

“They Are Taking Everything Away from Us”: Land Dispossession and the Criminal Selectivity of Indigenous Communities versus International Agricultural and Extractive Firms in Argentina



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Abstract

This article examines how the Argentine state’s inadequate mediation of the relationship between indigenous communities and international agricultural and extractive companies results in criminal selectivity in terms of territorial rights. This article focuses on the Mapuche community’s struggle against the Italian Benetton Group in Patagonia to demonstrate that indigenous communities are over-criminalized and international companies are under-criminalized. Instead of utilizing a criminology perspective to explore *how* the criminal selectivity process is carried out, this article investigates the genesis of this dynamic from a historical perspective by employing Jacques Derrida’s concept of hauntology. The sources of this research include journal articles, newspapers, and published reports. As the global discourse about indigenous territorial rights expands in the academic context, it is pertinent to acknowledge and address historic patterns of subjugation in order to effectively initiate transformative progress.

Keywords

Argentina, Mapuche; Jacques Derrida; Hauntology; Benetton Group; Land Dispossession; Indigenous Rights; Criminal Selectivity; Santiago Maldonado; Extractivism; Rosa Nahuelquir; Neoliberalism

“La justicia sólo es para los poderosos.” Justice is only for the powerful. This is Mapuche woman Rosa Nahuelquir’s scathing assessment after a provincial judge determined that Nahuelquir and her family could not build their lives on Mapuche ancestral lands in the Patagonia region of Argentina (Relea). Despite their constitutional claim to their traditional lands, indigenous communities in Argentina find that their calls for repossession of ancestral lands from international agricultural and extractive companies fall on deaf ears.

The relationship between indigenous communities, international agricultural companies, extractive companies, and the state of Argentina is complex. After the repressive civic-military dictatorship ended in 1983, indigenous rights have gained more widespread national recognition (Barreiro et al. 3; Weis 41). At the center of this study is an investigation into the impact of the dispossession of indigenous communities from their historic lands during Argentina’s early nation-building period in the 19th century, in particular how this history of dispossession influences today’s relationship between indigenous communities and international agricultural and extractive firms. In their many attempts to obtain possession of their historic lands, both through legal means and through protests, indigenous communities have been over-criminalized through police violence and harsh legal measures, while many of the international firms are under-criminalized, not only for continuing the historic trauma of ancestral land dispossession, but also environmental and governance harms. It is important to unpack the underlying cultural and societal mechanisms that result in the aforementioned over-criminalization and under-criminalization.

Indigenous communities express their demand for territorial rights through a combination of legal avenues and grassroots protest, as there are few official routes to assert indigenous people’s constitutional right to their traditional lands. Their expression of dissatisfaction and critique is over-criminalized and met with a range of unsatisfactory responses by the state, such as throwing out legal cases, over-policing, and state-sanctioned violence (Weis 44). The ways in which indigenous peoples organize to obtain these rights are squashed by the state via violence and marginalization.

The rise of multinational extractive firms who conduct agricultural and mining operations on the same territories that affect indigenous communities are increasing. These operations

generate revenue for the companies themselves and for Argentina, while causing environmental and governance harms related to disassociating indigenous communities from their historic lands (Weis 41). There is a lack of state willingness to punish companies for committing harms that primarily affect indigenous communities, so these harms are thoroughly under-criminalized (Weis 48).

The dynamic of over-criminalizing indigenous resistance and under-criminalizing international companies' harms is originally presented by Valeria Weis in her article "Towards a Critical Green Southern Criminology: An Analysis of Criminal Selectivity, Indigenous Peoples and Green Harms in Argentina." Weis' analysis primarily comes from the perspective of critical criminology and green southern criminology (39).¹ In addition to shedding light on the current experiences of indigenous communities in Argentina with regard to the negative impact of international agricultural and extractive companies, this article also reveals the importance of historic modes of action in influencing the state's relationship with indigenous communities in the present day. Furthermore, this article seeks to explain why historic processes of dispossession continue to be such a barrier to effectively actualize indigenous rights over their ancestral lands. To demonstrate the dynamic in the Argentine case, this article focuses on the contentious relationship between the Mapuche community with the Italian Benetton Group, which conducts agricultural, forestry, and extractive practices on Mapuche ancestral lands in the southern Patagonia region.

The Boom of Agriculture and Resource Extractivism in Argentina

Argentina is rich in natural resources, particularly arable land for grazing livestock and agriculture and the minerals lead, zinc, copper, iron ore, magnesium, petroleum, and uranium ("The World Factbook"). Over the last century, agriculture and mineral extraction has been crucial for Argentina's economy. Since the end of the Argentine military dictatorship in the mid-1980s, the government has come to rely on multinational firms coming to remote areas of Argentina to conduct mineral extraction and agriculture (Costantino 138).

¹ Weis reframes criminology to critically examine environmental crimes in the Global South through a broader lens. She considers the socio-economic context in which these crimes occur and governmental agencies' biases that result in criminal selectivity.

Extractive industries have boomed in Latin America, where state governments have been able to benefit from the high prices that international firms can receive for a number of commodities including “minerals, hydrocarbons, forestry, and agricultural goods,” moving primarily into regions which had not previously had a wide range of access to “these types of economic activities” (Savino 406). No matter the socio-political leanings of a government administration, many Latin American countries rely on resource extraction as a strategy of national development.

Due to the rampant economic stagnation that Argentina experienced during the civic-military dictatorship, the government turned to extractive activities to help revive the economy (Costantino 138). Even the self-proclaimed progressive administration of President Cristina Fernández de Kirchner had difficulties in limiting international influence on the extractive industries. Agricultural and extractive activities are contingent on having access to land where they can conduct these activities. Between 2002 and 2013, the Argentine state has facilitated large-scale land grabbing, defined as any single acquisition of more than 1000 hectares, by foreign investors (Costantino 138). In the 1990s, under President Carlos Menem, Argentina had instituted policies to privatize formerly public or communally managed land (Costantino 138). As a result of President Menem’s policies, in the period between 2002 and 2013, 1,399,424 hectares of land were acquired by foreign investors, with the average acquisition being 62,000 hectares (138). Therefore, the combination of economic reliance on extractive firms and the deregulation of land making its sale easier has aided in the proliferation of international extractive firm’s influence in Argentina.

Tellingly, in an interview in journalist Gonzalo Sánchez’s book *La Patagonia vendida: los nuevos dueños de la tierra*, a man who sold his land in Patagonia to an American millionaire and moved back to Buenos Aires explains that the “south of the country [...] has always been a land of foreigners” (qtd. Brudney 138). This response is revelatory in the ways that Argentines view vast expanses of rural land. The legacy of the Conquest of the Desert in the south of the country informs the understanding that this rural land has no claimant and that to switch from indigenous peoples, to white Argentines of European descent, to wealthy foreign buyers is the fate of land that is viewed as having no rightful owner.

As international firms have begun to encroach more onto territories that were considered remote from the rest of the country, and traditionally were and continue to be inhabited by indigenous communities, indigenous claims to land rights have become increasingly important. Of the 1,399,424 hectares of the land that were acquired by foreign investors between 2002 and 2013, 53% was under dispute for reasons of pollution, deforestation, and eviction of persons living on the land; 30.8% of the disputes were directly brought by indigenous communities (Costantino 138). While the environmental effects are devastating for indigenous communities, they add to the general grievance that many indigenous communities experience in Argentina regarding land ownership. Although in regard to environmental harms, from “2000–2008, there were 1,254 criminal cases for environmental crimes; only five ended with a conviction” (Weis 48). The under-criminalization of international companies’ harms is not simply an affront to the territorial demands of indigenous communities, but “factors known to be associated with higher levels of violence and offending – can be related in various degrees to state control of Indigenous lives” (“Understanding” 62).

The right of foreigners to access and own this land is never put into question by the state (Caggiano and Mombello 148). Though international agricultural and extractive firms generate demonstrable harms against indigenous peoples and their ancestral lands, the harms they commit are minimized and thoroughly under-criminalized for their impact on indigenous communities. The state values the economic benefits of these companies over the well-being of its own indigenous communities.

Dispossession in the Neoliberal Age—Haunting of a New Nation

The story of indigenous peoples in Argentina is clearly one that has land at its center. Indigenous peoples have had their land intergenerationally dispossessed; first, by way of the creation of the nation state and second, by way of extractivist firms’ global control of national and international markets. The narrative of Argentina echoes that of many other neoliberal states. Neoliberalism is a nebulous term that generally refers to market-oriented policies, with states that prioritize “strong individual private property rights, the rule of law, and the institutions of freely functioning markets and free trade” (Harvey 64). In general, neoliberal states favor “the integrity of

the financial system and the solvency of financial institutions over the well-being of the population or environmental quality”, believing that such economic policies would improve living standards for everyone (Harvey 70). Leaders of many neoliberal states “privatized public assets, opened up natural resources (fisheries, timber, etc.) to private and unregulated exploitation (in many cases riding roughshod over the claims of indigenous inhabitants) [...] and facilitated foreign direct investment and freer trade” (Harvey 8). Argentina is in lockstep with neoliberal phenomena. Since the end of the civic-military dictatorship, the policies of President Menem in the 1990s ushered in a deepening reliance of the Argentine state on international companies which conduct agricultural and extractive activities on land traditionally occupied by indigenous communities.

While many consider neoliberalism to be a conflict between governments and markets, this interpretation overlooks the ways in which the state utilizes the markets to fulfill the nation’s goals and define citizenship (Eagleton-Pierce 178). In actuality, statehood under the neoliberal model is “a series of interest groups that may be in conflict with each other;” with the state privileging the interests of certain groups over others on “structural, institutional or personal levels” (178-179). In this case, the interest groups are those of indigenous communities across the country and international agricultural and extractive firms. While their clash over land is quite recent in the history of Argentina, the state prioritizes the interests of international companies. The dynamic from which conflict between indigenous populations and international companies originates is in Argentina’s early nation-building period. The dispossession of indigenous communities from their ancestral lands and the harms associated with international agricultural and extractive companies in the current era are not simply a legacy of the dynamics between the Argentine state and indigenous communities in the nation-building period, but a further entrenchment of this interrelation.

This observation is analyzed via the concept of hauntology as originally posited in the 1993 book *Specters of Marx: The State of the Debt, the Work of Mourning and the New International* by philosopher Jacques Derrida. The terms haunting and ontology are combined to create the new concept “hauntology” to describe the process by which the past is not completely left behind, but reappears in a way similar to a ghost (Derrida 10). While a ghost is a representation of the past, it is

not solely relegated to the past as it also exists and interacts with the present. Time and space in this concept are simultaneously negligible and of extreme importance, as the first time and repetitions converge, and the “singularity of any first time, makes of it also a last time” (10). Therefore, each instance of dispossession in the modern era is not a singular event, but is reproducing and retrenching past occurrences of dispossession. Derrida further emphasizes that “it is necessary to introduce haunting into the very construction of a concept” (202). Therefore, the preconditions for the haunting are present in the original event. As the Argentine state was developing its parameters to define Argentine-ness, the perceived foreignness of indigenous communities was baked into the concept of Argentina. As those indigenous societies lived on the land central to the territorial definition of Argentina, their dispossession was a precipitating step to form the nation. Since those who engaged in the Conquest of the Desert are long dead, the only way to engage with the historic process of dispossession in the present day is to engage with this dynamic’s current iteration of dispossession as part of the neoliberal model. In Derrida’s words, we can only “speak to the specter” (12). The original dispossession and dynamic of subjugation during the nation-building process is entrenched in the present as a dispossession and subjugation in the neoliberal model. Even though the current discourse about indigenous territorial rights is well-meaning, it obfuscates the true reason for the subjugation and dispossession framework in the first place. While this article focuses on the Argentinian case, its findings could be extrapolated to explain many of the situations which are occurring in Aotearoa (New Zealand), the United States, Australia, Canada, and other countries which have contentious relationships with local indigenous communities in relation to the possession of ancestral lands.

New Beginnings: Indigeneity and the Inception of the Argentine State

A nation is an imagined community (Anderson 6). The political, historical, cultural, and geographic boundaries present during the creation of the Argentine state continue to shape the conflict between indigenous communities and international agricultural and extractive firms to this day. The modern discourse surrounding indigenous territorial rights does not guarantee indigenous autonomy over their ancestral lands because of the framework of land dispossession devised during

Argentina's creation.

After declaring independence from Spain in 1816, Argentina was a young nation struggling to establish a new national identity unrelated to its previous colonial ruler ("The World Factbook"). In an attempt to validate the new nation's autonomy, General Julio Roca, who was later elected to be the president, spearheaded a series of military campaigns in what is now southern Argentina (Brudney 117). Known as the "Conquest of the Desert" (*Conquista del Desierto*), these campaigns, spanning from 1878 to 1884, amalgamated the land into the Republic of Argentina and served the nation-building process of defining the national Argentine identity (Brudney 117). These lands, however, were already inhabited by various indigenous communities. As the settlers expanded into their territories, they created "the conditions for physical violence on a massive scale" (Brudney 123-124).

Even though the views on how to occupy the new territories and how to deal with the indigenous inhabitants varied, indigenous communities were seen as obstacles to state expansion. From the beginning, there was a shared vision: "a civilized, white Argentina free from the presence of native peoples" (Brudney 15). Already in the early conceptions of the Argentine national identity, indigenous peoples were marked as a precursor to the nation. Their elimination was considered a necessary step to solidify national borders, destining indigenous peoples to forever remain "relics, confined to the prehistory out of which had blossomed a new country and a new people" (Brudney 123). The Argentine military enacted such intense violence that within the first months of the campaign the indigenous population was reduced by a third (Brudney 125). Within a decade, "two-thirds of the native population south and west of Buenos Aires died at the hands of the Argentine military" (Brudney 128).

The perspective that indigeneity is a legend that precedes modern Argentine civilization and that the eradication of indigenous populations is necessary for the state to reach its rightful actualization is paradoxical to the other prevailing narrative that indigenous lands were always unpopulated and available for European settlement. This reveals that the Argentine state conceptualizes the humanity of indigenous peoples as so low on the social hierarchy that they

essentially register as non-existent or easily expendable in the pursuit of available land for occupation (Brudney 126). In the imagination of a nation, the metaphorical “face” of an Argentine was that of the *Criollos*, the Argentines of European descent. It removes indigeneity as an aspect of Argentine-ness, and thus relegates indigenous people to the figure of a foreigner (Brudney 126).

One of the most potent obstacles for indigenous communities across Argentina was the legacy of the Conquest of the Desert, marginalizing indigenous peoples by framing their historic territories as “empty deserts” ready to be plowed by Euro-Argentine workers and farmers (Brudney 3). Even scholars and politicians who later condemned the violence against indigenous peoples solidified this legacy as they “unwittingly installed the idea that indigenous people had been ‘exterminated,’ thus relegating them and their culture to a no-longer-existing past” (Brudney 3). This fact was seemingly verified by the “uniform whiteness” of the Argentine populace, which by the late twentieth century had led to the widely held belief that “any group claiming indigenous identity was necessarily lying” (Brudney 132). This perspective of indigenous peoples being a relic of the past, forever stagnated in the Argentine imagination by characteristics and descriptions given to them by settlers. Hence, to engage with indigeneity in the modern era necessarily creates a disjointed sense of time. If a person were to be indigenous, they would enshrine all of the clearly identifiable traits, like cultural practices, costumes, language, remote location, that would mark them as different from modern Argentinians (Barreiro et al. 16). Thus, indigenous people who live in urban centers and do not fit these stereotypes have their existence negated and continuously face prejudice (Barreiro et al 16). Modern recognition of indigenous desires, needs, and rights is hindered by a prejudice that grows along historic fault lines of the campaigns of the late 1800s and that “both mimics and builds on the museification of indigeneity” (Barreiro et al 135). The history of the nation-building period demonstrates the ways in which indigeneity is conceptualized in opposition to the Argentine national identity.

Over-criminalization of Indigenous Peoples in Argentina

The exclusion of indigeneity from Argentine national identity has been maintained for most of Argentina’s history and has thus shaped the relationship between indigenous communities

in Argentina and the political and judicial enforcement mechanisms of the state.

There are various institutions responsible for administering all aspects related to upholding the law, but the focus of this article is on the police and the judiciary. The police are a formal institution organized to conduct “a wide-range of regulatory practices that serve to monitor social behaviour and ensure conformity with laws and normative codes” as directed by the state (O’Brien 122). The main objective of the Argentine police is to assist “the judiciary in bringing offenders to the attention of the courts and the prosecution of cases” (June and Ebbe 101). The criminal justice system in Argentina is primarily retributive, focusing on punishing offenders to deter them from further committing crimes and to deter “the rest of society from engaging in a similar act” (June and Ebbe 104). Despite the emphasis on deterrence, the system intends to operate under the general principle that under “no circumstances should a citizen of the nation be punished without a finding of guilt based on the law” (June and Ebbe 103).

The Argentine Constitution, the guiding document to the criminal justice system originally instituted in 1853, was significantly amended in 1994 (June and Ebbe 93). As a response to the legacy of human rights abuses committed during the civic-military dictatorship, which spanned from 1976 to 1983, and the evolving international discourse on human rights, the Constitution was altered to include sections committing to certain sacrosanct rights and to include international treaties of human rights that Argentina had signed onto (Giles 90). Therefore, the Constitution accepts many rights asserted by the international community as an obligation to be defended by the government.

The amended Argentine Constitution very briefly addresses the rights of indigenous peoples. Chapter 4 Article 75 subsection 17 states that it is the responsibility of the National Congress to recognize the preexisting culture of indigenous Argentines, give entitlement to the possession of lands they traditionally occupy, and guarantee indigenous participation in the issues related to natural resources affecting them (“Constitución”). Argentina is also a signatory to the 2007 UN Declaration on the Rights of Indigenous Peoples, which outlines many rights specific to indigenous peoples and heavily emphasizes the prevention of any action against indigenous

peoples “which has the aim or effect of dispossessing them of their lands, territories or resources” (United Nations).

In spite of these rights and proclamations, efforts to assert indigenous demands for recognition are impeded by the criminalization of indigenous peoples in the name of national security. For example, authorities in a 2016 National Ministry of Security report alleged that Mapuche activists “belong to a terrorist organization funded from abroad” aiming to “impose an autonomous and Mapuche republic in the middle of Argentina” and “willing to do so by means of usurpation, fires, property destruction, threats, which constitute federal offenses”; thus the report recommended a review of criminal law to recategorize “territorial claims as threats against national security” (Weis 43). This characterization of the otherness of indigenous peoples clearly followed the line of thinking stemming back from the Conquest of the Desert of indigenous peoples being branded as foreign and a terrorist threat to the nation. The attitude of hostility extended to police forces, where the National Gendarmerie, a highly militarized police force, supported provincial police in squashing indigenous protest (Weis 43). The criminalization of indigenous peoples engaging in protest and other means of political organization to advocate their right to territorial claims in fact contradicts their rights guaranteed by the Constitution (Circosta 196-197). In relation to indigenous communities, criminal selectivity leans toward the over-criminalization of indigenous communities for their assertion to obtain what are constitutionally guaranteed rights.

Argentina’s early nation-building period was contingent on territorial expansion requiring the dispossession of indigenous peoples from their traditional lands. Over time, large swaths of communally-managed or state-owned land titles were transferred to international companies (Costantino 138). These firms replaced the state as the main aggressor dispossessing indigenous populations from their historic lands. This dynamic is typified by the tensions between the Italian Benetton Group and the Mapuche community in the Patagonia region. Benetton Group asserts their right over Mapuche land due to their formal land titles, employing some Mapuche people, and offering to gift parcels of land to the local Mapuche community (“Profile – at a Glance”). However, tensions continue because Benetton Group has ultimate authority over the local

Mapuche community's access to their ancestral lands. This conflict continues and deepens the trauma of Mapuche peoples being dispossessed from their ancestral lands during the Argentine nation-building process.

Particular examples of over-criminalization are the eviction of Atilio Curiñanco and Rosa Naheulquir, and the use of excessive force by the National Gendarmerie which resulted in the death of Santiago Maldonado. Under-criminalization is exemplified by the lack of federal investigation into Benetton Group's violation of the Argentine Constitution for continuing the dispossession of Mapuche people from their historic lands. The eviction of Atilio Curiñanco and Rosa Naheulquir, and the death of Santiago Maldonado are representative examples of the complex ways that the criminal selectivity dynamic reveals itself through both state action and inaction, as well as the legal frameworks which excessively punish indigenous claims to their ancestral lands.

Mapuche Eviction and “Unwitting Involvement” in Dispossession

The Benetton family is the owner of the famous Italian Benetton Group fashion brand, a historic retailer with nearly 5,000 stores worldwide (“Profile – At A Glance”). While the retailer is the family's most public-facing brand, the family owns the holding company Edizione S.r.l (“Profile – At A Glance”). In 1991, Edizione acquired Compañía de Tierras Sud Argentinos S.A., an Argentine company dealing in the livestock and agriculture sector, which was originally owned by three Argentine families (“Edizione Acquires”). During the acquisition, the company's titles to around 900,000 hectares of land were transferred to the Benetton family holding company (Hooper and Baldock). In 2004, Compañía de Tierras Sud Argentinos grazed about 280,000 sheep to produce wool for clothing, while also using the land for purposes of forestry and mineral extraction (Hooper and Baldock). In 2010, the farm provided work for 600 workers, many of them Mapuche (“Position Statement”).

The acquisition of Compañía de Tierras Sud Argentinos made the Benetton family the largest landowners in Patagonia (Hooper and Baldock). The Mapuche's traditional lands were seized during the Conquest of the Desert, when cattle farmers began to populate the land for the purpose of breeding and grazing livestock. One of the hallmarks of the neoliberal model

is “accumulation by dispossession,” by which wealth, in this case land and its agricultural productivity, is transferred from their original owners to private and class-privileged domains, in this case the Benetton family, who are already spectacularly wealthy (Harvey 160). Mapuche communities were originally dispossessed of their land during colonial campaigns; however, the Benetton family obtained the land in 1991. This was during the presidency of Carlos Menem who began to institute policies to encourage foreign investment and to make the privatization and sale of Argentine land significantly easier, as it aligns with the neoliberal framework (Costantino 138).

In 2001, hostilities started to heat up between the local Mapuche community and the Benetton family when a Mapuche couple, Atilio Curiñanco and Rosa Naheulquir, settled with their four children on an uncultivated plot legally titled to *Compañía de Tierras Sud Argentinos* (Hooper and Baldock). The couple claimed they had received a verbal, positive response to an application for settlement rights (Hooper), and that the Chubut Province government told them there was no impediment for them to settle there (Relea). Yet, thirty-eight days after moving in, the police evicted the family (Hooper and Baldock). The couple were not found guilty of usurpation (Relea), but the investigating judge, José Colabelli, ordered the eviction of the couple and the restitution of the land back to *Compañía de Tierras Sud Argentinos*. Judge Colabelli ruled that the company’s title to the land outweighed the couple’s “ancestral rights” (Hooper). After the Judge’s decision, a company spokesperson stated that the Benetton family simply wanted restitution of the land and never intended to press criminal charges against Curiñanco, Nahuelquir and their family, since the couple did not act in bad faith (Relea). A press release by Benetton Group, a company owned by the Benetton family, claimed that Curiñanco and Nahuelquir occupied “without authorization 385 hectares of unpopulated land situated in Patagonia, belonging to *Compañía de Tierras Sud Argentino* held by Edizione Holding (holding of the Benetton family) (“Position Statement”). The couple and their supporters, on the other hand, refuted the judge’s decision, arguing that the “Argentine constitution guarantees indigenous peoples the possession of land they have traditionally occupied” (Hooper).

Notably, Adolfo Pérez Esquivel, a Nobel prize winner for opposing the Argentine civic-

military dictatorship, published an open letter directed at Luciano Benetton, Benetton Group's chairman at the time (Hooper). In his letter, Esquivel claimed that the Mapuche were the legitimate owners of the land by means of being descendants of the indigenous peoples expelled from the land and that they should not be excluded from the land on account of not having the legal documentation as recognized by the state. Esquivel used strong language to lambast the company, and named the judge of the case as complicit in Benetton Group stealing the 385 hectares from Curiñanco and Naheulquir (Esquivel). In response, Luciano Benetton also wrote an open letter agreeing to meet with Esquivel to help resolve the matter. He doubled down on his position and justified their actions as simply following "the economic rules we believe in" (Hooper).

Benetton Group understood that the pushback to their ownership of the land was related to a "historic problem relating to the creation of the Argentinean state in the 19th century and its relationship with the native populations who lived there before the birth of the state;" however, Benetton Group refuted that their ownership of seized land was a continuation of this dynamic and they had instead found themselves "unwittingly involved" in a historic conflict ("Position Statement"). It is true that the Benetton family bought the land titles from the previous owners and their assumed ownership is due to the complex contracts of the neoliberal state which has "greatly extended the reach of legal contracts" (Harvey 166). The creation of such contracts is an aspect of neoliberal privatization, which makes the ownership, sale, and acquisition of land legitimate in the eyes of the state. This process is designed to facilitate foreign investment to generate wealth for Argentina (Costantino 142). Benetton Group's ownership of the land was likely not anticipated to be opposed by the local population. However, due to the ongoing dispossession of indigenous peoples of their ancestral lands in Argentina, any and all agricultural and extractive firms continue to engage in and perpetuate longtime historical crimes and grievances, knowingly or not. Benetton Group is an active participant in the continued dispossession of the Mapuche community from their historic lands.

In 2004, Esquivel facilitated discussions between Benetton Group, the provincial government, the indigenous populations of Mapuche and Tehuelche, and the entrepreneurs to

come up with a solution (“Position Statement”). In November 2004, Luciano Benetton announced that he was to “hand over a production unit of good quality land in Patagonia with water resources, situated near the town of Esquel, for the benefit of the local population” (“Position Statement”). Mapuche spokesperson Mauro Millán denounced the offer, saying that Mapuche peoples do not want philanthropy, but wished to reverse the situation of injustice and harm caused against indigenous peoples (BBC Mundo). As negotiations continued in 2006, the Chubut Province government declined 7,500 hectares of land, citing low productivity rate. Benetton Group refuted this rejection stating “the land offered has abundant water resources, with 10 kilometers along the banks of the Chubut River, and would be well suited to intensive use, not only for animal grazing, but also for the cultivation of fruit and vegetables” (“Position Statement”). With the 2006 offer declined, negotiations between the company and the local population fell apart, leaving hostilities unresolved.

While Benetton Group characterized their offer as an act of goodwill, it distanced their system of companies from the historical process of indigenous dispossession and left “unexamined the deeper social structures that produce and maintain the dispossessions” (McCormack 239). In the settlement process “repatriation of natural resources as financial assets is presumed to be the means to resolve grievances,” however, there is no discussion as to why “European conceptions of private property take precedence over indigenous ones” (McCormack 239-240). This is the core tension in the negotiations following the eviction of Curiñanco and Naheulquir: Benetton has the power over the local Mapuche community to donate land, rather than having to acknowledge and address their role in the injustice of indigenous land dispossession. This settlement process is “embedded in the broader programs, philosophies, and practices of neoliberalization” as it still defers power to Benetton Group, who owns the legal land titles, to control the negotiations and decide how land is distributed, leaving the Mapuche community at the mercy of Benetton Group and without any autonomy to make decisions about their historic lands. This uneven and biased process effectively places a “ceiling on indigenous aspirations” (qtd. in McCormack 236). Despite the assertion by the Argentine Constitution that indigenous communities are entitled to their

ancestral lands, the negotiation dynamic between Benetton Group, Curiñanco and Nahuelquir, and the Mapuche community remains wholly unequal. While the state did not insert itself on behalf of the Mapuche community to represent them in negotiations or protect the evicted couple, the police and judicial system were mobilized on behalf of Benetton Group. The police evicted Curiñanco and Nahuelquir and confiscated their belongings, as the judicial system ruled in favor of Benetton Group.

The conflict between Curiñanco and Nahuelquir on one side, and Benetton Group on the other occurred between 2001 and 2006, which overlapped with Néstor Kirchner's presidency (2003 – 2007). Kirchner wanted to distance himself “from the neoliberal project” of the late 1980s, 1990s, and early 2000s, dubbing his policy style a post-neoliberal, national-popular development model (Savino 405). Though Kirchner used rhetoric and certain national policies to demonstrate his break from neoliberalism, his policies continued to limit the ability of localized rural and indigenous movements to “radically alter power relations and institutional politics.” Kirchner's policies continued to ignore the demands of indigenous communities opposing foreign extractivist firms while Argentina remained “highly dependent on global markets” following a pattern “very familiar to those who analyzed social mobilization under the height of neoliberalism” (Savino 405). This continuity was underscored by the leaking of tapes revealing President Kirchner's comments to fifteen indigenous leaders from around the country in a private meeting, stating that their demands for land and resources could not be met as they interfered with the economy and development goals of Argentina (Savino 411). Despite the surface-level ideological change during the Kirchner administration, indigenous peoples' dispossession from their historic lands was in actuality not addressed seriously. The government continued to defer to international companies to control negotiations, demonstrating the continued predominance of neoliberal organization.

The political aspiration of a post-neoliberal transition is stalled by the “troublesome continuities in the relationship between the state and foreign capital,” which is not negated despite being stated otherwise. Neoliberalism is thus “reproduced in the ongoing imbrication of state and corporate roles,” which aims to ensure the quiescence of indigenous communities (Riofrancos

161). The negotiation process, which ironically doubled as a silencing process, was merely masking “ongoing colonial constructions; by appearing to remove grievances, they worked to abrogate” company and state guilt (McCormack 237). This paradox underscores that despite the transition away from the early nation-building policy of explicit land grabbing in Argentina, there is a continued negation of the land and resource rights of indigenous peoples. Land repatriation is seen as a hindrance to national development and an interruption of the national and global economic systems. Therefore, acts of resistance, such as the settlement of Curiñanco and Nahuelquir on land titled to Benetton Group and the refusal of charitable deals from Benetton Group, were major disruptions to the established neoliberal system. While there was technically a negotiation process, it was far from fair in that Curiñanco and Nahuelquir were evicted without trial and had their belongings confiscated by the police while the state not only did not seek to criminalize Benetton Group for dispossessing the couple and the Mapuche from their historic lands, but even ruled in Benetton Group’s favor despite the Constitution. This reveals that the dynamic of over-criminalizing indigenous resistance and under-criminalizing international agricultural and extractive companies’ harm is “inextricably linked to prevailing economic, social, and cultural arrangements; and concern past and present grievances but also future ones” (McCormack 237).

In 2017, tensions between the local Mapuche community and Benetton Group reappeared in the international spotlight with the death of Santiago Maldonado. As part of a protest with the Mapuche Pu Lof community against the detainment of Mapuche activist, Facundo Jones Huala, Maldonado was blockading a road (Novaro 40). During that time, the Mapuche Pu Lof community had been occupying land legally belonging to the Benetton family holdings since 2015 (Goñi). In response to the protest, the judge, Esquel Guido Otranto, ordered the Argentine National Gendarmerie to remove protesters (Novaro 40). In the chaos of the increased hostilities and violence on the part of the military force, protestors fled across a river to escape. Once on the other side, many realized that Santiago Maldonado was missing (Novaro 41). In the aftermath, there was an attempt to determine Maldonado’s whereabouts and how he had disappeared.

Judge Esquel Guido Otranto was assigned to the case of Santiago Maldonado’s disappearance

(Novaro 48). To quell speculation of the state's involvement, Judge Otranto labeled the case as a search for a "missing person" instead of the "forced disappearance of a person" (Novaro 48). Many international organizations called for further investigation into his disappearance and a change of the judge investigating the case as they saw the dismissive language of the case (Goñi). Later Maldonado's body was found, and his cause of death was determined to be drowning, but many still blamed this incident on the state due to the violence of the National Gendarmerie spurring the protestors toward the river (Premici 183).

These protests had escalated, in large part due to excessive National Gendarmerie force, resulting in the situation that contributed to Santiago Maldonado's death. Due to the implication of the Benetton land, this conflict raised questions regarding rightful land and the use of force. In the absence of state backing, the Mapuche community turned to protest to garner support for their rights to their historic lands and to resist the continued dispossession by Benetton Group. The Argentinian state clearly did not advocate on behalf of the Mapuche community as it took the side of Benetton Group and under-criminalized the harm it caused by continuing the dispossession of the Mapuche from their historic lands. Additionally, the state mobilized the various mechanisms it had at its disposal to protect Benetton Group's formal land titles, through military violence and the legal system not handling the disappearance of Santiago Maldonado with the appropriate seriousness. This resulted in the over-criminalization of resistance to Benetton Group's harm.

Conclusion

The dynamic of over-criminalizing indigenous resistance and under-criminalizing international agricultural and extractive firms' harms in Argentina did not become the dominant form of interaction by accident. It is the result of extremely complex and layered historical, social, and political phenomena which have given shape to the dynamic we see today. The examination of the conflict in Patagonia underscores that international companies dispossessing indigenous peoples from their historic lands is a long-term consequence of the initial dispossession of indigenous lands during Argentina's nation-building process. This modern dynamic does not disturb the fundamental mechanisms which have maintained the subjugation of indigenous communities across Argentina

which remain dispossessed of their ancestral lands. Despite attempts to incorporate a recognition of indigenous territorial rights in Argentina's national legal framework, the dispossession of indigenous communities continues as they face legal marginalization and violence in their attempts to assert their constitutional rights. The under-criminalization of international companies' instances of ill-treatment is not simply an affront to the territorial demands of indigenous communities; it is to assert Argentina's state control over indigenous lives. Hence, under-criminalization does not simply signal to indigenous communities their continued societal marginalization, but is another form of re-enforcing state control over indigenous communities through the guise of international agricultural and extractive companies.

While acceptance of Argentina's indigenous territorial rights has legally changed from the early nation-building period to the current neoliberal era, in reality international companies today serve to re-enact the original dispossession of indigenous communities. Owing to the hauntological nature of this dynamic, additional legislative and policy changes, enacted to protect indigenous populations from international agricultural and extractive firms' harms, would only be effective if they were not just to acknowledge, but work to fully resolve the underpinning pattern of indigenous suppression which has accumulated over the past 200 years. The examination of the background process that results in the over-criminalization and under-criminalization dynamic will be useful for future researchers to develop ways to further understand these historic processes of dispossession and criminal selectivity to meaningfully improve access to territorial rights for indigenous populations.

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