The important and changing role of support structures as embodied by the fight for indigenous land rights in democratic, post-1988 Brazil

I. Introduction

In *The Rights Revolution*, Charles R. Epp analyzes the causes of the rights revolution in the United States. He describes three theories as to why the rights revolution occurred—constitution-centered, judge-centered, and culture-centered—before settling on a fourth: support structure-centered. His argument is that support structures prove to be the source of the rights revolution because they provided the groups pushing to have their rights recognized with resources, access, and *drive* that would otherwise be unavailable to them.

What happens if we apply his process elsewhere? This is precisely what I do in analyzing the process through which indigenous land rights were fully recognized in Brazil. I look at the Constitution of 1988, which acknowledged the ownership of the land by the indigenous peoples, before looking at judicial and cultural factors. Finally, I look at the role of support structures in achieving these rights, finding that their role is similar to that outlined by Epp: they were key in helping materialize these rights for the indigenous population; however, support structures differ in their tactics. Instead of advocating these rights in the courts, they gain attention in the international arena, which in turn pressures Brazil into honoring the rights laid out in their Constitution. Throughout this paper I rely on the work of Maria Rodrigues as well as that of Sara Gavney Moore and Maria Carmen Lemos, using the relevant government documents when possible.

While the importance of support structures has not changed, their tactics have shifted from primarily legal and domestic-based, to international and awareness-based.
II. Pre-constitution land rights

Before I analyze the constitution-centered theory on rights, it is important that I describe the ways in which indigenous land rights were regarded by the military regime that ruled Brazil between 1967 until democracy was established under the Constitution of 1988.

Interestingly enough, the authoritarian military had a Constitution (the Constitution of 1967) that actually recognized indigenous land rights, stating: “Foresters [Indians] are ensured the permanent possession of the forest lands they inhabit and recognized are their rights to the exclusive use of natural resources and all utilities in them.” (Brazil Const. 1967, art. 186) Despite this stipulation, the regime did not respect these rights. This is embodied in the Indian Statute, issued in December of 1973. This law served primarily as a way to integrate the “Indians” (Brazil Law 6001/73, art. 1), but also included some provisions in which they could exploit the lands for economic benefit. The Statute states that the government “may intervene…in the indigenous area” for “public works of interest to national development” and “for exploration of subsoil of considerable interest to national security and development.” (art. 20, sec. 1) In other words, the government could authorize construction and mining projects on indigenous land, and that it did. Economic development was the focus of the military regime and setting land aside for the indigenous populations would go against “the military’s development plans”. (Rodrigues 490) Instead, the government engaged in “productive activities such as road and railroad construction, mining, and agricultural settlements.” (Rodrigues 491)

This sets the stage for the perfect environment in which to test Epp’s theory. As Maria Rodrigues states, “Policymaking processes and apparatus during military rule were characterized by bureaucratic centralism and insulation from civil society. The state was the single actor responsible for defining policy priorities….” (Rodrigues 491) At this time, Brazil was free of the
four different actors highlighted by the four different theories outlined by Epp: a Constitution (I do not consider the Constitution of 1967 applicable because it was mostly symbolic), a judiciary, a culture that could affect policy (the military regime was “insulated”), and support structures. Additionally, as I have explained, indigenous land rights were something that did not truly exist prior to the existence of the actors either. Beginning with the Constitution of 1988, we can look at each of these factors in regard to indigenous land rights, eventually coming to support structures as the catalyst of these rights.

III. Constitution-centered explanation

The first explanation for a rights revolution that Epp offers is a constitution-centered revolution. This explanation is simple: a constitution allows judges to approve civil liberties as they are stipulated within its framework (Epp 12). Those who adhere to this theory believe that a constitution that provides for a certain set of rights is the most important factor in assuring that those rights are respected.

William Balée describes the Constitution of 1988 as “perhaps the most environmentally sound and humane legal document concerning nonstate peoples (Indians) within the borders of a world nation.” (127) Chapter VIII of Title VIII is devoted entirely to “Indians” and Article 231 is directed specifically towards land rights. The Constitution recognizes the indigenous peoples’ “original rights to the lands they traditionally occupy, it being incumbent upon the [federal government] to demarcate them, protect and ensure respect for all of their property.” (art. 231) This article is the most significant, because by recognizing “original rights,” it is recognizing that indigenous Brazilians are the owners of the lands that their people have occupied for hundreds of years, preceding Brazil’s existence as a nation. It goes on to give them “exclusive usufruct of the
riches of the soil, the rivers and the lakes existing therein” (par. 2), declares the “lands referred” as “inalienable and indispossession” (par. 4), and states, “Acts with a view to occupation, domain and possession of the lands referred to in this article or to the exploitation of the natural riches of the soil, rivers and lakes existing therein, are null and void, producing no legal effects….” (par. 6) This last paragraph represented an attempt to undo past wrongs and was designed to give back lands that had been given to nonindigenous individuals, as well as remove any projects that were currently exploiting resources that were now designated for indigenous use.

If the constitutional-centered theory were to hold up, we would see a clear shift following the Constitution of 1988. The indigenous people would have successfully gained official ownership of their land, and the government would have honored those rights. This, however, was not the case.

In 1996, President Fernando Henrique Cardoso issued Decree 1775, authored by his Minister of Justice Nelson Jobim. This decree, which the media dubbed as the “Genocide Decree” (Moore and Lemos 446) shifted the actor who had the final say in the demarcation process from being a more technical decision under the National Indian Foundation (FUNAI), to being a more political one under the Minister of Justice (Decree 1775/96 art. 2, sec. 10; Rodrigues 506). The decree also stipulated that lands that were currently undergoing the demarcation process could be challenged within 90 days of the decree being issued (art. 9). This meant that areas that FUNAI had demarcated but had not officially registered could be challenged (Rodrigues 506). Once the law went into effect, 531 suits were filed with FUNAI contesting the demarcation of the land (Rodrigues 506). The states of Rodônia and Pará challenged “all of the indigenous areas within their boundaries whose demarcation process had not been completed.” (Moore and Lemos 453)
Jobim justified this decree by saying that it “protects existing indigenous areas from being declared unconstitutional” (Moore and Lemos 454) because it would allow for third parties to make claims in accordance with the collective rights guaranteed by the Constitution (Rodrigues 505); however, this decree is widely viewed as a political concession by Cardoso to politicians in “states such as Amazonas, Roraima and Pará” in exchange for support of some of his other reforms (Moore and Lemos 455), the obvious goal here being to take the land from the indigenous people to exploit for economic benefit.

The example of the Raposa/Serra do Sol (RSS) reserve is great for giving us insight into the ways in which different actors contributed to indigenous populations gaining the right to their land. The reserve is located in the northernmost part of Brazil’s northernmost state, Roraima. The RSS reserve contains an abundance of resources of economic significance which are designated for indigenous use under the constitution. In the time after the Constitution was ratified, however, the region faced an influx of outsiders who aimed to capitalize on the resources that exist within its borders. There were two main industries that threatened the region: cattle-ranching and mining.

One way that mining has proven detrimental is in the competition that has resulted. Indigenous farmers compete with nonindigenous farmers for land and water (Moore and Lemos 457)—lands and waters guaranteed to the indigenous peoples in Art. 231, Par. 2 of the Constitution. Additionally, the growing number of nonindigenous farmers led to the spread of highways into indigenous lands (Moore and Lemos 457). Despite constitutional protections, the people faced serious threats to their lands from outside farmers.

Mining was especially detrimental to the indigenous inhabitants of the RSS reserve. Miners frequently established mining “villages” within the borders of the reserve—villages that
were “legally outside the limits of the indigenous area” and “would permanently serve as springboards for future invasions.” (Rodrigues 508) Politicians actually encouraged miners to move into these areas because of the economic implications. (Moore and Lemos 458) The miners brought with them diseases unknown to the indigenous population, and polluted “the waters with sediment and the mercury used in the mining process.” (Moore and Lemos 458) Mining and nonindigenous farmers seriously threaten the way of life for the indigenous inhabitants of the region.

This area was hotly contested under Decree 1775. Since the region was not demarcated in its entirety prior to the decree being issued (Moore and Lemos 459), it was open to appeal, and 99% of the RSS area was contested. The Minister of Justice, Nelson Jobim, decided to reduce the area, ignoring FUNAI’s recommendation (which was to demarcate the region in its entirety), splitting up the reserve so it was no longer contiguous. (460) He allocated 12.5% of the region to ranchers (460) whose lands should have been designated as indigenous under the Constitution. He also gave land to five mining villages in the region so that they could continue their operations. (460) As with the issuing of Decree 1775, this represented a political ploy: every member of Roraima’s delegation in the Brazilian Congress opposed the complete demarcation of the region. (Rodrigues 508)

Clearly the Constitution did not protect indigenous land rights by itself. The language clearly defines what is to be demarcated as indigenous land, but the President and Minister of Justice did as much as they could to avoid Article 231 and appeal to political forces in the regions with the most at stake economically. Under the constitution-centered theory, this conflict would not have arisen, or at the very least would have been quashed by judges who made decisions based on the language in the Constitution. This did not happen.
It was at this time that support structures became vital in this process of the indigenous people gaining their land rights. But before analyzing the role of support structures, I will take a look at the judge- and culture-centered explanations.

IV. Judge-Centered Explanation

The judge-centered explanation for rights revolution argues, “[I]ndividual rights results [sic] primarily from supportive judges who have the power to focus on the cases that interest them.” (Epp 14) The idea here is that judicial attitudes and leadership will eventually lead to individual rights. With a rights-minded judge (or judges) on the court, rights will be achieved.

While I was not able to find a significant amount of information on the decisions of judges in indigenous land-related cases, the information I did find was significant. Sara Gavney Moore and Maria Carmen Lemos mention that leading up to the issuance of Decree 1775, the federal courts moved away from favoring indigenous peoples’ land rights in their decisions (452). At the time that indigenous land rights started to gain traction, judges’ decisions were not trending in their favor.

Furthermore, the Supreme Federal Court (STF) did not issue a major decision on this issue until 2009 in its decision on Petition 3,388-4 Roraima (Pet. 3388/RR). The court upheld the ratification of the RSS reserve, and ordered nonindigenous farmers to leave the land, at which time they would be compensated appropriately in accordance with the Constitution (Pet. 3388; Duffy 2009).

One might argue that the judge-centered argument aligns with the chain of events: Decree 1775 was issued when judges were ruling against indigenous rights, and it took an STF decision to finally grant these rights. Judges, however, did not cause the rights revolution. Awareness of this issue and Pet. 3388/RR would not have been possible without the help of support groups.
The Pet. 3388/RR decision was the final step in a long process rather than the starting point. As I will explain in detail in Section VI, support structures did all of the legwork in fortifying these land rights.

V. Culture-centered explanation

The culture-centered theory holds that culture influences “judicial protection of individual rights.” (Epp 16) Epp explains that judges are influenced individually by culture itself (their beliefs will mostly align with popular beliefs); possessing insufficient power to make a ruling that would be both “contrary to widely held beliefs” and enforceable; and by the content of the cases that they can rule on, since these are determined by culture as well. In this explanation, popular culture will bring about a change in rights.

As with the judge-centered explanation, evidence that could give us an insight to the validity of the culture-centered explanation was hard to come by. But, I was able to find a little bit about the culture in Brazil around the time Cardoso issued Decree 1775. According to Moore and Lemos, the media became “anti-indigenous” around 1992, influencing public opinion. (451-2) Additionally, the public began to prefer “governability and economic adjustment” over “democracy and civil rights,” “negatively affect[ing] [their] sympathy for the plight of indigenous peoples.” (452) Additionally, indigenous peoples represent less than one-fifth of one percent (0.153%) of the population. (Balée 128) With such a small percent of the population being represented, it is hard to influence popular culture as a whole without outside help.

Popular opinion had shifted against the indigenous peoples at the time of the land rights “revolution.” While it seems that a cultural shift did occur, this shift can be directly appropriated to support structures. Culture did not cause this gain of individual rights, but was altered as a result of the work done by support structures.
VI. The important role of support structures

Epp highlights support structures as the source of legal mobilization, saying this mobilization “depends on resources…rights-advocacy lawyers, rights-advocacy organizations, and sources of funding.” (Epp 18) Alone, groups advocating for themselves do not have the resources necessary to gain their rights. This is clearly the case in Brazil where the indigenous peoples represent such a small portion of the population. It was necessary for support structures to bring attention to this issue in order for change to occur. In the case of indigenous land rights in Brazil, support structures were key to gaining these rights, but on the national level they took a different route than the structures highlighted by Epp.

Following the ratification of the Constitution of 1988, indigenous Brazilians became much more organized. While there were only eight indigenous organizations in 1986, there would be 290 organizations by 1999. (Rodrigues 501) Maria Rodrigues lays out the goals of these groups: “to increase the visibility of their struggles, demands, and proposals; to build alliances with social movements, churches, and other organizations…and to demand legal protection….” (502) They went about reaching these goals through lawsuits, drafting legislation, petitions and sit-ins. (502) It is important to note that these groups tend to operate on a local level, with the diversity of the indigenous groups in Brazil making for a different set of goals for each locality. (501)

On issues of national importance, support structures focused on the first goal described above: increasing visibility. Here I focus on the two cases described in Section III: Jobim’s decision on the original 531 suits filed contesting land demarcations, and the aftermath of his incomplete demarcation of the RSS reserve.
Following the passing of Decree 1775, support structures worked to educate the Brazilian public and important actors on the international stage. The Council of Brazilian Indigenous Peoples and Organizations (CAPOIB) organized a march in the Brazilian capital of Brasilia, bringing together “over 300 indigenous leaders” and educating the Brazilian public about the potential of the decree. (Rodrigues 506) This was the strongest showing ever by this national organization that had struggled to find its feet and had been represented by 201 indigenous leaders the year before. (Rodrigues 502) CAPOIB also “issued a series of public statements in the Brazilian media…rejecting the government’s initiative.” (506) These actions gained the attention of the Indigenous Peoples Missionary Council (CIMI) and Social and Environmental Institute (ISA) who started their own media campaign criticizing the decree. (507)

These domestic support structures effectively gained the attention of international support structures. Rodrigues describes some of the groups involved: Survival International and Oxfam lobbied for the suspension of funds disbursed to the Rainforest Trust Fund. The Environmental Defense Fund (EDF) sent letters protesting the partial demarcation to the Brazilian authorities. Amnesty International, Survival International, and Oxfam visited the Brazilian ambassador in London to protest the decree. (507) Rodrigues further explains that these actions gained a significant amount of attention and support on the international level: forty-three Representatives from the United States Congress “sent a letter to the president of the World Bank indicating their concern with the consequences of the decree”; and the Pope and European Parliament passed a resolution condemning the decree. (509) In light of all of this, the Jobim was forced to reject all but eight (out of 531) of the contestations (Moore and Lemos 454; Rodrigues 508), with the notable exception being the RSS reserve that he later reduced.
Further international backlash resulted from the partial demarcation of the RSS reserve. Domestic support structures had already drawn an international audience to the issue and it is possible that the government underestimated the effects of this action. The Amanaka’a Amazon Network, the Coalition for Amazonian Peoples and Their Environment, and the Rainforest Action Network sent letters to President Cardoso calling for the revoking the decree and partial demarcation. (Moore and Lemos 460) EDF would lobby the US Congress, helping inspire a letter signed and co-signed by 17 Representatives that called for the full demarcation of the RSS reserve, and was sent to President Cardoso. (Rodrigues 509) Survival International organized a petition that would contain over 50,000 signatures that they used to persuade the United Nations and European Parliament to stand against the partial demarcation. (509) Once again the international pressures that resulted from the attention raised by support structures led to success on the part of indigenous land rights.

In 1998 the Minister of Justice, Renan Calheiros, issued an administrative ruling demarcating the reserve in its entirety. (Rodrigues 509) In 2005, President Luiz Inacio Lula da Silva signed another decree (titled Portaria n° 534) that demarcated the land and required nonindigenous peoples on the land to vacate in accordance with the Constitution of 1988 (they would be compensated for that land). (“Raposa Serra do Sol” 2008) Finally, the Supreme Federal Court ruled in the aforementioned case, Pet. 3388/RR, that Lula’s decree was indeed constitutional and that nonindigenous people living on the land would have to comply (Pet. 3388; Duffy 2009). Finally, the indigenous peoples living in Roraima had legal recognition of their land.

Epp emphasizes legal action and the use of structures to fund, and actively litigate for these rights. This was not the case in Brazil. To clarify, I am not disagreeing with Epp, as this is
a different case entirely, but am stating that support structures were utilized in a completely different way. In this case, domestic support structures worked to gain the attention on the international stage—of strong international actors and support structures. In this regard, the Brazilian case aligns more with Sally Engle Merry’s discussion on countries’ participation in a global culture. The events that were taking place in Brazil were not acceptable to the international community and were voiced as such. As the world becomes “smaller”, acceptance on the international level increases in importance. This option was much less viable during the United States rights revolution that Epp discusses—support structures had to contain their fight within the borders of their country. Now we live in a world where support structures are able to make an international call for justice. In the end, all these structures wanted in Brazil was for the Constitution to be upheld. When a domestic approach was unsuccessful, international actors stepped in and provided the support necessary for rights to be recognized. The international community of the 21st century requires adherence to a certain standard, even if the ruling only has implications for less than 100,000 people living in a small region in the middle of the Amazon.

VII. Conclusion

In accordance with Epp’s assertions about the rights revolution in the United States, the indigenous peoples in Brazil that were able to gain their land rights did so via support structures. While the constitution, judges, and culture all played important roles in the process and in the ways in which these rights were viewed, support structures emerged as the catalyst that sparked the change. I would go further to argue that by educating the Brazilian population and taking the issue to an international stage, support structures effectively influenced a change in culture. (This in turn could have influenced the STF’s decision in Pet. 3388/RR, but I think that is a much more
difficult connection to make.) Ultimately the international pressures exerted upon Brazil forced the government to make a decision that it otherwise would not have made. This goes to show the importance that international approval and an international culture have on individual nations in today’s world. And while support structures have shifted in regards to their role since the US rights revolution, they remain vital to groups that need to assert their rights.
Works Cited


Brazil Constitution 1967, art. 186.

Brazil Constitution 1988, title VIII, chapter VIII, art. 231.


Lei de Terras Indígenas. Decreto N° 1775. 8 January 1996.


