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The Belo Monte Dam: Social Movements, Law and State Repression

There is no Indian without land. The relationship with the ground is the characteristic mark that is the essence of the Indian. Hence the importance of the ground to the guarantee of other rights, all linked, one way or another, to the land.[1]

Introduction

The Belo Monte dam project in the Brazilian rainforest is a paradigmatic example of development at any cost. While the dam will be the third largest in the world and provide electricity to industry and citizen, the environmental and social impacts are astounding. Thirty years have nearly passed since the Brazilian government first presented its plans to build the dam. Over these years, social movements – in solidarity with national, regional and transnational groups – resisted the project at every step of the way. In response to this resistance, the state and elite power holders developed ways to navigate around, through and over their legal obligations under the Brazilian constitution and international law comitments. Nonetheless, the social movement to stop the Belo Monte dam continues to this day.

This paper uses Belo Monte dam to examine the ways in which social movement theory reveals and highlights important facets of the Belo Monte dam struggle. I argue that law has an integral meaning in constituting and mobilizing indigenous claims against the government and elite actors, as well as to each other. Moreover, law provides a rights based approach to the injustices recognized not only in federal and

[1] Chief Justice Menezes de Direito of the Brazilian Supreme Federal Tribunal in his judgment in *Raposa Serra do Sol* case (2008)

international law, but also in the international community. Despite the legal issues and the failures of law, the global social movement struggle against the Belo Monte dam relies on law and rights realization. Additonally, I argue that the movement's multi-institutional approach, meaning it is not just political and economic, but also cultural, has created a lasting and important example for a multi-institutional approach for other social movements. To argue this case, I first examine applicable social movement theory concerning oppositional consciousness, law, frames and the importance of a multi-institutional approach. I then move onto examine the many actors and coalitions that enable or block the building of the Belo Monte dam. Next, I analyze the federal and international law applicable in the case. This step is important since here we see the emergence of the legal frame utilized by indigenous groups and their allies. Following this, I finish by examining some of the unique aspects of this social movement such as the symbols mobilized by the indigenous and enabling coalitions and repressive state actions against the social movement. This paper adds to the literature on Belo Monte by using a social movement theory lens to examine the importance of law as a symbol and frame for social movements.

Social Movement Theory: An Introduction

Jeff Godwin defines social movements as a "collective, organized, sustained, and non-institutional challenge to authorities, powerholders, or cultural beliefs and practices" (2003, 3). He places these movements in high regard for it is through these movements, he believes, that "we learn about the world around us through them"

(Goodwin 2003, 5). Social movements are emblematic of society and we discover the wants and desires of others through their demands and claims. Doug McAdam sees social movements as a response to state or elite actor domination in the political and social sphere (2007, xxv). McAdam believes state and non-state actors respond to one another and the changes around them in their attempts to "make sense of their situations and to fashion lines of action based on these shifting interpretations of reality" (2007, xxv). These actors always look for opportunities to alter the world to favor their group and its allies. For social movements, these political opportunities are responses to state or elite attempts to neutralize and counter forms of resistance while maintaining hegemonic domination. This domination occurs, argues Aldon Morris & Naomi Braine, in the "constellation of institutions, values, ideas, and practices" of the privileged group that maintains power through exploiting others in multiple scales and interacting iterations of exploitation and domination (2001, 25).

Resisting domination occurs on different levels and scales, through symbols, marches, ideas, identities and violence. In a sense, we have multiple oppositional cultures that respond to dominating power structures through critiques, previous social movements, rebellious actions and forming new identities (Braine 2001, 26). An important cultural facet of social movements is developing oppositional consciousness – an internalization of oppositional culture. Morris and Braine defines this development as "an empowering mental state that prepares members of an oppressed group to act to undermine, reform, or overthrow a system of human domination" (2001, 25). This interplay between the oppressors and the oppressed creates the "conditions that generate oppositional cultures as well as oppositional consciousness" (Braine 2001,

27). Social movements benefit from both an oppositional culture and consciousness as these highly influence the power and lasting impact of a movement and its organizations.

Oppositional consciousness requires creating and maintaining a meaning or viewpoint that exists in a dialectical relationship. It involves constructing an identity for the movement while developing sites and forms of resistance – in relation to powers of domination – over the meanings of the world. This construction of meaning is commonly employed as a "frame." Benford & Snow posit that a frame is a verb and "denotes an active, processual phenomenon that implies agency and contention at the level of reality construction" (2000, 614). Social movements may "frame, or assign meaning to and interpret relevant events and conditions in ways that are intended to mobilize potential adherents and constituents, to garner bystander support, and to demobilize antagonists" in their attempts to create collective action (Snow and Benford 1988, 198). This collective action frame emerges through negotiating what needs to be changed, altered, or reformed "regarding who or what is to blame, articulate an alternative set of arrangements, and urge others to act in concert to affect change" (Benford 2000, 615).

How actors frame issues plays a significant role in a social movement and counter-movements. These frames can create, what Myra Marx Ferree calls, *discursive opportunity structures*, which are the "institutionally anchored ways of thinking that provide a gradient of relative political acceptability to specific packages of ideas" (2003, 309). Ferree notes the discursive opportunity structures "can be found in major court decisions, as well as in the prior constitutional principles they invoke and in subsequent

legislation written to be consistent with these principles" (2003, 309). Thus, legal components to a frame can be construed to create discursive opportunity structure thereby leading to a culturally resonant "master frame" – especially concerning environmental justice issues like those found in Belo Monte dam movements (Benford 2000, 619).

Domination and state influence occurs on every scale and often finds itself in the codification of national and international law. Therefore, effective resistance must occur upon the "contested terrains" of law. However, we must resist the belief that laws are designed to protect the interests and rights of citizens and instead realize that law reproduces and enforces social control through moral and legal discourses (Fernandez 2008, 22). The battle over law and its meaning can significantly shape a social movement while litigation and other legal tactics can provide social movements with important resources for their cause (McCann 1994, 4). As one scholar noted, "since law provides social actors with key interpretive resources, constructing and mobilizing legally embedded cultural symbols is one central theoretical mechanism through which challengers frame their grievances, identity, and objectives" (Pedriana 2006, 1724). Indeed, law need not exist as an abstract concept informing movements, but instead we can view law as "constitutive of practical interactions among citizens" (McCann 1994, 6). This approach to law and social movements allows us to see how "legally embedded symbols and categories shape social actors' interpretive capacities in ways that enable and constrain movements in their competition with dominant groups and the state" (Pedriana 2006, 1723). The process of developing oppositional consciousness and applying a culturally resonant master frame, in many ways, requires the constitutive

processes that law provides. With law we can point to areas of injustice and battle over legal interpretations taking place “in a field of pain and death.“

This legal mobilization framework requires an understanding of law as “a complex repertoire of discursive strategies and symbolic frameworks that structure ongoing social intercourse and meaning-making activity among citizens” (McCann 1994, 282). Through knowing the law, we can begin to make meanings for ourselves. We begin to understand we have rights and that we deserve them. We begin to understand that through law we can begin to realize them. More than this, through law we begin to understand ourselves in relation to others. This legal mobilization framework has several important benefits –

> Litigation can raise expectations, spark indignation and hope, and stimulate a rights consciousness among movement constituents and supporters; it can help legitimize a movement's goals and values, publicize the movement's causes, and provide leverage in bargaining with powerful elites (Levitsky 2006, 147).

The implication for using law in social movements provides a strong foundation for expanding and legitimizing a movement’s frame and oppositional consciousness. Through law we can begin to take our activities to the broader world.

In their article, *Culture, Power, and Institutions: A Multi-Institutional Politics Approach to Social Movements,* Elizabeth Armstrong and Mary Bernstein provide insights into the multi-institutional politics model that can help broaden a social movement’s gaze to include challenges over culture instead of limiting our frame to economic and political disenfranchisement. This process, they argue, requires examining the material and social power of institutions (2008, 82). They argue that “institutions are where distinctions made by individual social actors are translated into social boundaries, where classification systems are anchored and infused with material

consequences" (Armstrong 2008, 83). These categories shape our culture and where we belong within it. It shapes our rights and duties and the ways in which these rights and duties fundamentally affect our life's path and the paths of future generations (Armstrong 2008, 83). The authors make a strong point in arguing "[a] challenge to the system of cultural classification is often a precondition to the reallocation of resources" (Armstrong 2008, 92). Meaning, individuals, groups and movements, through this type of challenge, can begin to make claims demanding more economic or social capital. More than this, they want to point out that if movements only look to the state for solutions it "fails to capture the ways that power is distributed in society and cannot capture the range of activity designed to challenge the ways that power operates" (Armstrong 2008, 84). Therefore, social movements would be well served to base their claims not only in law, but also culture and the classification systems that distribute costs and benefits.

Belo Monte and Its Actors

Belo Monte dam, in the Brazilian state of Para, was first proposed in 1975. After many years of corruption and government repression, the project met organized resistance in 1989 by 3,000 indigenous people, government authorities, and hundreds of environmentalists near the proposed site of the dam (Santos 2013, 8). This social movement forced the government to change strategies and ultimately abandon construction. Between 1989 and 2002 construction companies and government agencies developed new designs, and since that time, struggles have occurred on

every side of the issue (Santos 2013, 8). The Belo Monte dam, is one of six new hydroelectric power developments currently in process – with all six affecting indigenous and conservation areas (Ferreira et al. 2013, 1013).

Brazil is undergoing massive economic expansion. According to one scholar, Brazil is undergoing a "predatory model of development" that prioritizes large-scale natural resource exploitation and infrastructure projects (Timo 2013, 137). These projects bring enormous benefits to elites, but at the cost of "violating the human rights of the Brazilian population…such as indigenous, riverside and quilombo communities, but also slum residents and street people, among others" (Timo 2013, 138). The government owned Brazilian Development Bank (BNDES) supports this mode of production through financing mining, ethanol, oil and gas, paper and pulp, farming and hydroelectric projects (Hall A 2012, 857). The bank's spending has increased from US$21.91 billion in 2003 to US$105.10 billion in 2010 (Hall A 2012, 857). The Belo Monte dam is a paradigmatic model of this mode of development. BNDES provides 80% of the investment in the dam, but state owned companies hold together 49.98% of the voting shares thereby allowing the big construction companies to outvote the state backed enterprise (Hall A 2012, 857). Lawmakers also grant their support to the Belo Monte dam. Following systematic infrastructure revisions to the flooded area caused by the dam's reservoir, which reduced its overall size and would not flood demarcated indigenous lands, Congress introduced a bill to approve dam construction (Jaichand 2013, 411). Brazil's Court of Electoral Accounts released political contributor data and reported that in the 2002-2012 period, the four largest contributors were construction firms (Fearnside 2014, 256). It's no surprise that Congress approved the bill within a

month – a record time – and during debate, the government argued that indigenous people of the area need not be consulted since the reservoir would not flood their demarcated lands (Jaichand 2013, 411). This is only the beginning. Brazil's energy-expansion plans over the next six years calls for an additional thirty dams in the Amazon region (Fearnside 2014, 256). BNDES will also be expanding their funding scheme to dams in Peru, Bolivia, Ecuador and Guyana (Fearnside 2014, 256). Hydroelectric power is on the ascent in the Amazon region, but incurs significant costs.

A constant interplay between social movements and sites of power occurs as changing circumstances provide movements and sites of domination with openings and closings. Social movements, the state and elite actors, all take advantage of these conditions when possible. For example, "the change in the state governorship in 1999 in Acre brought a clear shift to more environmental concern under the administration of Jorge Viana, as did the change of government to Eduardo Braga in Amazonas in 2002" (Fearnside 2013, 16-7). Other examples include assassinations and massacres leading to changes in mining practices, land reform and conservation reserves (Fearnside 2013, 16-7). On the other hand, state power and elites moved to –

> quickly force approval of hydroelectric dams following the electricity shortage of 2001, and the pressure to speed approval of the Belo Monte Dam following the windfall provided by an incident in which the chief Electrobras [Brazilian electric company] engineer for Belo Monte was cut with a machete during an indigenous demonstration against the dam in Altamira in May 2008 (Fearnside 2013, 16-7).

These opportunities cut both ways and provide avenues for capitalization of a movement's goals and state repression. Indeed, these opportunities can shape a movement as contexts and actors shift through the years. One study, which focused on Belo Monte actor networks per Bruno Latour, found that "the diversity of the groups, the

varied artifacts used as tools in the conflict and even the space of the affected cities and…locations have been in constant transformation since the beginning of the conflict" (Fleury L.C 2013, 151). The changing actors, massacres and dramatic accidents are political opportunities that state and non-state actors will mobilize for their benefit.

The struggle for and against the Belo Monte dam is a thirty-year struggle that began in the 1980s. Over that time, many actors have come and gone, but the consistent actors mentioned below form the main sites of contestation. The groups can be organized into the enabling coalition and blocking coalition. Those in the enabling coalition are the dam builders, Ministry of Mines and Energy[2], Electrobras, Electronorte (electric company in Para, Brazil), the construction firms, and academic support from the Federal University of Rio De Janeiro, aluminum industries (national and international) and China (a beneficiary of extractive industries) (Fearnside 2006, 19). On the blocking side are the Movement of Dam Affected People (the main national-level organization in Brazil), Movement for the Development of the Transamazon Highway and the Xingu (MDTX), international NGOs (Greenpeace, Friends of the Earth, Amazon Watch, International Rivers Network and many others), Brazilian legal institutions and academic support from University of Para, Campinas and Sao Paulo (Fearnside 2006, 19, McCormick 2010, 38-9). An example of group interactivity is the MDTX that works closely with local social movement organizations such as Forum Carajas and Living

[2] "A key role will be played by Vale S.A., the world's second-largest mining company, which runs the world's largest iron mine at Carajás, situated southeast of the Belo Monte dam. Over the next few years it plans to increase output from 90 million to 130 million tons of iron ore – an expansion that will clearly demand a great deal more energy. In April 2011 it announced the acquisition of a 9 percent stake in Norte Energia (Bloomberg Business Week, 2011). Vale S.A. already operates nine hydro-electric power stations in other parts of Brazil to satisfy its huge demand for energy from its mining activities, and it clearly expects to receive large amounts of electricity from Belo Monte" (Hall A 2012, 858)

Rivers, along with the Catholic church, a senator from Para, two federal deputies and a state deputy (McCormick 2010, 39). On the local indigenous level, one leader of the Kayapo tribe, who live on the Xingu river, created an alliance that "consists of at least twenty five distinct indigenous groups, local NGOs and environmental activist groups, as well as the settlers of the Xingu basin, including the people of Altamira" (Jampolsky 2012, 246). This local alliance created an education campaign along with direct action movements, including picketing road blockades and other acts of disruption (Jampolsky 2012, 247). The local, regional and international actors involved in the blocking coalition are astounding. Much of this solidarity is formed around the legal mobilization of rights. Injustice is being done and justice must be realized through movement activity on multiple scales. In other words, " [i]t is hard to think of any strategies of influence that went unused over the 35 years this project was debated—lawsuits, lobbying, protests, studies, public audiences, and more" (Hochstetler 2011, 367).

Belo Monte - International and Federal Law

Indigenous people's land rights in Brazil are regulated by Article 231 of the 1988 Federal Constitution, which is a result of decades long indigenous struggles, and enumerates –

> It is recognized to indigenous peoples their social organization, their customs, languages, beliefs and traditions and the original rights over lands they traditionally occupy, belonging to the Union to demarcate them, to protect and enforce respect for all their assets" translated in (Zhouri 2010, 260).

Environmental rights are enumerated in Article 225 of the 1988 Federal Constitution, which states that every individual has the right to an ecologically balanced environment

(Cardoso Jr 2014). Federal Law established the environmental impact assessment (EIA) and the environmental licensing procedure; both are directly applicable and necessary to infrastructure projects. Brazil's international legal obligations provide more in-depth and specific protection to indigenous people. Brazil is signatory to the United Nations Declaration on the rights of Indigenous Peoples (UNDRIP), the Organization of American States (OAS) and a member country to the International Labour Organization (ILO) and signatory to Convention Concerning Indigenous and Tribal Peoples (ILO 169). To avoid enumerating each applicable article, the important legal issues regarding the Belo Monte dam (and most development projects) are land demarcation, the EIA and licensing procedure and the free prior informed consent (FPIC) required by international bodies when indigenous people are affected.

On April 1 2011, the Inter-American Commission of Human Rights (IACHR) granted precautionary measures[3] (PM) to the indigenous communities affected by the Belo Monte dam. The Commission requested that the Brazil immediately suspend the licensing process for the Belo Monte dam and stop any construction from continuing forward until several conditions are met (IACHR 2011). These conditions, the Commission stated are FPIC, that the Environmental Impact Study be made available and translated into indigenous languages and adopting measures to secure the life and health of indigenous people along the Xingu river (IACHR 2011). The unprecedented events that followed jeopardize the relevance and efficacy of one of the oldest human

[3] "The mechanism for precautionary measures is established in Article 25 of the Rules of Procedure of the IACHR. The Rules of Procedure establish that, in serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case, as well as to persons under the jurisdiction of the State concerned, independently of any pending petition or case" (IACHR 2014).

rights protection systems in the world. Besides refusing the PM's requirements, Brazil refused to attend a meeting of the OAS member states to address the issue, recalled its ambassador to the OAS, withdrew the candidacy of a Brazilian judge to the IACHR and withheld payment of its budget quota that finances the IACHR (Timo 2013, 143). Brazil made a statement that it will not kneel to an international judiciary when its interests are at stake. In response, the IACHR reevaluated its PM on July 29, 2011. While upholding the health requirement, the Commission decided the FPIC controversy "has turned into a discussion on the merits of the matter, which goes beyond the scope of precautionary measures" thereby relieving any tension between the Brazilian government and the Commission (IACHR 2011). Unfortunately, it's been over three years since the PM and not a further word from the Commission regarding the Belo Monte dam.

Despite this setback and the long timeline (the law can move slowly most times), a recent IACHR decision *Sarayaku v Ecuador* provides excellent precedent for indigenous people. The IACHR found that the Ecuadorian state violated the community's right to be consulted, as well as their community property rights and their cultural identity on the grounds that the indigenous people were not consulted in "good faith" when development projects trespassed upon indigenous lands (International 2012). In other words the IACHR requires "consultations be carried out in "good faith" necessitates an absence of coercive measures by the state or third parties acting with the state's authorization or acquiescence" (Khatri 2013, 192). As one scholar noted, "[t]he decision sets a stricter standard than any preceding Inter-American decision or legal instrument on the rights to consultation and FPIC in the context of state-sponsored

development" (Khatri 2013, 167). This can provide an excellent resource for the Commission when hearing the Belo Monte case. In a 2012 report by the Committee of Experts on the Application of Conventions and Recommendations for the ILO, also found that Brazil violated FPIC with the indigenous people concerning the Belo Monte dam. Their recommendations echo the IACHR's first PM regarding Belo Monte (ILO 2012). Ultimately, as one critic noted "[i]n practice, adequate participatory processes consistent with international understandings of FPIC are rarely implemented in Brazil" (Hanna 2014, 58-9). Thus, we must question the efficacy of international law and FPIC in the Brazilian context. However, this legal mobilization clearly marks the strategy of the indigenous social movement and its supporters – indigenous people must be consulted.

Brazilian law and its Enforcers

Created by the 1988 Federal Constitution, the Ministério Público (MPF) enforces Brazil's environmental laws against both public and private actors. In 2003, Brazil's MPF had 10,000 public prosecutors and of that number 2,000 were responsible for environmental protection with 200 working exclusively on environmental issues (McAllister 2005, 208). Prosecutors can open environmental investigations based on their own personal observation or knowledge, along with complaints submitted by the public or another government agency (McAllister 2005, 210). Lesley McAllister notes, "investigation[s] may be a regular civil investigation (inquérito civil) or it may be a preparatory investigation (procedimento preparatório do inquérito civil), used to

determine whether a regular investigation is warranted" (2005, 210). During their investigations, they have the authority to demand documents and/or technical reports from private or public entities to use as evidence for the filing of public civil actions (ação civil pública) (McAllister 2005, 210). Anyone can file a public civil action, but the MPF has brought over ninety percent of public civil actions in Brazil (McAllister 2005, 210). Thus, the MPF is an excellent resource for social movements. Of particular note to the Belo Monte case and others like it, "for a public official to state false or incomplete information in the environmental permitting process or to issue an environmental permit that does not comply with environmental regulations" is a criminal offense (McAllister 2005, 212). The criminal consequences are severe "with sanctions including prison, house arrest, community service, disqualification from the receipt of public contracts or subsidies, and monetary fines" (McAllister 2005, 212). However, According to McAllister, "[t]he majority of the Ministério Público's environmental investigations result in settlements, referred to as conduct adjustment agreements (termos de ajustamento de conduta)" (2005, 210). The MPF has brought civil public suits concerning the Belo Monte dam since 2001 and has done so continuously up until the date of this paper. Their cases generally revolve around the dams current and expected impacts, corruption, licenses and EIA (Jampolsky 2012, 250-1). The MP has been an ardent enforcer of the laws, but like the IACHR and ILO, the state and its elites continue to power through any illegalities.[4]

The Brazilian Courts constantly change between finding the Belo Monte dam legal or illegal. Since the MPF brought suit in 2001, multiple cases have gone in and

[4] For more information regarding court cases please see Jaichand, Vinodh Sampaio Alexandre Andrade. 2013. "Dam and Be Damned: The Adverse Impacts of Belo Monte on Indigenous Peoples in Brazil." *Human Rights Quarterly Human Rights Quarterly* 35 (2):408-447.

out of the different levels of Brazil's court systems. The court's constitutional and international law obligations requires the courts to –

> Recognize the value of environmental diversity and its components exposed in the Constitution of the Federative Republic of Brazil and in a number of agreements, recommendations, declarations, instruments and regulations adopted within the United Nations system and other international and regional organizations (de Araujo 2012, 122).

The court drama concerning the Belo Monte dam is very dramatic – judges stepping down, charges of corruption, negligence, ignorance and political pressure. Unfortunately, the historic and unfolding drama deserves its own article and some have captured most of it.[5] Despite its interesting narrative and relevance to social movements, much like the court cases in the United States, there is conflicting precedence along with lower courts not following the Supreme Court's rulings. Integral to this discussion, where the judiciary is only one part, is the placement and direction of power. On March 26 2014, a Federal Circuit Court ruled on a MPF appeal and stated "Belo Monte is an example of what should not happen in public administration, as regards [compliance with] the standards of environmental licensing;" with Judge José Batista concurring, "[t]he only concern [in this project] was economic, with a small amount of environmental [concern] and no social concern, especially in regards to indigenous peoples" (Vivo 2014). In total, there are more than 50 law suits against the dam pending judgment in the Judiciary, but while the courts hold off on ruling, the dam advances (Santos 2013, 9).

The Licensing Procedures in Brazilian Law

[5] Please see - de Araujo, Luis Claudio Martins. 2012. "The transnational institutional dialogue in belo monte dam case." *Veredas do Direito, Belo Horizonte* 9 (18):117-149.

One of the contentious areas of legal terrain for enabling and blocking coalition activity is the environmental licensing process. The environmental licensing process is a key procedural and decision making moment where a specific project officially takes shape and gains attention from both coalitions in efforts to block or enable the license process (Hochstetler 2011, 350). According to Brazilian law –

> An environmental licence is an administrative act by which the competent environmental authority establishes the conditions, restrictions and environmental control measures that must be met by the proponent, physical or juridical person, to locate, install, operate or expand enterprises or activities, which use environmental resources, are considered to be actual or potential polluters, or which in any way may cause environmental degradation (Hanna 2014, 61).

The Brazilian Institute for Environment and Renewable Resources (IBAMA) is in charge of applying statutes and regulations and executing environmental licenses is specific areas. In December 2011, Brazil enacted Complementary Law 140/2011 that redefined the licensing process as following –

> The federal government, through IBAMA, has sole authority to license undertakings: (i) involving Brazil and a bordering country; (ii) in territorial waters and the continental shelf; (iii) on indigenous lands; (iv) in federal conservation units; (v) involving two or more states; (vi) with military character; and (vii) involving nuclear energy. Analogously, the state environmental agencies have authority over projects involving more than one municipality and the municipalities have authority over projects exclusively confined to their territories (Cardoso Jr 2014, 287).

State or municipal government approve licenses that do not fall under these conditions. The environmental license process has three main stages –

> Preliminary License (Licença Prévia) – granted for the planning phase, approving the location and concept of the venture and its environmental viability. The environmental impact study is presented at this stage and public

> hearings/consultations are held. Construction License (Licença de Instalação) – authorizes the start of construction, according to the specifications of the approved plans, programs and projects, including environmental mitigation and monitoring measures and other conditions. Operating License (Licença de Operação) – authorizes the start of operation after inspection to verify that all the requirements of the previous licenses have been met (Cardoso Jr 2014, 285) .

The environmental licensing process, especially at the preliminary stage, is the prime time for indigenous peoples and interested parties to become involved in the legal mobilization process. One study found that in 2013 alone, around 3000 project proposals involving indigenous people are under consideration by federal agencies (Hanna 2014, 61). As an example, In 2010, IBAMA granted a preliminary license to build the Belo Monte dam, the license came with forty mandatory social and environmental conditions to reduce negative impacts (Santos 2013, 12). Interestingly, "IBAMA formally recognized the conditions were not met…and monitoring reports from the MP and civil society show that about [only] 19.7% of the obligations were fulfilled" (Santos 2013, 12). Yet, the dam continues to be built. A critic of the process notes "[i]mpact assessment, mitigation and enhancement play only a secondary role in the licensing process with proponents focusing primarily on obtaining project approval and ensuring rapid implementation" (Hanna 2014, 58-9). This is where state and elite power can drive, pressure and influence governmental agencies to approve licenses despite their illegality.

The preliminary licensing phase of project development requires the building companies to submit an "Estudo de Impacto Ambiental" aka Environmental Impact Statement (EIA) along with a "reader friendly version called a Relatório de Impacto Ambiental" (RIMA or simplified Environmental Impact Report), which together forms the

EIA-RIMA “used by the competent authority to determine approval, mitigation measures and/or conditions for project implementation” (Hanna 2014, 61). As McCormick notes, “[e]xperts who generate [EIAs] in dam planning have consequently become important actors in the approval process” (2007, 239). In the case of Belo Monte, state-owned electric companies handled the EIA. The EIA-RIMA is submitted to the relevant federal or state agencies and the impacted communities – if indigenous are affected an extra FPIC process consistent with ILO 169 requirements must be undertaken (Hanna 2014, 61). Moreover, “[w]hen Indigenous peoples are affected, the legislation also requires their participation and the utilization of traditional knowledge in conducting the studies and in proposing mitigation measures” (Hanna 2014, 61). This is the decisive stage where social movements can take action. Public hearings occur at this point before any preliminary license is approved. Public hearings are political opportunities for social movements to affect change –

> An open public hearing can follow the EIA if the local community requests it within 45 days of being notified of construction. The hearing involves the presentation of the official EIA by a consultant, statements by government officials, and testimonies by local communities or their representatives (McCormick 2007, 240).

Public hearings and licensing procedures are also where enabling coalitions look to disrupt social movement involvement. When the EIA is found acceptable and any FPIC or public hearing process is completed, IBAMA issues the preliminary license stipulating certain conditions such as the forty conditions noted above. Following the preliminary license, a “Plano Básico Ambiental (PBA or Basic Environmental Plan), the stage in which Indigenous peoples participate, is prepared” (Hanna 2014, 61). Here is another opportunity for indigenous people to state their rights. This process involves a detailed

negotiation component between the proponents and impacted groups and once a PBA is agreed upon by IBAMA and FUNAI (the government agency that deals specifically with indigenous peoples), a construction license is issued (Hanna 2014, 61). The proponents of the development project must have complied with all agreed upon conditions and implemented all mitigation concerns before an operation license is approved. This process is the main site of contention with Belo Monte dam construction. Both the enabling and blocking coalitions use the licensing process as the nexus of their interests and claims.

The enabling coalition cuts corners whenever and wherever possible concerning the Belo Monte dam. For instance, Eletrobras a state-owned utility company, developed the Belo Monte EIA, but did so without involving the impacted indigenous communities (Khatri 2013, 171-2). Nonetheless, IBAMA approved the EIA in 2010 despite the 20,000 paged EIA becoming publicly available only two days before the public hearing with these public hearings taking place in urban sites outside of where the impacted indigenous live (Khatri 2013, 171-2). Despite this, the construction license was approved in 2011. Phillip Fearnside, a Brazilian scholar argues, "[o]ne of the ironies of the licensing system is that the content of the impact studies and required hearings has very little effect on decisions regarding licensing the projects…The only fact that matters is that the various steps in the process have been carried out…The content is secondary" (2014, 264). While the EIA-RIMA process lacks significant enforcement and integrity the process can be much more than what Fearnside calls "a last-minute hurdle that can only result in adding measures to minimize the impacts when a project that is already decided upon is implemented" (2013, 20). But Fearnside

believes this process should not be abandoned altogether, “[t]he system must deliver decisions that are neither hurried to skip needed stages nor paralysed to the point where no infrastructure can be built no matter how great the benefits are relative to the impacts” (2014, 264). In the case of Belo Monte, the law is secondary to the power of the state and elites, but it is this exact terrain that meaning, symbols and rights must be contested. The Belo Monte licensing process highlights how the existence of laws and procedures does not amount to much if they are circumnavigated and overpowered by power politics. Nonetheless, this is the main site of resistance for social movements that struggle against development.

Movements Outside of Law

The battle over Belo Monte is a multi-decadal battle with multiple interests and coalitions on both the enabling and blocking factions. When we look to the Belo Monte now, we see state and elite power forcing development of the dam despite the illegality under its own constitution and international law. Under such circumstances where law and procedure are ineffective, the indigenous social movements have no choice but to move outside of the law and politicize the issue by gaining support nationally and internationally. Indigenous rights claims to Brazilian politicians and sites of power largely occurs through social movements. The Brazilian state marginalized the indigenous people for centuries. Brazil’s policy and political processes are “asymmetrical granting disproportionate access to politically and economically powerful sectors that historically have had clientelistic ties to the state's legislative and executive branches” (Carvalho 2000, 475). One author argued that successful Brazilian

indigenous social movements require the “understanding of and willingness to participate in Brazilian politics, the strength of the domestic coalition committed to indigenous rights,” but also international civil society (Rodrigues 2002, 510). They must form and mobilize a transnational multi-institutional social movement that is constituted by law and practiced and realized through symbols and cultural advances.

In the last week of March 2014, representatives from indigenous communities and ally organizations of the Xingu Alive Forever Movement met in Altamira (Pará, Brazil) and drafted a declaration. As the leaders state, “[t]he idea was to take a deep look into ourselves, to look to the Xingu and the Amazon to think about the paths we have chosen so far and the direction that we want to choose from now on” (Xingu 2014). The full translation is noted in the bibliography, but what is striking is the use of legal language. Both federal and international law is mobilized on their behalf within the declaration. In this sense, the law constituted the movement’s meaning and mobilization of symbols. The law provided the language to make their claims.

As mentioned earlier, practices of framing the issue are important to building a movement and creating cultural resonance. Both the enabling and blocking coalitions mobilize framing to achieve their goals upon the battlefield of ideas and discourses. Of particular note are the ideas that the enabling coalitions utilize. Andrea Zhouri noted their “ideas relate to issues of territory, and the military development agenda of antagonism toward environmentalists, advocates of indigenous rights, and the Indians themselves…Symbols, concepts, and images that represent security, stability, and control are also important” (2010, 255). Environmentalists and the indigenous are threats to security and economic stability because they threaten the very energy

sources that power the nation – the rivers. The predatory model of development, mentioned earlier, reflects a development agenda that privileges growth over conservation. Zhouri argues that the frames and symbols used by the elite –

> Reveals a strategy of simplification and stereotyping of complex social and political issues that threaten the growth agenda. Such a strategy serves to delegitimize the claims of indigenous peoples and environmental and human rights advocates in Brazilian society. It does so by reducing the complex arguments for sustainable development of Amazonia and recognition of the rights of its people to matters of international conspiracy, national security, and sovereignty (2010, 255-6).

In other words, this framing and its use of cultural symbols delegitimize and marginalize those who question development projects. A Brazilian human rights lawyer stated that the government, media and military mobilize a nationalistic frame arguing that development projects are economic necessities that provide only benefits to Brazil and its people (Timo 2013, 138). The common frame or symbol – us versus them – is also mobilized on behalf of the enabling coalition –

> There is a silencing of us, as a multiethnic and multicultural society, and them is presented as an oppositional category encompassing multiple actors—including governments, corporations, environmentalists, and human rights advocates. Hence, in a calculated move, the voices of environmentalists are equated with nonnational capitalist interest (Zhouri 2010, 256).

Zhouri goes on to conclude, "[t]he nationalist accusations, which select NGOs, social movements, and indigenous peoples as their primary targets, shift the focus of the discussion on rights to a discussion about interests" (2010, 269). Whose interests are served if these dams are not built? These frames, of course, paint the "other" as what is wrong with Brazil, all the while intense capital accumulation and economic expansion are promoted as beneficial outcomes of nationalism and modernization.

In contrast to the military nationalistic hegemonic discourse, social movements

and their allies focus on rights based claims. Human rights violations, FPIC violations, procedural violations, demarcation violations (Timo 2013, 138). Other than legal discourse, the symbol of the native becomes mobilized – a symbolic politic framing the Indian as a keeper of conservation. One author notes that in transnational politics and social movements –

> Indian activists negotiate among multiple cultural forces…that favor idealized native images. These intersecting forces propel native activists to frame their identity politics in terms of ideas, images, and symbols that communicate to outsiders (Conklin 1995, 706).

Perhaps a symbol of innocence or victims of industrialization or the symbolic deep connection to the land that will be forever lost if they are displaced because of infrastructure development. These symbolic identity politics have formed transnational networks and bypassed traditional political institutions (Lauer 2006, 52). Therefore, the Belo Monte dam is a multi-institutional social movement that focuses on culture and symbols beyond the legal, economic and political. One scholar notes, "[s]ome of these indigenous organizations have been astonishingly successful in asserting themselves politically and have influenced international lending intuitions and foreign aid organizations who wield power over South American nations" (Lauer 2006, 52).

The symbolic capital of Indians is useful in international environmental politics. There is a cultural resonance that occurred between the Amazonian Indians and Western conservationists. It's as if their beliefs coincide, despite the lack of any historical connection. One author notes these transnational alliances came to frame their political discourses this way to "establish common ideological ground and mutual interests in opposing destruction of the rain forest and keeping land in native hands" (Conklin 1995, 696). Much of the interaction between the Indian and the Western world

is entirely imaginary. Yet this imaginary symbol –

> legitimized first-world environmentalists' involvement in distant nations' internal affairs. Without the connection to local peoples' struggles, foreigners' protests against Amazonian deforestation can be construed as just another form of self-interested first-world imperialist meddling in third-world affairs (Conklin 1995, 698).

The Western world begins protecting the Indian's human rights. We have destroyed our world; let us help you save yours. An excellent example of this imaginary is the involvement of James Cameron, director for the film *Avatar*. When he visited Para Brazil to meet with the tribes concerning Belo Monte dam, he stated "I wound up going to Brazil, and found myself living in *Avatar*" (Cameron 2012). He later wrote in a letter to the Brazilian President Lula –

> As you may know, *Avatar* is a film about the destruction of the natural world by expanding industrial interests, and the consequent impact to Indigenous populations. The film asks us all to examine our values, and to reconnect with each other and with the natural world. Its unprecedented success indicates the extent to which people, all over the world, are thinking about these issues as never before (Jampolsky 2012, 252).

The cultural symbols reverberate internationally. Not only are indigenous rights being violated, but also they could lose their culture due to the machinations of capital accumulation.

Sites of State Repression

Besides the legal battles and power politics concerning the EIA and environmental licenses, the state has taken repressive actions against the Belo Monte

blocking coalitions. Brazilian politics and state governments are highly influenced by "the military, conservative nationalists, landed elite and mining interests" (Carvalho 2000, 464). Additionally, one of the main actors shaping indigenous policy in Brazil is a member of an anti-indigenous coalition that works to promote Brazil's economic and security interests over indigenous rights claims (Carvalho 2000, 464). In 2001, an undercover investigation found a Brazilian military information center in Para Brazil that revealed a complex spying program in that region (Zhouri 2010, 254-5). The reports marked certain political parties, social movements and NGOs as "adverse forces" and to defeat these forces the military assumes possible "infringements of rights" (Zhouri 2010, 254-5). These spying practices mark a clear policy to neutralize those who stand against the nationalist regime. Throughout the following decade, state repression occurred against activists, indigenous members, and NGOs, but the latest string of civil right violations occurred in the summer of June 2012, when the Para's civil police force arrested multiple individuals accused of taking part in anti-dam protests (Timo 2013, 149).

The state and elite powers also look for ways to divide movements from within to weaken solidarity by taking "advantage of old divisions between the indigenous groups of the Xingu Basin to aggravate already existing tensions" (Khatri 2013, 192-3). At one of the public hearings on the Belo Monte damn, the construction companies attempted to buy participation "by offering televisions, boats, and other perks while refusing to address the various legally-required social and environmental conditions the company has yet to fulfill" (Khatri 2013, 172-3). Yet another method utilized by the enabling coalition is to take advantage of language barriers by instructing their interpreters to

misrepresent statements made by attendees, “[d]uring talks in July 2012, the Arara and Juruna communities in attendance became so frustrated with the consortium's refusal to cooperate that they non-violently detained three of its employees on tribal lands in protest” (Khatri 2013, 172-3). While I have no evidence, this hostage situation may have created a political opportunity for the enabling coalition to present their frames concerning indigenous people. Not only are enabling coalitions willing to trample the legal rights of indigenous people and distort the rule of law, but they also utilize extra-legal techniques to break up social movements and crate disorganization and chaos.

Future hope and successes

The goal of the Belo Monte transnational social movement is to completely stop the construction of the dam. Instead of the dam, the indigenous supporters offer other solutions such as energy efficiency projects or other alternative methods for electricity generation, which can take up the needed energy needs of the quickly developing Brazil. However, seeing that the dam is in the interest of state and elite power holders, the dam may be built despite its impacts on indigenous people and Brazil’s rule of law. If that is to be the case, one author provided secondary goals for the social movements –

> (1) Allot land for community displacement in an area upstream of the damming project with a similar environment; (2) Increase transparency by transferring information regarding the damming project through oral presentations rather than by pamphlets; (3) Monitor long-term impacts of displacement on individuals and develop inclusive documentation of affected individuals through earlier population monitoring; (4) Develop strategic plans between the public and private sector for social monitoring; (5) Provide compensation for land and productive activities to riverine communities despite their lack of formal documentation and account for non-market activities; (6) Initiate strategy meetings with riverine communities

> about compensation and future changes prior to more construction; and, (7) Include communities that live along the dried section of the Xingu River in the concept of affected populations (Khouri 2013, 79-80).

If the dam is built, does that mean the social movements were not effective? I believe not. The Belo Monte dam social movement has brought attention to hydroelectric power and its effects on the environment and indigenous people. There has also been an increase of awareness of the politics of law. Judges ruling on the legality of the dam has been a back and forth drama for over a decade. Additionally, indigenous people and those affected by the dam have a new language of rights, which have developed and constructed meanings and symbols they can mobilize in their movements. Not only is their cultural mobilization important and effective, there are also frames of law and justice.

In some ways, the social movement may have already achieved some its goals. Since 2008, the Brazilian government implemented a process of consultations with indigenous people in an attempt to integrate indigenous traditional knowledge in development and conservation projects in indigenous reserves and territories (Hanna 2014, 61). This incorporation of indigenous knowledge with environmental policy resulted in the “Política Nacional de Gestão Territorial e Ambiental em Terras Indígenas” (PNGATI, National Policy for the Environmental and Territorial Management in Indigenous Reserves)” (Hanna 2014, 61). While PNGATI is not an official process with either environmental licensing or EIA, it has the possibility of being so. Perhaps through a statute declaring that PNGATI must be an official aspect of projects affecting indigenous land. Most importantly, the Belo Monte dam social movement brought awareness to the people of Brazil and the world. While this dam may be built, coalitions

and social movement are prepared for the massive hydroelectric development projects Brazil has planned.

Conclusion

The nearly thirty year social movement fighting against the Belo Monte dam highlights several important aspects concerning social movement theory and law. The legal terrain is where most of this fight has occurred in national and international forums. The Belo Monte dam highlights the problems with international law enforcement and the power of the sovereign and its elites. It also highlights the constitutive power of the law within social movement construction. The indigenous people now make legal rights claims and mobilize these symbols and frames along with their cultural meanings. Additionally, the Belo Monte dam social movement utilizes a multi-institutional approach that looks outside of law and politics to achieve their goals. Whether the movement is successful depends on how you define success. The dam is now 10% built and most agree the dam will be built despite its illegality and environmental impacts. In the end, the movement brought attention to the plight of the indigenous within a rapidly modernizing country. It reminds the rest of us that the true cost of development can mean the destruction of cultures and environments, which are ultimately priceless.

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