. The maps suggest there are territories with sharp-cut boundaries. By contrast, social scientists see cartels as networks that partly cooperate with police, partly compete with rivals or fight state forces (see Hope 2012). Yet, the idea of territorial cartel power rarely takes into account how it might be related to the acquisition of land. Indeed, these groups participate in enclosures. The Internal Displacement Monitoring Centre (IDMC) estimates around 345,000 persons have been forcibly displaced, mostly through the violence of the illegal economy (IDMC 2018). One human rights activist interviewed, emphasized,

... they take the owners of the land by force to public notaries, who have to be corrupt, in exchange for the titles, in the name of – but then the narcos don’t need territorial control but the appropriation of land titles. It does not matter if it’s big landowners or communities, they do it everywhere. (NGO worker 2011)

Materialist state theory highlights which social forces benefit from and promote certain policies (Jessop 2008). The question then is, in which ways do illegal entrepreneurs and organized crime play a different role in the coloniality of power in land tenure from that of legal business? In enclosures in Mexico, legal entrepreneurs and the illegal economy often acted similarly, in several ways. First, as with legal enterprise, illegal actors are diversifying their economic activities by obtaining land for commercial production, either for illegal activities such as poppy cultivation or to diversify into the legal economy. Second, the very high demand for land in the “criminal commodities consensus” results in normalizing illegal acts by any actors. Organized Crime is thriving on the coloniality of state power in property relations. Its acquisitions are large scale and have contributed to the
intensification of the agro-industrial orientation during the last decade, for example, in the avocado industry (Ballesteros 2017). Power relations in illegal economy thus reproduce coloniality in land tenure. Third, land ownership implies higher social and political status. In a context where social ascent via education or employment is no longer a viable option, the (violent) appropriation of land can serve as a form of social mobility. Criminal networks then aspire to the power landed elites may have held before. Acquisition and formalization processes grant authority “no matter who holds the property rights” (Kelly and Peluso 2015: 474). As a result, the division between legal and illegal land ownership gets blurred, but this is not critically examined within the “criminal commodities consensus”.

The counter narrative in Mexico frequently highlights that the regions with most violent acts by state or non-state actors are often not abandoned but are instead regions with economic growth and dynamic changes in land tenancy and patterns of production. While the state ensemble’s coordinated and renewed interest brings these sites of struggle to the centre of state priorities, the existential threats described by communities and those I interviewed are reflected in forced displacements, disappearances, abuse, extreme military presence and harassment. The transformation of existing property relations, reinforces the coloniality of state power. Police sub-units across municipal, state and federal police seem to have provided logistic support for openly criminal actors (HRW 2013). Such activities can be defined as state crime given their systematic nature and operative goals (Green and Ward 2004: 6).

This article has argued that one aspect of the coloniality of state power regarding property is the state’s lack of protection for or neglect of those laying claim to property beyond private property sanctioned in state legal text. This coloniality of neglect is intertwined with state crime in three ways. First, the state systematically omits indigenous peoples’ claims for collective forms of property. Second, it actively deconstructs existing legal protection for communal lands. Both aspects are perceived and denounced as deviant and brutal by communities and cause severe harm. Third, the coloniality of neglect is intertwined with state crime, when simultaneously, state agencies actively participate in murder, torture and violent displacement in regions where large-scale agricultural production or mining is expanding on either a legal or illegal basis. Examining the domain of property exposes state crime and the (albeit indirect) links between the state ensemble, private investors and criminal forces and the structural interests they share.

Conclusion

This article studied conflicts between private property and communal land tenure in Mexico as two competing property regimes. I made three related
arguments. The core argument laid out in sections “Privatizing Property at Modern Mexico’s Edges” and “From Privatization to Land Control and State Crime” is that the post-colonial state’s operational logic in making private property can be defined as state crime, for two main reasons. First, the logic of enclosure causes social harm by aggravating violent conditions of severe inequality and the loss of livelihoods, equivalent to acts that are condemned as crimes. Racialized constructions of difference translate into a hierarchy of forms of property in state policies. The state’s failure to protect exposes the coloniality of state land tenure policies in a society that knows diverse forms of ownership. The state’s role in conflicts between different property regimes exposes the political power those with private property enjoy. Second, enclosures directly involve violent acts that threaten physical integrity, by paramilitary groups or state institutions.

The last section linked changes in land tenure to direct violence in the War on Drugs. State institutions have in turn employed contested concepts of crime and criminals when legitimizing the transformation into private property. The dominant narrative on crime in the War on Drugs constructed collective land tenure not just as unproductive but as risky.

I argue that as a consequence, the “commodities consensus” (Svampa 2015) turned criminal through neglect, lack of protection and direct, harmful acts that can be defined as state crime. “Consensus” implies that state institutions act coherently (Jessop 2008), in this case to realize the overarching goal of attracting investment. This coherent strategy involves state crime, if simultaneously, state agencies actively participate in homicide or torture, in regions which then host agro-industrial production, mining companies or poppy fields.

The article studied conflicts between property regimes through the lens of coloniality of power because this allowed me to relate conflicts between property regimes to racialized constructions of difference in the post-colonial state. It also enabled me to contextualize state crime in property in terms of social stratification in general and the intersections of categories of difference. The notion of coloniality (Quijano 2000b) relates state crime in property to global social relations and to capitalist processes of enclosure. To understand enclosures and dispossession as an integral part of modernity is a merit of such post-colonial approaches. Further research would thus have to study how coloniality simultaneously relates to land tenure and crime policies in other cases.

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Notes

1. To analyse the interviews based on a relational understanding of “experts”, a coding scheme was developed using both deductive as well as inductive elements. Reiterative coding expanded the scheme’s scope and complexity. The data package was analysed using interview software, to segment, categorize and group different arguments according to pre-existing categories as well as categories emerging from data (Schwartz-Shea and Yanow 2011). To complement interview analysis, participant observation was employed at a regional gathering of Mexican and Central American communal land activists (Foro Mesoamericano de los Pueblos). Critical discourse analysis (taking into account the process of elaboration) was used when analysing documents, such as the National Development Plans.

2. The existence of states of exception makes it even less convincing to define state crime solely based on formally illegal acts: if liberal democracies always contain the possibility to suspend democratic rights and limits on state coercion, then the executive itself decides on the validity of law and limits to state violence.

3. Deviance is not understood as deviance from a liberal state ideal. That would imply the Mexican state commits crimes because of its alleged deficiencies. It is clear, however, that states perceived as functioning liberal democracies also commit state crime (see Grewcock 2008: 149).

4. The popular expression México Profundo (Batalla 2010) refers to rural, indigenous Mexico, estranged from the central state, demonstrating heterogeneity of political organization.

5. Milpa-production is the use of a piece of land, often communal, for mixed vegetable and cereal production.

6. Their critical discourse has had some effect: In 2017, after years of postponement, the legislative passed a new law on forced disappearances, punishing officials’ involvement in the crime with up to 60 years. The penalty is more severe if the victim is disappeared because of their condition as a woman, migrant, Afro-Mexican, LGBTI or indigenous.

7. Ni-Nis are those with neither education nor job perspective, deducted from the Spanish expression “ni . . . ni” (“neither . . . nor”).

References


**Cited Interviews**

Grassroots activist (2011).


NGO worker (2011).