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A Tale of Two Americas

“Congress shall make no law [...] abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” First Amendment, United States Constitution

“When the last tree has been cut down, the last fish caught, the last river poisoned, only then will you realize that you cannot eat money.”¹

Introduction

On December 4, the United States Army Corps of Engineers announced that it would deny the final permit necessary for the construction of a 1,172-mile oil pipeline traversing four states that was already over ninety percent completed. This decision marked the success of months of protests by self-termed “water protectors,” who had camped on and near the Standing Rock Sioux reservation in North Dakota to protest the building of the pipeline through a sacred burial ground and underneath the Missouri River, where they worried it could contaminate the water supply. The success of the protests, I argue, was a critical juncture in indigenous and environmental politics in the United States, one that could symbolize a new era in the genocide against American Indians and the considerations of environmental issues.

Background

¹ This saying, in various wordings and forms, is attributed to a variety of sources and a number of tribes, and is referred to as a saying, a prophecy, and a proverb in various contexts. It is considered to be American Indian in origin but a single specific source is not known.

Narratives of colonialism often exempt the United States, and the public discourse within the country promotes a romanticized image of an inclusive democratic society, contrasting the United States with European colonial powers despite its imperial status in the spirit of what is sometimes deemed “American exceptionalism.” Yet settlers and the United States government have a history of confrontation, often violent and even more often exploitative, with the indigenous peoples of North America. Quijano (2000) makes the distinction between the treatment of American Indians (here, “Indians”) and that of other subjugated minorities in the United States:

Indians were not incorporated into the space of Anglo-American colonial domination. Thus when the history of the new nation-state called the United States of America began, Indians were excluded from that new society and were considered foreigners. Later on, they were dispossessed of their lands and were almost exterminated. Only then were the survivors imprisoned in North American society as a colonized race. (p. 560)

The indigenous peoples of North America, specifically those residing within the contemporary geographic boundaries of the United States, are referred to interchangeably by many sources as both Native Americans and American Indians. Activist and American Indian Movement founder Russell Means (Lakota) articulated his preference for the term Native American as follows:

I abhor the term 'Native American.' [...] It is a generic government term used to describe all the indigenous prisoners of the United States. These are the American Samoans, the Micronesians, the Aleuts, the original Hawaiians, and the erroneously termed Eskimos, who are actually Upiks and Inupiaqs. And, of course, the American Indian.

I prefer the term *American Indian* because I know its origins. [...] As an added distinction the American Indian is the only ethnic group in the United States with the American before our ethnicity. (quoted in Gaffney, 2006)

Writer Christina Berry (Cherokee) argues that such general terms should be avoided altogether, where possible:

The recommended method is to refer to a person by their tribe, if that information is known. The reason is that the Native peoples of North America are incredibly diverse. It would be like referring to both a Romanian and an Irishman as European. It's true that they are both from Europe, but their people have very different histories, cultures, and languages. The same is true of Indians. The Cherokee are vastly different from the Lakota, the Dine, the Kiowa, and the Cree, but they are all labeled Native American. (quoted in Gaffney, 2006)

For this reason, where I refer to indigenous peoples collectively, the term American Indian is used; where appropriate, I indicate the tribal or national affiliation of individual activists and groups.

The specific group concerned in the Dakota Access Pipeline (DAPL) fight is the Standing Rock Sioux Tribe, part of the Sioux Nation which encompasses several bands from both the Lakota and Dakota nations (Standing Rock Sioux Tribe, n.d.). According to the tribe's own description of its heritage and nomenclature:

The Great Sioux Nation is also called The Lakota Nation, Tetons and the Western Sioux. The people of the Sioux Nation refer to themselves as Lakota/Dakota which means friend or ally. The United States government took the word Sioux from (Nadowesiooux), which comes from a Chippewa (Ojibway) word which means little snake or enemy. The French traders and trappers who worked with the Chippewa (Ojibway) people shortened the word to Sioux. (Standing Rock Sioux Tribe, n.d.)

All speakers of “similar languages” were considered Sioux by the U.S. government; tribal history teaches that “the oral tradition of our people states that the Lakota and Dakota people were one nation. The Lakota people broke away and formed their own nation” (Standing Rock Sioux Tribe, n.d.). Collectively, the people are referred to as Lakota/Dakota (shortened in writing L/Dakota) or Sioux. The current geographical boundaries of the Standing Rock reservation straddle the border between the states of North Dakota and South Dakota, states that draw their names from the Sioux despite having relegated them to an ever-decreasing parcel of land. TallBear (2016) illuminates the specific history of violence between the Dakota and the government of the United States in the U.S.-Dakota war – one of many such conflicts, often overlooked historically because of its temporal overlap with the United States Civil War.

The legal status of American Indians in the United States is complex. While many tribal reservations fall under the jurisdiction of the Bureau of Indian Affairs, some states administer the reservations within their borders rather than having them fall directly under the purview of the federal government. The case of the Standing Rock reservation is the former; however, this does not mean that it has no interaction with local and state officials in both North and South Dakota. Tribal governments are considered by the United States to be “dependent nations” – allowed some limited sovereignty but subjugated by the U.S. government (Robertson, 2001). For this reason, the U.S. government has historically signed treaties with American Indian nations and tribes but also frequently passes legislation and federal court decisions that affect them.

The United States has signed multiple treaties with the Great Sioux Nation allocating land in the northern central part of the country (now known as the Dakotas, Montana, Wyoming, and Nebraska) in exchange for an end to wars with settlers. The 1851 Treaty of Fort Laramie allocated a vast swath of land including parcels of all of these present-day

states; a new treaty in 1868 reduced this to roughly the western half of South Dakota, and in the following years large amounts of this land were reclaimed by settlers and the government (Uenuma & Fritz, 2011; Newcomb, 2016). A 1980 Supreme Court decision found that an area known as the Black Hills was wrongfully taken during this era and set aside a monetary trust as compensation, the value of which was \$1.3 billion in 2011 (Uenuma & Fritz, 2011). The Oglala Sioux Tribe has refused this compensation on the basis of the fact that their land was never for sale (Uenuma & Fritz, 2011). On the issue of accepting this compensation, President Theresa Two Bulls has said “we’re poor now – we’ll be poorer when that happens,” meaning both that the tribe would have lost the principle and that the money, when divided amongst its many members, would give very little to each (Uenuma & Fritz, 2011).

A decision in the mid-20th century by the Army Corps of Engineers (a division of the United States Army tasked with, among other things, a number of domestic infrastructure projects) to build a series of dams along the Missouri River in what is known as the Pick-Sloan plan resulted in an even greater loss of usable land, particularly for the Standing Rock Sioux Tribe (Schneiders, 1997). The tribal governments with land along the river were excluded from the planning process, and

None of the planners recognized that the bottom lands were of irreplaceable economic value to the Indians, who could hunt and grow traditional crops on lands that were "useless" only from the point of view of technologically dependent commercial agriculture. (Schneiders, 1997, p. 249)

In this instance, the tribe’s material independence was further eroded. The Standing Rock Sioux place their losses in the creation of the Oahe Dam at 95 miles of road, 55,944 acres of land, 190 units of housing, among other infrastructure (Standing Rock Sioux Tribe, n.d.). Another account of this incident from a recent investigative report claims that

By the early 1960s, five large dams erected along the river inundated nearly 360,000 acres of land. One of the dams, the Oahe, flooded more than 200,000 acres on the Standing Rock Reservation and the Cheyenne River Reservation in South Dakota. Natural resources and wildlife along the river bottom were almost completely eradicated, including 90% of the tribes' timber, which also served as cover for wildlife. (Lee, n.d.)

The report covers the poverty experienced contemporaneously in the Great Plains area (covering much of the northern central United States) in general, but specifically on tribal reservations, pointing to the Oahe Dam creation as evidence of “the government’s cinching of the tribe’s control of its natural resources” (Lee, n.d.). Thus, in addition to subjugating tribal governments as dependent nations, the United States continues to erode their sovereignty and their material independence through a variety of legal and environmental means.

Hoogvelt (1997) argues the “crosscutting” nature of the supposed core-periphery system, characterized by the existence of peripheric regions and communities within wealthy states and vice versa. Tribal reservations represent such peripheric communities within the United States. Imperial dynamics exist within the geographical territory of the United States in regards to tribal nations’ legal rights and sovereignty as well as in social dynamics and realities, and the legal and social dimensions are co-constitutive. These dynamics exists as broad social realities, affecting many aspects of the lives of American Indians, particularly those on reservations. While the Black Lives Matter movement in response to police brutality has gained enormous media attention in the United States, the Native Lives Matter movement has garnered almost none despite the fact that “the racial group most likely to be killed by law enforcement is Native Americans, followed by African Americans, Latinos, Whites, and Asian Americans” (Males, 2014). This is an often overlooked fact because of their relatively

small share of the overall population and the fact that “Native Americans, 0.8 percent of the population, comprise 1.9 percent of police killings. African Americans, 13 percent of the population, are victims in 26 percent of police shootings” (Males, 2014). Such disparities are also present in sentencing, with American Indians on average receiving longer sentences and constituting a disproportionately high number of cases in the justice system (Braunstein & Feimer, 2003; Flanagin, 2015), in employment, with large gaps in employment rates between American Indians and whites (Austin, 2013), and in schooling, where they experience “disproportionate rates of suspension, expulsion and referrals to law enforcement” (Klein, 2015). The same investigative report mentioned earlier notes an unemployment rate of 79% for Standing Rock and a poverty rate of 43.2% (Lee, n.d.).

The Pipeline

The Dakota Access pipeline is a \$3.78 billion project that plans to carry oil a total distance of 1,172 miles across four states (Dakota Access LLC, 2016). In terms of the United States’s focus on “energy independence,” the project provides a means for the more efficient transportation of crude oil from oil fields in North Dakota to Illinois, where it can be distributed. Because of the multitude of health and environmental concerns over oil production and pipeline projects in general, environmentalists expressed concern over the project from the beginning.

Concerns particularly over the possibility of water contamination have been at the focus of the environmental case against the Dakota Access pipeline (or DAPL). This is particularly relevant for communities such as the Standing Rock Sioux Tribe given that a report found that “over a half million people - nearly 48% of tribal homes - in Native communities across the United States do not have access to reliable water sources, clean drinking water, or basic sanitation” (Natural Resources Committee Democrats, 2016). For this reason, the thousands of Native and nonnative protestors at the site have taken on the

name “water protectors,” many also carrying signs or otherwise pursuing the message “water is sacred.” The company building the pipeline had previously explored using a route that ran close to the North Dakota capital of Bismarck, but decided against this route for a variety of reasons, including that the route was several miles longer and that there were concerns about the possible contamination of Bismarck’s water supply (Dalrymple, 2016). The Bismarck route was considered in May 2014; in December 2014, the company filed for a permit to build along an alternate route running within a half-mile of the Standing Rock Sioux reservation (Dalrymple, 2016).

Because of the route’s proximity to the reservation, the Army Corps of Engineers is legally required to consult with the tribe about any potential concerns. The tribe claims that the Army Corps of Engineers made an initial offer to consult with the tribe but did not pursue the process (Meador, 2016). In April of 2016, a public forum was held for people to voice their concerns about the pipeline; this was followed in May and June by grassroots organizing efforts against the pipeline project (Sacred Stone Camp, 2016). On July 25, the Army Corps of Engineers issued the final permit (also called an “easement”) necessary for the pipeline to be built along the route proposed, running under the Missouri River (Sacred Stone Camp, 2016; Meador, 2016). The following day, the Standing Rock Sioux requested a legal injunction (filing through a partner environmental organization) to prevent the project from moving forward (Sacred Stone Camp, 2016). On August 8, the company building the pipeline issued a 48-hour construction notice to indicate their plans to proceed with the construction of the pipeline; less than three weeks later, on August 24, a judge ordered a halt of the construction while the matter was reconsidered (Sacred Stone Camp, 2016). On September 9, the Army Corps of Engineers announced its plans to review the project (Sacred Stone Camp, 2016), which was followed by its declaration on November 14 that it had not yet decided whether to allow the project to move forward, but that

The Army has determined that additional discussion and analysis are warranted in light of the history of the Great Sioux Nation's dispossessions of lands, the importance of Lake Oahe to the Tribe, our government-to-government relationship, and the statute governing easements through government property [...] While these discussions are ongoing, construction on or under Corps land bordering Lake Oahe cannot occur because the Army has not made a final decision on whether to grant an easement. (U.S. Army Corps of Engineers, 2016).

In the meantime, a growing protest movement had coalesced around opposition to the pipeline. For months, Native and nonnative protestors had been assembling in protest camps near the pipeline construction site. Their concerns were twofold: on the one hand, the pipeline running underneath the Missouri River posed the threat of a leak and thus an oil spill that would contaminate a water source for the Standing Rock tribe and countless others. The other source of contention was that although the proposed route was half a mile from the current boundaries of the Standing Rock reservation, it was within the boundaries of the land promised to the Great Sioux Nation under the 1851 Treaty of Fort Laramie (Newcomb, 2016; Meador, 2016). Moreover, the tribe claims that the route ran directly through a sacred burial ground and that artifacts holding cultural significance were unearthed during the initial excavation (Meador, 2016).

Water protectors eventually came to occupy three camps: two on the Standing Rock reservation and a third, called the Oceti Sakowin Camp (meaning "seven fires," an homage to the original seven fires that burned throughout the Great Sioux Nation), outside of current reservation boundaries but on land allocated to the Sioux under the 1851 Treaty (Oceti Sakowin Camp, 2016). Though water protectors emphasized a commitment to nonviolence, confrontation with law enforcement became increasingly common as the protests progressed, hallmarked by hundreds of arrests and injuries and the use of water cannons against

protestors in below freezing temperatures, in addition to an incident which nearly resulted in the amputation of an arm of an environmental activist from New York (Newcomb, 2016; PBS Newshour, 2016). Days before the Army Corps of Engineers announced its decision denying the final permit necessary for the pipeline construction, both the Army Corps of Engineers and North Dakota governor issued warnings asking protestors to leave the protest site (Overland, 2016); however, the governor announced that he did not intend to have protestors forcibly removed nor did he intend to stop supplies from reaching the camp, as had previously been indicated by the Morton County Sheriff's Department (Hersher, 2016).

Context

As the victory of a number of protestors against a multi-billion dollar energy project and as the victory of the Standing Rock tribe and its allies, the protest against DAPL represents a number of significant turning points for anti-globalization and anti-colonial movements. The events at Standing Rock received global media attention and global solidarity, including from cities in other U.S. states whose councilors passed resolutions expressing their support for water protectors. When law enforcement was accused of violence against water protectors, a statement made on November 22 by the chair and permanent members of the United Nations Permanent Forum on Indigenous Issues “condemn[ed] the aggravated conditions that have worsened near the Sioux tribal territories of Standing Rock” (Pop, 2016). Perhaps most notably, a September report put the number of tribes represented at the camp at 280, and the protest has been referred to as the biggest gathering of American Indians since the Battle of Little Bighorn, an 1876 battle in which Sioux and Cheyenne warriors defeated the United States Army (Healy, 2016). Flags of the many tribes represented could be seen flying at the camp in a truly remarkable show of solidarity amongst American Indians. Some groups, such as the Sioux and Pawnee, put aside centuries of strife to show support for the movement. Later, water protectors were also joined by a group of U.S.

military veterans, some of whom announced their intent to protect protestors from police violence if necessary – perhaps surprising, but seemingly appropriate given that, according to the director of the Smithsonian National Museum of the American Indian, “American Indians serve in their country’s armed forces in greater numbers per capita than any other ethnic group, and they have served with distinction in every major conflict for over 200 years” (Gover, 2015). The question remains of whether this could be a turning point for the treatment of American Indians by the United States government. According to Kennedy (2016),

Anthropologist Nancy Scheper-Hughes has observed that Genocide is a continuum that runs for years, decades or centuries. It begins with marginalization and dehumanization of an identifiable minority, the theft of their lands and property, their slaughter and decimation, and the gradual squeezing of remnant populations. The central organizing principle of the continuum is a narrative that turns "others into non-persons or monsters," that normalizes atrocities and rationalizes the "every day practice of violence."

This, he contends, is the way in which American Indians were relegated to the status we observe in the United States today. Considering their “dependent nation” status, tribal governments are in turn considered sovereign when it is convenient and subjects when it is not. Though called “sovereignty,” the status of tribal governments does not reflect the notion of sovereignty as known to scholars or as considered characteristic of the nation-state – not today, and certainly not in the past.

The water protectors’ establishment of a camp on land they claim to be theirs under the 1851 Treaty also represents a clear example of the de- and re-territorialization of a particular area. Furthermore, the government’s practice of eminent domain exhibits a juridical mechanism by which this re- and de-territorialization can occur. Eminent domain

allows the United States government to seize land for a particular purpose without the landowner's consent (though the landowner is compensated) – essentially saying, “this is more ours than it is yours.” Used for a variety of public works and infrastructure projects, the practice is not uncommon and helps to clear the way for large infrastructure projects such as dams and pipelines. In this case, water protectors have turned the use of eminent domain on its head, claiming this as their justification for appropriating the land north of the Cannonball River, promised to them in the 1851 Treaty, and building the Oceti Sakowin Camp there. Even after the North Dakota governor and Army Corps of Engineers demanded the evacuation of this site, they did not state an intention to forcibly remove protestors. Thus, regardless of the juridical mechanism at play in determining the land's legal status, water protectors effectively re-territorialized the land by occupation.

The ability of water protectors to gather in this manner to protest DAPL is also something that begs the question of the nature of the global moment that allowed this to occur. Certainly, digital communications were vital in spreading awareness of the events at Standing Rock and encouraging supporters to donate to the cause or to express their support for water protectors by contacting law enforcement or other government offices. The clear goal of this particular movement distinguishes it from movements such as Occupy Wall Street and Black Lives Matter, and its deference to tribal leadership sets it apart from numerous other social movements both in the fact that it has clear leadership and in the fact that all water protectors were expected to heed the decisions of the leadership of the Standing Rock tribe. These events are necessarily not only a defining moment in environmental politics, but also have the potential to reconstitute the way in which nonnative Americans relate to our indigenous communities, peoples, and governments.

The situation surrounding the pipeline protests also invokes the notions of material independence and precarity. Water protectors came largely from American Indian

communities, which are plagued by high rates of unemployment, but these were joined by nonnative environmental activists prepared to camp through a harsh winter. As Zibechi (2011) argues, “material autonomy and political autonomy cannot be separated” (p. 127). In the case of the Standing Rock water protectors, the community was supported by donations of both money and supplies and the support of numerous volunteers who took on the necessary roles to ensure the functioning of a protest camp complete with kitchens and schools. The Standing Rock tribal government made several statements in support of water protectors and hosts a donate link on its website, explicitly affiliating the tribal government with the protests. In this sense, the movement is politically autonomous from the interests of the pipeline, though inherently politically tied to a government. The material independence lost by the Standing Rock tribe after the construction of the Oahe Dam has not been restored, but donations of countless supporters enabled the community of water protectors to sustain itself for months. While many protestors may have felt they joined out of necessity, environmental activists who came from far-away communities did so reflecting an inherent privilege. Yet, regardless of background, water protectors were united by a common cause, and in acknowledging its root causes, protesters coming from privileged backgrounds reflected a sort of acknowledgement of the United States’s colonial history in doing so. Anyone joining the group was expected to follow the rules of the community as established by tribal leadership, acknowledging, as the Oceti Sakowin Camp guidelines state, that “we are all guests of the Lakota Nation.”

The explanation of these events in terms of existing social science theory also offers an interesting insight: among the prevailing social science theories of the moment, institutionalism offers an explanation of outcomes in terms of institutions, or rules, that govern the playing field. These events, perhaps, demonstrate that institutions are also produced and reproduced by their constituent members – members such as the law

enforcement officers who reportedly turned in their badges rather than participate in police militarization against peaceful protestors, the judge who halted pipeline construction, and the officials with the Army Corps of Engineers who made the decision to deny the final easement. This may also represent a critical moment in the institutional response to environmental and Native issues within the context of the institutional culture of United States politics.

What Comes Next?

The future of DAPL is uncertain. The Army Corps of Engineers's decision to deny the final easement does not prevent completion of the pipeline altogether; rather, it pushes back the decision of where exactly the pipeline route will go. There are concerns that Entergy Transfer Partners and Dakota Access LLC, the companies behind the project, will not heed the Army Corps of Engineers's decision and will continue construction without the permit. Another North Dakota oil pipeline approximately 150 miles from the Standing Rock site began leaking only days after the final easement was denied and its leak detection system failed to detect the leak, reigniting debate over whether such systems are adequate. Finally, in the pursuit of energy independence, a multitude of other pipeline projects are underway across the United States, each faced with its own protests (Rosenmann, 2016). The question also remains of how the procedure of required tribal consultation on other requisite projects will be addressed.

In spite of the unanswered questions that remain, the denial of the final easement for the pipeline flies in the proverbial face of capital, marking success for the incredibly marginalized indigenous community in the United States and environmental interests, which, despite gaining global momentum, are frequently sidelined in our politics. The issue has always been a multifaceted one, invoking the importance of regard for sovereignty – both at

the level of tribal government and in the context of the increasing doubt that access to water is a right.

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