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Brittany A. Bondi
Gettysburg College

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Abstract

The Dakota Access Pipeline and the events of the accompanying protests are contemporary examples of environmental injustice, with the Standing Rock Nation facing a majority of the injustice. Analyzing Sioux history, the pipeline's previous routes, and the police and state responses to the "protectors", I propose that the Dakota Access Pipeline is a form of distributive, procedural, and substantive injustice.

Keywords

Dakota Access Pipeline, Protests, Environmental Justice

Disciplines

Environmental Policy | Environmental Studies | Indigenous Studies

Comments

Written as a research paper for Africana Studies 250: Race and Housing.

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Brittany Bondi

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Power Dynamics of the Dakota Access Pipeline Protests: An Environmental Justice Analysis

On January 24th, 2017, newly-inaugurated President Donald Trump signed a presidential memorandum authorizing the construction of the Dakota Access Pipeline (DAPL). Although the pipeline construction had previously been canceled by then-President Obama, this single act undid months of Native American and ally protests aimed at halting the construction of the pipeline. These protests were filled with brutal violence by police, censorship by the government, and solidarity from all over the world. Analyzing the nearly-unbreakable power of the police and government over the protectors, it is clear to see that the Dakota Access Pipeline and the accompanying protests are contemporary examples of environmental injustice.

Theoretical Framework

Environmental justice is a fluid and complex term, as its exact definition changes between contexts and time. For example, the U.S. Environmental Protection Agency defined the term in 2008 as:

‘ . . . the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental law, regulations, and policies. . . It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making

process to have a healthy environment in which to live, learn, and work.’ (Walker, 2012, 10).

While environmental justice is often interpreted as an overarching end goal, it may be more achievable if dissected into more definitive subsections. For example, environmental racism is a specific type of environmental injustice and can be defined by the policies or lack thereof that allow disproportionate exposure among people of color to conditions that are harmful to both the environment and human health (White-Newsome, 2016). Bell (2014) offers three other categories of environmental justice: distributive, procedural, and substantive. The first facet, distributive justice, is defined as “an equitable distribution of environmental ‘goods’ and protection from environmental harms for all socioeconomic groups” (Bell, 2014, 22). The second facet, procedural justice, stresses “the fairness and transparency of the processes by which decisions are made” (Bell, 2014, 19). Finally, substantive justice refers to one’s personal access to a healthy environment.

History

Native Americans have had a long history of suppression under the U.S. government, and the Standing Rock Nation is no exception. The Fort Laramie Treaty of 1851 officially established the Great Sioux Reservation, where the Standing Rock is today, and additionally expressed both the U.S. government’s and the tribes’ desire to establish peaceful relationships (Neville and Anderson, 2013). However, the reservation faced several subsequent U.S. government actions that diminished the reservation’s autonomy and size. The Homestead Act of 1862 allowed for the U.S. government to sell surplus land to new settlers and “checkerboarded” the land, mixing reservation land with

non-reservation land and thus making the tribal land noncontiguous. The Fort Laramie Treaty of 1868 reaffirmed the Great Sioux Reservation as outlined in the 1851 treaty. This treaty additionally declared that all Native American tribes would not oppose the construction of railroads or military posts in the lands surrounding the reservation. The Natives received the land north of the North Platte River and east of the Big Horn Mountains, and no white persons were to settle upon the land without explicit approval from the Natives. However, this treaty was quickly violated after Congress abolished the treaty system in 1871. In 1874, George Armstrong Custer began mining for gold on the Black Hills, which later was signed away from the Sioux Reservation under the Act of 1877. The Dawes Act, signed that same year, separated the Great Sioux Reservation in six separate reservations, one of which being the Standing Rock. Over the next century, more gold would be extracted from a single mine here in this formerly-Indigenous-owned land than from any other mine in the United States (Neville and Anderson, 2013).

In addition to land rights, the United States government violated Native American water rights as well. Although the Winters Doctrine of 1908 declared Native Americans to have superior jurisdiction over waterways within a certain distance of their reservations, this document was violated by the construction of the Oahe Dam, which severely flooded the Stand Rock and other reservations. It also destroyed nearly all of the local timber and wildlife, drowned sacred sites, and displaced hundreds of Native families (Mo Wells, 2017).

Dakota Access Pipeline

The Dakota Access Pipeline is a controversial pipeline designed to carry crude oil from western North Dakota to Illinois. Although the project was slated to travel just North of Bismarck, North Dakota, it was later rerouted to travel through Sioux Nation territory, passing under Lake Oahe and a total of three tributaries of the Missouri River (Mo Wells, 2017). When the project was revealed to the public in June 2014, the people of the Standing Rock Nation took the U.S. Army Corps and the Dakota Access, a subset of Energy Transfer Partners, to court to attempt to block the Dakota Access Pipeline construction. Quickly after this lawsuit began, Natives and activists set up camp near the Standing Rock Reservation to protest (Mo Wells, 2017).

The proposed and eventual route for the pipeline showcases the environmental racism of the Dakota Access Pipeline. Demographically, the population of Bismarck is over 91 percent white (U.S. Census Bureau, 2010). The Standing Rock Nation, not being a white-majority and thus a different socio-economic status than Bismarck, was given a disproportionately large environmental burden through the Dakota Access Pipeline. Standing Rock Nation, as a Native American reservation, as explained earlier, has had a significant history of exploitation by the U.S. government. The fact that the original Dakota Access Pipeline course ran through a majority-white neighborhood but was then redirected through an already underprivileged population is an example of environmental racism.

Analyzing the events of the protests, the pipeline project is clearly an example of procedural injustice. From the very beginning, the Standing Rock Nation's opinion was in no way considered by either Energy Transfer Partners, the parent company of the pipeline, or the United States government. Once the Standing Rock Nation voiced their

concerns over the pipeline and proceeded to make their camp as “a safe place for healing, learning, and resisting in a prayerful way”, they were met with excessive force (Mo Wells, 2017, 149). As seen in the documentary *Awake*, police blasted the protestors (or protectors, as they called themselves) with high-pressure water cannons in 26°F weather. During this scene in the film, the recording of an actual 9-1-1 call played in the background. The woman on the phone asked to report an assault, specifically one by the police, who were spraying the unarmed protectors with mace. When the operator tried to tell her that there is nothing he can do because the police are already there, she continuously asked him, “Who protects the people from the police?” (Goodfeather et al., 2017). This scene showcases the vulnerability of the protectors under the force of the police. The thousands of protectors, who were additionally threatened by rubber bullets, were no actual threat to the police. Protectors remained unarmed as they were violently attacked by the guards hiding behind heavy uniforms and shields (Mo Wells, 2017). Because the police themselves were the instigators of the continuous violence, protectors had no outside force that could save them. If protectors had physically fought against the police, the media and government may have used protector violence to justify the brutal actions of the police. While police tried to justify using the water hoses to control the crowd and extinguish fires started by protectors, it is important to remember that the protectors were outside in sub-freezing weather. In fact, a spokeswoman for the Indigenous Environmental Network reported that activists created only two fires, both for warmth and cooking, while any others were created by the police’s weapons (Barajas, 2016). The Red Warrior Camp was perhaps the only group of activists present at the Standing Rock protests that advocated for more direct

and physical actions to stop the pipeline. Yet, even they did not instigate much, if any, violence, as they were asked to leave the protest site in early November of 2014 (Enzinna, 2017). While attempting to play a peaceful and engaged role in governmental decisions that would affect their land, Standing Rock natives were denied the right to safely occupy their own territory.

During the scene in *Awake* when the woman is asking the operator about who will protect the protectors from the police, the operator can only think to tell her to talk to the governor's office (Goodfeather et al., 2017). However, the government did not seem to be on the side of the protectors. Soon after Dakota Access, the sub-company of Energy Transfer Partners, sued Standing Rock for blocking its project, the state of North Dakota removed the water stations they previously set up for the protectors. A state of emergency was then declared, allowing of out-of-state police and heavier equipment to be used in the protests (Braun, 2017). Thus, all at once, the protectors' resources (water) were now restricted and they had to face the brutality from overly-armed police and state forces.

Police were not the only instigators of violence. Energy Transfer Partners hired private security, who attempted to ruin the protectors' image. The protectors specifically opted for peaceful and spiritual resistance to the pipeline, but the private security tried to make them seem destructive and out-of-control. These security guards reportedly participated in actions such as: damaging and stealing their own equipment, breaking into the protectors' camps, trying to provoke protectors, and setting two Humvee military trucks ablaze (Mo Wells, 2017).

Protectors relied heavily on the power of solidarity and community to overcome the forces against them. Allies from across the United States and even from across the world traveled to Standing Rock to stand with their brothers and sisters. Hawaiian Natives and Sami, or indigenous people of Norway and geographically-similar areas, were among those who joined in the protests (Mo Wells, 2017). Non-governmental organizations, such as Greenpeace, also represented some of the protectors (Haus, 2017). Other social activist groups, such as Black Lives Matter, were also present at the protests (Goodfeather, 2017). Even celebrities tweeted and voiced their support for the Standing Rock Nation. In fact, Shalene Woodley physically attended the protests and was arrested and charged with criminal trespassing and engaging in a riot (Woodley, 2016).

Social media served as the “weapon” of the protectors, allowing them to gain strength in numbers and support. However, the protectors were also fighting forces from the cyberworld. “#NoDAPL” was a revolutionary force on social media, claiming national and international attention and solidarity. However, throughout the protests, reports of connectivity issues corresponded with some airplanes flying over the camps hourly. North Dakota Governor Jack Dalrymple also reportedly orchestrated two media outages during the protests (Mo Wells, 2017).

Fortunately, the support produced by social media also allowed it to stay active. Geeks Without Bounds, a grassroots organization, erected a small service tower to increase cell and internet service. It additionally set up a tent for journalists and activists, which earned the nickname “Facebook Hill” (Mo Wells, 2017). Social media and news coverage became a driving ally and recruiter for the Standing Rock Nation.

However, the motivations of the media, particularly “mainstream media”, may have been more than just helping the Standing Rock Nation during this plight. Rather, media focused nearly-exclusively on the particularly “violent” conflicts, such as the water-cannon scene shown in *Awake*. Yet, other Native grassroots efforts received little to no media coverage. The Iowa and Omaha Tribes, for example, also showcased their concerns about the Dakota Access Pipeline’s route through their own cultural sites, though their plights are unknown in comparison to the Standing Rock Nation’s (Braun, 2017).

Looking at the blackouts, it seems that constitutional injustice occurred tangent to environmental injustice. The First Amendment of the United States’ Constitution states that

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances (U.S. Const. amend. I).

The blackouts and restricted internet connectivity violated the protectors’ ability to exercise their right to freedom of the press and speech. But the first amendment was violated beyond the realm of social media. The state-sponsored violent responses to the protectors’ peaceful assembly violated the protectors’ right to voice a redress of grievances to the government. The Standing Rock Nation was concerned that the pipeline was going to be cutting through several important cultural and spiritual sites, and thus it can be argued that, by supporting the Dakota Access Pipeline’s construction,

the government also prohibited the free exercise of the Standing Rock Nation's religion and spirituality.

Even after the Dakota Access Pipeline construction was officially halted by then-President Barack Obama, the Standing Rock Nation faced threats for its return. After Obama announced the shutdown, Energy Transfer Partners released a statement declaring to ensure "that this vital project is brought to completion and [they] fully expect to complete construction of the pipeline without any additional rerouting in and around Lake Oahe" (Braun, 2017, 108). Although the project was legally shutdown, this company still held high hopes for the pipeline's construction, despite clear local disapproval. Additionally, the company had the moral support from several powerful politicians, including North Dakota's Congressman Kevin Cramer. He referred to President Obama's action as "unfortunate", framing the decision as one against "those who want to build infrastructure in this country" (Dennis and Mufson, 2016). He also wrote that he was "encouraged [that] we will restore law and order next month when we get a president [Donald Trump] who will not thumb his nose at the rule of law" (Dennis and Mufson, 2016). Out-of-state politicians with even greater power also spoke about the issue. Speaker of the House of Representatives Paul Ryan tweeted that the termination of the pipeline was "big-government decision-making at its worst [and he] look[s] forward to putting this anti-energy presidency behind us" (Braun, 2017, 108). However, there were some politicians that voiced their support for the Standing Rock Nation's efforts. Secretary of the Interior Sally Jewell praised the Army Corp's cancellation of the project, writing that it "underscores that tribal rights reserved in treaties and federal law, as well as Nation-to-Nation consultation with tribal leaders, are

essential components of the analysis to be undertaken in the environmental impact statement going forward” (Dennis and Mufson, 2016). Unfortunately, the mixed responses from government officials also signaled an unclear future, especially with then-President-elect Donald Trump, who had voiced his support for the pipeline on several occasions, coming into office the next month.

The finalized route of the Dakota Access Pipeline is an example of distributive injustice as well as environmental racism. While the U.S. Army Corps of Engineers rejected the original Bismarck-directed pipeline for the threat of contamination to the drinking water and farmland, the protectors cited the same concerns about the pipeline crossing through Standing Rock. Still, the U.S. Army Corps and other government officials continued to support the redirected route through the Standing Rock (Mo Wells, 2017). In fact, the U.S. Army Corps, who had initially praised Obama’s decision to stop the pipeline, quickly granted an easement to allow the Dakota Access Pipeline to travel near the Standing Rock Nation after Trump signed his infamous executive order. The Corps additionally cut the time allotted for the environmental impact assessment and the time for the public to comment about it (Hersher, 2017).

Today, oil flows through the pipeline. The ultimate completion of the pipeline is substantive injustice, as the Standing Rock Nation’s primary water source is under constant threat of oil contamination. From 2010 to 2016, nearly 9 million gallons of crude oil spilled from pipelines throughout the United States (Harrington, 2016). The Dakota Access Pipeline, situated just north of the Standing Rock Reservation, now actively threatens the people of the Standing Rock.

Analyzing the EPA's 2008 definition of environmental justice, the Dakota Access Pipeline was and is a violation of the Standing Rock Nation's environmental rights. The Natives of this area were not permitted to be a part of the development, implementation, or enforcement process of the pipeline construction (procedural injustice). Yet, the nearby white-majority area (Bismarck) was spared the frustration of having an oil pipeline directly threaten their water supply (distributive injustice). As most protectors peacefully fought for their voices to be heard, they were met with excessive and life-threatening violence by institution such as the police and government (procedural injustice). The protects found strength in numbers and saw a short success when former-President Obama called for the end of the pipeline's construction. Unfortunately, shortly after, with the support of the pipeline company and many politicians, newly-inaugurated President Trump restored Energy Transfer Partners' ability to complete the pipeline. Because of the United States' recent record of pipeline leakages, spillage from the Dakota Access Pipeline seems imminent (substantive justice). While this pipeline and the events associated with it had a bleak ending, the sheer strength of the movement against it brings hope that people will continue to fight against environmental injustice.

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