

**A Collective Vision:  
Analyzing the Failed Consensus-Building of the Dakota Access Pipeline  
Using the Social Construction of Technology**

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Marlene McGraw  
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On my honor as a University Student, I have neither given nor received  
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Signature Marlene McGraw Date 05-08-2021  
Marlene McGraw

Approved Tsai-Hsuan Ku Date 05-11-2021  
Tsai-Hsuan Ku, Department of Engineering and Society

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## Introduction

The development of major infrastructure is a complicated process that involves a broad swath of stakeholders and raises questions of cost, location, and effect on those around it.

President Biden's recent release of a \$2 trillion infrastructure plan has brought many of these conversations to the forefront of American politics – the plan calls for investments in major roadways and bridges, the electrification of vehicles, increased support to at-home caregivers, retrofitting homes, updating water lines and internet access, and making these and other infrastructure investments resilient to the effects of climate change (*FACT SHEET*, 2021). The plan, while not yet in formal legislation, has faced challenge by Republican opposition, who perceive some of its elements to not be “infrastructure” and who may take objection to the increase in corporate taxes to pay for the infrastructure (Pramuk, 2021). In addition, the new administration's focus on renewable energy and cancellation of the Keystone XL pipeline has signaled a value shift that could have fundamental impacts on the continued development and operation of pipelines around the country, which frequently intersect uniquely with indigenous nations' land rights and reopen controversy over old treaties and the notion of private property.

The Dakota Access Pipeline (DAPL) is a project that began in 2014 and was commercially completed in 2017, carrying light sweet crude oil from North Dakota production fields in Bakken and Three Forks to Patoka, Illinois (*Home | Dakota Access Pipeline Facts*, n.d.). An illustration of the full scope of the pipeline, as well as the area which nears the Standing Rock Reservation, is shown in Figure 1.

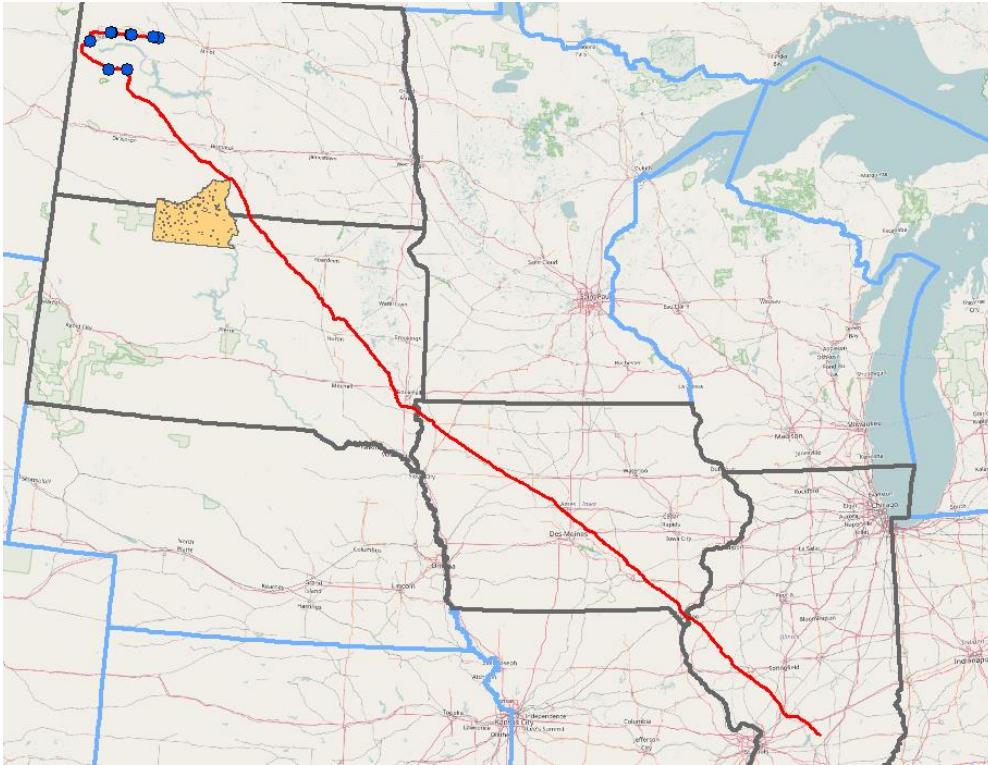


Figure 1: The Dakota Access Pipeline Route (Standing Rock reservation shown in orange). By NittyG - Own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=52776844>. Image has been cropped slightly for space efficiency.

While its journey to commercial completion met significant resistance in 2016, as construction moved to begin, the Oceti Sakowin (or the Sioux Nation) had established an opposition to the Keystone XL pipeline two years prior, in the spring of 2014 (Estes, 2019). In September of 2014, the first discussion between Energy Transfer Partners, the primary financier of the project, the Dakota Access Pipeline company itself, and the Oceti Sakowin took place, with largely unfruitful results (Estes, 2019). Awareness-raising was done by the Oceti Sakowin for the next two years, but primary resistance began with construction in 2016, with a primary and several secondary camps being created and led by the Oceti Sakowin and other indigenous actors to host other nations and activist allies as they organized peaceful protests and held

expressions of indigenous faith and values (Fox et al., 2017). Protests continued in various forms until the camp's formal disbandment in 2017, though legal challenges remain in place contesting the pipeline's environmental clearances. The pipeline is, however, currently operational, and carries 570,000 barrels of oil per day (*Dakota Access Pipeline Now in Service* | *TheHill*, n.d.).

This paper will explore a few research questions by utilizing DAPL and the #NoDAPL movement as a case study. First, the paper asks how the Dakota Access Pipeline became a controversial piece of infrastructure and applies the developed understanding of infrastructure to analyze how the pipeline's relationship to various stakeholders has changed its existence and future ability to exist. The thesis will then explore how consensus and closure are reached in controversial development projects in the United States, and whether these processes are fundamentally successful at achieving this closure or consensus. Finally, the paper asks what changes to our structures of closure should be implemented to better facilitate successful communication and compromise.

## **Literature Review**

### *Infrastructure as a Political Concept*

Science, Technology, and Society (STS) as a field of study frequently considers on a conceptual or philosophical level what the implications of technology are on human society, and thus much research exists that explores this understanding. This thesis will be looking, in particular, at the conversation that the field has developed in understanding technological objects' relationship to their political and social contexts. There are those, like Joseph Pitt, who argue that technology is divorced from its political and social context, either because there are so many contradictory values embedded in an artifact that there can be no clear whole, or because

values are not concrete enough to be specifically located in the physical structures and design papers (Pitt, 2014). Pitt's paper was written in response to an earlier and more foundational paper by Langdon Winner, which asserts that technologies could be political in two ways: the technology could create a "convenient means of establishing patterns of power and authority" or intractable properties of certain kinds of technology are "strongly, perhaps unavoidably, linked to particular institutionalized patterns of power and authority" (Winner, 1980). Other, more recent publications on the subject suggest that both technology and society are shaped by their *interactions*, rather than their dimensions, which resolves Pitt's concerns of where to locate values within objects; in Winner's famous overpass example, the values of Robert Moses are not contained in the dimensions of the drawings, but rather in the interaction of the overpass and its users (people who drive their own cars, and people who use buses) (Verbeek, 2015). This idea of *interaction* affecting both user and technology aligns with the Social Construction of Technology, which will be the primary framework this thesis uses to discuss DAPL.

### *Indigenous Peoples Intersection*

Much research has already been done pertaining to the relationships between indigenous nations, the federal governments they interact with, extractive industries that affect them, and other relationships. A 2017 research paper examined the history of American law in determining indigenous land rights – the earliest establishment of legal understanding of indigenous peoples put them in a legal position as a kind of ward, under the "guardianship" of the American government, which significantly limited the authority of native people and restricted their ability to contest land development or usage legally (Bower, 2017). The National Historic Preservation Act of 1966 (NHPA) was fundamental in expanding these rights, as legal understandings of the relationship between the federal government and indigenous nations shifted to consider it the

federal government's responsibility to ensure native peoples' had rights to fair consideration and hearing when action is taken on lands that they inhabit or on lands that have "religious or cultural significance" to a nation, regardless of location (Bower, 2017). However, the paper also expands on the limitations of NHPA in adequately responding to indigenous concerns, as there is no legal requirement to adjust design or take action after hearings have been held, even though the law may imply this sort of response. This legal relationship was fundamental in the case study this thesis will consider further in the Data Analysis section.

However, global work in expanding indigenous rights also plays a key role in understanding the case study and has had a significant influence on the academic work around this topic. The United Nations Declaration on the Rights of Indigenous Peoples was one such key resolution, which was adopted in 2007 and declared the necessity of obtaining free, prior, and informed consent from affected indigenous peoples before industries develop land that has significance to those nations (Anaya, 2013; *United Nations Declaration on the Rights of Indigenous Peoples / United Nations For Indigenous Peoples*, 2015). While this Declaration, like most UN resolutions, is not legally binding, its affirmation by 144 countries in the UN lent indigenous peoples in the four nations who voted against its adoption (Australia, Canada, New Zealand, and the United States) power to pressure their governments, who each eventually affirmed the declaration. The United States formally affirmed the Declaration in 2011 under the Obama administration, although it interpreted free, prior, and informed consent as "to call for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken" (*Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, 2011; *United Nations Declaration on the Rights of Indigenous Peoples / United Nations For Indigenous*

*Peoples*, 2015). While this maintained the loophole mentioned in the NHPA discussion, the formal acceptance of free, prior, and informed consent into the mechanisms of American development would give indigenous nations new tools to leverage in ensuring that interactions were fair.

### *Empirical Studies*

Much research has been completed on the adverse effects of developing major infrastructure without indigenous involvement or approval; this thesis's prospectus touched on this element, but some of this research is included here for its relevancy. Globally, it is consistent that the development of infrastructure on or near traditional indigenous territory disrupts traditional food and water sources, either by interrupting migration routes or patterns, or by introducing pollutants and carcinogens into local food sources that make them unsafe to eat (Baker, 2016; Jonasson et al., 2019; Whyte, 2017; Yakovleva, 2011). This can not only remove valuable food and water sources but also comes with a cultural cost, as the preparation of food plays a vital role in cultural transmission and mental health (Jonasson et al., 2019).

This impact is seen more specifically in the Oceti Sakowin's recent history with the construction of dams in the 1950s and 60s in North Dakota, which flooded fertile lands that were reservation territory; indigenous communities were left with "largely uninhabitable" land and were subsequently forced to relocate, sometimes multiple times, as continued dam construction continued to encroach on indigenous territory (Estes, 2019). The Hoover Dam is perhaps the most famous instance of dam infrastructure which has had similar impacts on indigenous nations who lived near the Colorado River. The Cucapá are a nation who have lived along the Colorado for much of its history, but their houses and fertile land were all flooded and they were forced to move to higher, less fertile land, which has kept them impoverished (Postel, 2012). In addition,

the damming of the river has also had significant effects on the ecosystem, which has all but removed many staple foods (Postel, 2012).

After 2010, interest in the concept of energy justice in the academic sphere began to explode, with researchers across many disciplines considering the social and political dimensions of energy access and investigating the often extreme disparities in energy benefits and burdens; they found that indigenous and minority communities often lack access to energy that they might simultaneously suffer the consequences for due to production facilities' proximity to their communities, as mentioned above (Guayo et al., 2020). This understanding of energy justice is further split into four tenets – distributive, procedural, recognition, and restorative justice – which highlight recognition of the current cost-benefit disparities, involvement in the process of energy construction, acknowledgement of the needs of different groups, and rectification of existing injustices. This growing body of academic work investigates both what inequities are present in current energy systems and how to change the process of energy infrastructure development to lessen those inequities. One example from the book *Energy Justice and Energy Law* examines the development of rural electrification (RE) in Canada and highlights the tension that existed between the government, trying to bring electricity to its rural citizens, and the utility companies, who preferred rural communities to make cooperatives to pay for rural distribution facilities because they didn't want to offer at cost electricity (Guayo et al., 2020, Chapter 14). While this example is not directly related to indigenous right and energy justice, it is an example of the kind of work being done in this emerging field.

### *Summary*

This literature review has examined several topics which will be useful to think about as the thesis progresses into more detail of the actors involved in this project, their perceptions of the



pipeline, and the mechanisms they use to try to bring closure to the controversy of its construction and location. First, this literature review discussed evolving understandings of the inherent politics of objects, which most recently posit that an object's interaction with society has an influence on both the object and the society. The review then moved on to a brief history of American interaction with indigenous nations, which began with a kind of "guardian-ward" relationship and has moved to provide indigenous nations moderately improved rights under NHPA, alongside the acceptance of the United Nations Declaration on the Rights of Indigenous Peoples, which requires the free, prior, and informed consent of indigenous nations before development can be completed on their lands. Lastly, the literature review considered the impacts of development on indigenous nations – historically, this development has often required the displacement of nations from traditionally inhabited territory, removed or limited the opportunity to gather traditional food and medicine, and distributed the burdens and benefits of development unequally, which can exacerbate indigenous poverty. This thesis will build on these existing analyses and bodies of research to contribute to the body of energy justice literature and indigenous rights research by using the DAPL pipeline as a case study.

### **STS Framework/Research Method**

The socio-political process that ultimately led to the construction of the pipeline is a complex one, so in order to more fully understand it, this research will use the Social Construction of Technology (SCOT) to understand the development and existence of the pipeline in its current state. The SCOT theory posits that society influences the shape of technology, rather than technology shaping society (Bijker, 2015). Various actors, defined as individuals, groups, or organizations that have different views of the same technical artifact (in this case, the

pipeline), will respond to the artifact according to their perception and attempt to use different methods to resolve or bring closure to the creation of the technology in some way (Pinch & Bijker, 1987). Closure, in this theory, is the development of a general unified opinion and may be associated with a more tangible result, like a change in design or process. This closure may be temporary, as new actor groups emerge and reopen conversations with different opinions.

The research method for this thesis involves examining various sources of information about and from different actors, from official statements and webpages to written essays and artistic films, in order to gain an understanding of the different perceptions of DAPL and how those perceptions guided choices by actors to create closure to resolve the conflicts that existed regarding the pipeline's creation. The thesis will focus on three actor groups: Energy Transfer Partners and other involved pipeline companies, the United States Army Corps of Engineers and federal government at large, and the Oceti Sakowin and their associated allies. After analyzing different actors' perspectives and attempts to resolve the controversy of the pipeline's construction and location, this thesis will also discuss the ethical implications of the pipeline's construction by considering the political-social-cultural roots of engineering ethics in determining what ethical building looks like for Western American and Indigenous values, and how those different roots can make engineering action more complicated.

### **Data Analysis**

This analysis, following the framework of SCOT, will be separated by actor and will seek to understand that actor's perception of the pipeline, as well as what influences that actor's perception had on the pipeline as an artifact. After each actor has been analyzed, this section will discuss the various mechanisms used by different actors in attempts to resolve the controversy,

which specifically regarded both the location and construction of the pipeline, and to what degree each of their mechanisms was successful.

## **Actors and their Partnerships**

### *Energy Transfer & Other Pipeline Company Partners*

Energy Transfer (known as Energy Transfer Partners during the #NoDAPL movement and referred to hereafter as ET) is the primary owner of DAPL, though three other fossil fuel companies hold minority interests in the creation of the pipeline: Phillips 66, Enbridge, and Marathon Petroleum. Construction was managed through a Limited Liability Corporation (LLC) called Dakota Access, whose official website holds the most direct information that can be found to indicate the company's perception of the pipeline – on the front page, a general statement about the pipeline reads: “Increased domestic crude oil production translates into greater energy security, lower trade deficit, and boosted economic growth” before providing statistics about employment (*Home | Dakota Access Pipeline Facts*, n.d.). Using the Internet Archive's Wayback Machine, which allows for viewing of webpages as they appeared in previous iterations, it was seen that prior to 2017 the site retained much of the same information and had a dedicated webpage for landowners with some frequently asked questions and relevant information, but contained no other significant changes (*Dakota Access Pipeline Facts*, 2015). There was, at that time, no information regarding indigenous nations.

From the beginning, then, the company's conversation with the public about their perception of the project has revolved around energy security (especially US-generated oil) and the economic growth from hiring workers to construct the pipeline. For the company internally, this project was a big opportunity to generate new revenue, as ET had been slowly acquiring other oil companies and pipelines, as well as building new ones, since their founding in 1996

(*Energy Transfer*, n.d., p. History). Their stock had been increasingly rising since 2012. The company's perception of this pipeline as a primarily economic artifact – that is, for the benefit of their own revenue, as well as the benefit of the country's economy – meant that its introduction to the public was not geared toward addressing concerns outside of those private landowners that they were, at the time, holding meetings for. More conversation will follow on the various mechanisms that ET leveraged to attempt to define the problem and bring closure to the controversy of its location and construction.

ET built some partnerships with local government, but for the most part the central controversy of the #NoDAPL movement, its location crossing under Lake Oahe upstream of the Oceti Sakowin reservation, was an issue that was dependent on federal regulation and approvals from the Army Corps of Engineers (USACE). ET had previously obtained the approval of the North Dakota Public Service Commission and in that way developed a positive but distant relationship with North Dakota's state regulatory bodies (*Jurisdiction - Pipelines: Public Service Commission, North Dakota*, n.d.). However, close partnership with local, state, and federal police forces was evident in attempts to disperse protesting, which indicates that there was likely partnership building during this management process; once ET hired TigerSwan, a security firm with a background in counterterrorism, this connection was solidified, as shown through regular correspondence between TigerSwan, the FBI, the Department of Homeland Security, the U.S. Justice Department, the Marshals Service, the Bureau of Indian Affairs, and state and local police (Brown et al., 2017). This also indicates efforts to work with federal agencies following some of the protests which resulted in injuries, but it is unclear exactly how much communication or relationship-building was present between these organizations and ET prior to these incidents, which will be talked about in more depth in the mechanism section. All of this

illustrates a development of networking with several levels of policing systems and security departments, which doubly emphasizes ET's perspective of this pipeline as an economic asset, to be protected from possible threat.

### *Army Corps of Engineers*

The United States Army Corps of Engineers (USACE) play a primary role in issuing permits and in interfacing with indigenous nations on development projects that impact those nations through USACE's Tribal Nations Program. Thus, as an actor they play a more regulatory role in determining when and where development can occur by officially approving the process. The program's goals are stated as: "(1) to consult with Tribes that may be affected by USACE projects or policies and (2) to reach out and partner with Tribes on water resources projects" (*US Army Corps of Engineers Tribal Nations Program*, n.d.). Their perception of this project, on the whole, appears to be as a development that has the potential to benefit the state if it passes its regulatory checks. However, there is some uncertainty of how much interest involved USACE regulators had in ensuring that indigenous voices were heard, suggesting that their perception may also have included a disinterest in reaching harmony in favor of approving a project that might bring a key benefit to the country. On a procedural level, the organization's policy for involving indigenous nations in development processes are vague, which Tarah Bailey notes can create difficulty in enforcing processes or ensuring participation is satisfactory for indigenous nations (Bailey, 2018). Bailey's report also points out a general lack of communication between USACE and the Oceti Sakowin, as well as an unresponsiveness to communications sent by the Tribal Historic Preservation Officer about culturally sensitive sites, which, as mentioned earlier in this thesis, are protected by NHPA. The perception that this lack of communication implies is perhaps a dismissal of the potential importance of the site, or an unwillingness to cooperate. This

is speculative, however, and on the other hand it is reported that USACE tried to engage in consultation with the nation dozens of time but were refused, which may have been taken as a sign to proceed or created frustration that led to the moving ahead of the project (Colwell, 2016).

Regarding partnerships, the USACE has definitive connections to the National Park Service, as they rely on information from the Tribal Preservation Program's Tribal Historic Preservation Officer in order to confirm sites to be avoided, and for consultation on sites intended for construction (*State, Tribal, and Local Plans & Grants*, n.d.). The USACE also certainly has partnership with the Bureau of Indian Affairs, as the two work in parallel on the same sites and with the same nations to prevent harm and offer resources, respectively. The USACE is also influenced by the active presidential administration's executive orders, general directions, and policy changes. This has resulted in several changes of course from the USACE over the five years that the controversy has been at its peak, which will be elaborated upon in the mechanisms section and solidify the relationship between the administrations and the Corps.

### *Indigenous nations*

The first perception that the Oceti Sakowin had regarding the pipeline came before it had arrived. The nation has had a prophecy with it for a long time. The account of the prophecy from the film *AWAKE: A Dream from Standing Rock* reads:

*"The Black Snake has been prophesied for generations. It was foretold that it would bring death, that it would be the youth that would rise up, and that, behind them, the mothers would rise. And behind them, our warriors would rise. We, the seventh generation, are given the task of defeating it."*

- Narrator

And, similarly, another account of the prophecy from *Standing with Standing Rock: Voices from the #NoDAPL movement* reads:

*“When we were kids, our grandmothers used to talk about this Black Snake that would be coming to destroy the earth. [...] When we saw the pipeline being built that pushed this black fluid through, then we understood: this is what is coming to kill the world. The prophecy says that when the Black Snake comes, we will stand up and stop it. We have no other choice but to stop the Black Snake to save the world. People may think that is a farfetched idea. But it is a reality because we must stop destroying what gives us life.”*

- *LaDonna Bravebull Allard*

Prophecy is, obviously, a matter of belief, but what is tangible and relevant here is that the Oceti Sakowin recognized DAPL as the Black Snake, and this prophecy, alongside more concrete concerns about the rate of spills from ET pipelines, the effects that a spill would have on their water supply, and the fact that the land being disturbed has significance as a sacred land, historical gathering area, and, in some places, burial ground, have led to the Oceti Sakowin maintaining an opposition to the construction of the pipeline (Estes & Dhillon, 2019; Medina, 2016a). These concerns were validated by Sunoco, the pipeline’s future operator, having the highest amount of onshore pipeline oil spills of any US pipeline operator since 2010 at the time (Hampton, 2016). The reservation only has one water supply, which is the river, so spills that reach the water would have a profound impact on the health of the Oceti Sakowin.

It is also important to note that the Oceti Sakowin’s understanding of the pipeline is in many ways not just linked to the prophecy, although that had a very fundamental coloring of their perception. The pipeline, as a major infrastructure project that involves the acquisition of land to proceed, intersects with the history of indigenous land rights and, more fundamentally, indigenous struggles for sovereignty. In 1877, a gold rush led the U.S. Congress to force the Oceti Sakowin to cede the Black Hills, a site sacred to the nation, without the agreement of the nation and in direct violation of the Fort Laramie Treaty (Bailey, 2018; *Newberry Library: Lewis and Clark Exhibit*, n.d.). Similarly, the construction of dams ignored previously cemented

jurisdiction that indigenous nations had over the Missouri River and further created a precedent with which to continue to ignore that jurisdiction. The nation's history with this infrastructure creates an understanding or an expectation that whatever structure is involved, even those that intend to consult with them, may have little interest in their opinions or ignore their authority (Estes, 2019). Thus, the pipeline from an indigenous perspective is not only a prophesied evil but also the latest iteration of land-consuming infrastructure which intends to infringe upon their sovereignty.

The partnerships of the Oceti Sakowin are incredibly numerous; the protest camps hosted over 300 other indigenous nations, alongside a variety of non-native allies and organizations (Estes & Dhillon, 2019). These partnerships not only renewed old and pre-existing partnerships between nations, but also encompassed a diversity of thought and facilitated the exchange of culture and ideas over the duration of the camp's existence. Partnership with landowners who opposed the usage of eminent domain for the purpose of pipeline construction existed prior to the swell of protest and action in 2016 (Estes, 2019). Through outreach and social media, which will be discussed further in the mechanisms section, partnership was also achieved with a variety of outside organizations, including Greenpeace, the Sierra Club, and the Science and Environmental Health Network (Dawson & Maher, 2016; Raffensperger, 2016). Despite the broad partnerships developed by the Oceti Sakowin over the course of this controversy, the movement as a whole maintained a cohesive perspective of the pipeline as a harm to the Oceti Sakowin nation, the environment, and the United States as a whole, with general advocacy for the pipeline's removal and discontinuation.



### *Closure Mechanisms*

In the SCOT framework, the actors involved in a controversy are analyzed to see what actions they took either to resolve the controversy (*closure* mechanisms) or to reframe the controversy (which I will call *reframing* mechanisms). Resolution may be a technical innovation outpacing its competitors, a technical object being adjusted to address concerns, or other such methods, while reframing may look to shift discourse of the technical object so that the problem that creates controversy is moved from one source to another. Both of these mechanisms were utilized over the course of the construction and operation of DAPL and will be displayed below. This explanation of closure mechanisms will attempt to lay out the progression of strategies from the actors involved in this controversy in a linear fashion, but in the interest of avoiding redundancy will also try to avoid repeating significant and similar actions, in favor of viewing and interpreting what mechanism the action served and how effectively the action built consensus. As one final note before the section begins, it is important to recognize that while the strongest physical protests have completed, the pipeline itself is still in lawsuits and the controversy has yet to entirely complete, so in this sense no mechanism will be capable of being entirely effective at creating closure.

Some of the earliest attempts to avoid conflict in 2014 involved a consultation meeting between ET and the Oceti Sakowin, which was intended to be a closure mechanism, a way to provide pipeline companies and indigenous nations a way to discuss construction. However, this effort did not create any tangible understanding. ET had already completed a broad majority of the pipeline, and the Oceti Sakowin were firm that they had no desire for the pipeline to be present at all near the site they were consulted for, nor for it to exist (Estes, 2019).

Following this unfruitful effort, the Oceti Sakowin began grassroots awareness campaigns in order to establish their perspective into the broader social consciousness and gain allies and partnerships to bring about closure that worked for them; this effort involved both early digital media campaigns in 2014, like “Rezpect Our Water” and later, more physical campaigns, like the 2,000 mile relay from North Dakota to the White House to call on the Obama administration to intervene in 2016 (Estes, 2019).

Early efforts to begin the process of land acquisition and construction in 2015 kept public outreach to a minimum and focused on the outreach to landowners, mostly, in efforts to make them receptive to selling land to ET and to prevent conflict (*Dakota Access Pipeline Facts*, 2015). As the protests mounted and publicity increased, the DAPL Facts website attempted to reframe the problem, focusing on the safety of the design and the job creation from the pipeline’s construction while also attempting to discredit protest movements and artificially distance them from the Standing Rock Sioux Nation (Oceti Sakowin), despite the chairman of the Nation Dave Archambault II’s prominent role in opposing the pipeline (Thorbecke, 2016). The company’s CEO, Kelcy Warren, also appeared on PBS in November of 2016, indicating a continued desire to complete the pipeline quickly and having little interest in addressing further concerns, further indicating the company’s decision to attempt to convince the public of their perspective and to retain the economic perception of the pipeline (Brangham, 2016).

The USACE did attempt to use their closure mechanism of consultation with the Oceti Sakowin “dozens of times” but most were refused because the Oceti Sakowin wanted to be consulted for the entire pipeline, instead of just the narrow crossing of Lake Oahe (Colwell, 2016). Indigenous nations are aware that the consultation mandated by the federal government is often not meaningful, and that their opinions can be dismissed as long as the consultation does

take place, which may be part of the reason why the nation was reluctant to consult (Bailey, 2018). However, consultation at Lake Oahe did occur after concerns were raised about the pipeline's routing, and sites of significance were communicated to the USACE, to whom they were new (Colwell, 2016). This consultation occurred after construction had already completed, and while fortunately the main sites of concern escaped destruction, the consultation process provided little closure to the controversy, having failed to prevent construction in the first place.

As construction began in 2016, the Oceti Sakowin began using two different mechanisms in parallel: they pursued legal action, a closure mechanism, and protest, a reframing mechanism. A legal complaint was filed the day after the pipeline's path was approved by the USACE; after it became clear that this was not progressing, more primary protest began. However, legal action continued to be a key closure mechanism utilized by the Oceti Sakowin. In September of 2016, a lawsuit was filed against the USACE, claiming inadequate consultation and seeking an injunction; although this injunction was denied, the Department of the Army, the Department of Justice, and the Department of the Interior all moved to block construction pending further evaluation (Merit Kennedy, 2016). Later that month, the Chairman of the Oceti Sakowin, Dave Archambault II, spoke directly to the United Nations Human Rights Council in 2016 seeking support, and various representatives of the UN did speak in support of the rights of the Oceti Sakowin (Germanos, 2016; Medina, 2016b) – while this was not technically a legal action, it did represent significant political intervention following official proceedings by the UN, so it has been included here. In some ways legal action has been the most successful closure mechanism, as it has prompted action that reconsiders how the project suits or does not suit the opposing parties, but as the controversy is still not complete, it cannot be said to be completely effective. The pipeline has remained in legal challenges; in March of 2020, a federal judge ordered a more

comprehensive environmental review be carried out, and that same judge went on to order the pipeline be shut down in July, although the shutdown order was reversed (Friedman, 2020; Mack, 2020; Press, 2020). A renewed shutdown request from the nation was filed in October of 2020, and a further hearing concerning the environmental review was completed in November of 2020 (Gilmer, 2020a, 2020b). Legal action has played a major role in attempting to create consensus and resolve conflict, but continued action makes it unlikely that a resolution will be reached in the near future.

While legal action continues to be a crucial component of navigating the controversy of the pipeline's location and existence, it can be argued that the massive protests of 2016 were perhaps the most powerful mechanisms and did successfully reframe the problem for a significant portion of both American and global society. Major action began with the establishment of camps in reservation territory or near the pipeline, which created physical spaces within which indigenous and settler peoples lived together and engaged in dialogue and learning, which inspired action from many who lived and learned in the camp and even influenced Alexandria Ocasio-Cortez to run for office (Estes & Dhillon, 2019, Chapter 22; Solnit, 2019). Early protests from the various camps were largely peaceful and orderly, with indigenous peoples engaging in ceremony, sit ins in specific areas, and interspersed acts of kindness to security teams (Fox et al., 2017). But in 2016, on Labor day, when an area was plowed and graded by construction workers only two days after Tim Mentz, a previous tribal historic preservation officer for the Standing Rock Sioux, testified that it contained historic and cultural features, the protestors attempted to interfere with the grading and were subsequently attacked by dogs and maced (most reports maintain that though they worked to interfere the work of the bulldozers, they remained nonviolent toward security teams) (Estes, 2019; Fox et al.,

2017; Gilbert, 2016). Protestors and police clashed intermittently, notably over the closure of Blackwater bridge; while police reported violence from protestors, live footage and activist testimony reported that the protestors remained largely peaceful (Fox et al., 2017; Merrit Kennedy, 2016). Protestors' continued action was often livestreamed and distributed to social media, allowing the world to watch as the conflict unfolded. This publicity, especially following the grading of the historic area and dog attacks, was highly influential as a reframing mechanism and brought significant support for the Oceti Sakowin's cause to the public sphere - the DAPL protests sparked similar, massive protests across the world in support of the #NoDAPL movement or against local pipelines, and ET lost revenue and faced lowering stock prices as a result (Fox et al., 2017; Fredericks et al., 2018; NW et al., n.d.; *Stock Information | Energy Transfer*, n.d.).

ET responded to the Oceti Sakowin's protesting with a more controversial closure mechanism: the continued effort to complete the pipeline despite protest from indigenous nations and allies. As a closure mechanism, this strategy seems less interested in facilitating discussion and resolving different perspectives than it is in essentially ending the conversation by removing the opportunity to fight against something tangible (construction), a much easier and more coherent target than something less tangible (operation). The process of completion involved heavy police and private security force presence – TigerSwan, in particular, was a private security force that Dakota Access LLC hired after footage of a protest on Labor Day weekend in 2016 showed protestors being attacked by dogs from pipeline security guards (Brown et al., 2017). The company's internal messaging indicates an operating perspective that viewed protestors, who were largely unarmed and peaceful save a few isolated incidents, as a danger and a threat, which likely increased the force's use of violence and surveillance tactics against the

protestors (Brown et al., 2017; Petroski, 2016). This particular mechanism, though it created strong opposition and was instrumental in publicizing the controversy to the world, in many ways was successful. The pipeline is functional, now, and while legal challenges do remain the controversy's peak was while there was a physical effort to combat. Most allies have at this point moved on to other efforts to support, leaving the Oceti Sakowin operating with reduced partnership.

Policy has evolved with the situation over the course of the years and has attempted to serve as a closure mechanism, by in some way requiring the compromise or inclusion of both parties' perspectives of the pipeline to the ultimate construction and approval process. While the USACE completed most approval processes ahead of the protests, the significant public backlash led to a statement being released in November of 2016 from the USACE stating that it intended to complete an additional environmental impact statement and would not be granting the third of three permits needed to move forward on the DAPL construction (Monet, 2016; *Statement Regarding the Dakota Access Pipeline*, 2016). Some further consultation did occur, but the final outcomes of these conversations are unclear (Estes, 2019). However, following the entrance of the Trump administration into office, a memorandum in support of expeditiously completing the approval process led to the easement being granted to drill – this was challenged by the River Cheyenne Sioux Nation in the same fashion as the first grants of easements (Winsor & Hill, 2017). No significant policy changes were made other than this memorandum over the course of the Trump administration, but the Biden administration's recent move to cancel the Keystone XL pipeline has created speculation that the administration could play a role in stopping DAPL's operation in the future (Blackmon, 2021; Gilmer, 2021). More recent announcements, however, seem to indicate that the administration is not planning to interfere with DAPL's operation and

will uphold the decision made under the Trump administration (Bridges, 2021). The ultimate success of this mechanism is very limited – though these regulations do seem to be intended to bridge perspectives, the ongoing nature of the controversy and the lack of clear permanent victory for ensuring that indigenous perspectives are integrated into the project’s final product both indicate a failure of the mechanism to complete this objective.

## **Discussion**

The data analysis has made clear that there are fundamental political-social-cultural differences in the perception of pipeline infrastructure from a colonizer/settler perspective (pipeline companies, USACE) and from an indigenous perspective, and these fundamental differences raise questions about the ethics of development in its current Western form. This discussion will seek to understand the ethics of this development given different relationships to land, current policies that try to address differences, and more fundamentally the closure mechanism structure in America.

Settler ideas of development often assume neutrality of development on land that isn’t private property or claim that economic growth and development is a universal value, which ignores both the history and the value systems of indigenous peoples (Proulx & Crane, 2020). Indigenous relationships to land often emphasize responsible care, kinship with native animals, and natural features as living, valuable elements of local culture (Estes, 2019; Estes & Dhillon, 2019; Fox et al., 2017; Stoffle et al., 2000). In addition, an indigenous interpretation of place may be less specific than western settlers, who are often very specific in delineating place from place, and the concept of private ownership is not a common value in Native American culture; indigenous nations have held to the collective ownership model that they have operated under

since before colonizers arrived, which leaves no one person in ownership of any plot of land, but rather designates an area the entire nation's collective home and responsibility (Stoffle et al., 2000). Western settlers also have a significantly different philosophical perspective of the land which brings influence from the colonizing intent that sought to find and extract value from new places and Christian ideas of the natural world as being under human dominion. On the basis of these differences alone, one might expect conversations about land to be difficult to navigate, but the history of the development of private property was also a tool designed to seize land from indigenous nations. As this thesis briefly touched on earlier, the development of private property in our legal system gave power to nations to claim the title to land that they had "discovered," thus removing its ownership by indigenous peoples (Bower, 2017). The very legal concept of private property in this country was a developed weapon, used against indigenous people to acquire land. This adds a historical violence to the conversation, and the repeated action that has been taken to continually steal land from reservations, dam rivers and force relocation, and other exploitative practices bring a deep-seated mistrust and trauma to even attempting a conversation of this kind. Land, and who owns it, also still remain unclear. When private property sits on treaty land, does it belong to the private owner, or to the indigenous nation? Treaties are old documents, and the Constitution regards them as some of the most important that can be written. But if they've already been broken, that sanctity is infringed upon. From these compounding complexities, it should be clear that not only are settler and indigenous relationships to land different, but that the land itself is a very political thing, influenced by its interaction with society and holding deep and important meaning for its oldest human inhabitants.

When trying to deal with an issue this complicated, and this old, how is consensus reached? It is evident from the data analysis that in the case of DAPL, consensus still has not



been reached. However, the controversy itself is past its peak, and ET has achieved their end goal, if not without some trouble, while the Oceti Sakowin have seen a lack of their values or perspectives integrated meaningfully into the process. Thus, it seems from this case study that creating consensus may rely more on how well an actor's perspective aligns with the current cultural and legal landscape than it does on the intent to discuss and learn from each other's perspectives. Put simply: consensus, like all things, can be swayed by the powerful. Once the USACE announced official evacuation orders for the main camp of protestors at Standing Rock and granted the easements, they created a kind of closure unilaterally, breaking up the most visible arm of the protest while other threads (digital activism, legal challenges, etc) remained in place. When the visibility of the protest died down, so too did national and global interest. The Oceti Sakowin's challenges to the pipeline returned to a similar state that they had begun in: smaller, quieter, and more internal. The nation had more allies than they had started with but had lost the international support. Construction progressed rapidly. Soon enough, the pipeline was operational, and it quietly slipped out of the news and became history. There was some speculation that the Biden administration's recent cancellation of the Keystone XL pipeline could indicate the administration's willingness to re-examine or cancel DAPL's operation, but when it became clear that the administration was not interested, it also highlighted the way closure mechanisms can also be about what is politically convenient – Keystone XL's huge controversy and protest presence, connection with climate change, and the Obama administration's previous hesitation to approve it combined into the cancellation being an opportune chance to appeal to environmentalists and resonate as bold action in his early days in office (McKibben, 2021). But DAPL is less convenient, having already been built and having

connections to issues about indigenous land rights that are, frankly, easier for an administration to ignore.

Culturally, the Oceti Sakowin's efforts had a much larger impact, but they still didn't create a full cultural consensus about the pipeline. This point – the development of cultural consensus – is a difficult one, because in many ways American culture is perhaps especially inclined to *resist* consensus. Our two-party political system inclines a kind of two-sided consensus building process, wherein each side creates a consensus on an issue, frequently opposing each other, and then elections determine representatives who vote increasingly along party lines. This is not to say that compromise does not exist in American politics, but it is more to say that our cultural consensus is always in a state of contention, and so it's difficult to say that consensus is ever fully achieved.

If a system is not achieving its end goals, it is logical to consider how such a system might be improved. There are several thorny implications for the US if it chooses to recognize the treaties that it signed with indigenous nations when much of that property is now privately owned, which is a likely reason that most administrations have chosen not to take action on these issues. However, consultation with indigenous nations will never successfully incorporate or meaningfully satisfy their concerns if the communication approach never fundamentally recognizes their sovereignty. The system in place for consultation, as organized by the USACE and carried out by developers and indigenous nations, in many ways treats consultation as an engineering problem that can have a simple or technical solution. But the complexities of the immensely different perspectives both parties bring to the development of an infrastructure project like DAPL will never be able to fit meaningfully into a few consultation meetings where one party doesn't have the option of refusing the proposal. In order to more fundamentally fix

this dismissal of indigenous histories and rights, solutions must look beyond the technical and toward solutions that address both technical and more philosophical elements of these discussions, and they must be more willing to consider the sovereignty of the nations they work with.

## **Conclusion**

This thesis has sought to analyze the various roles of actors in shaping the Dakota Access Pipeline's existence and has begun to highlight the impacts that largely peaceful protest has had on reshaping the existence of DAPL and of global pipeline development to both call attention to the lack of integration of indigenous nations with connections to the affected land, and to inspire greater efforts to solve these problems. The construction of the DAPL pipeline and the associated #NoDAPL movement has had profound impacts on both American and global conversations about how indigenous nations should be included in development processes and have highlighted the significant complexities in developing major infrastructure in a country whose landscape holds different meanings to the different people who inhabit it. As a country born out of colonialism, America will probably never finish grappling with this issue, but as the nation looks to updating infrastructure which is in dire need of upgrades and looking to develop increasing amounts of renewable energy infrastructure, it is likely that conversations about indigenous land rights and sovereignty will once more emerge. There is much opportunity for successful partnership, communication, and development that works with indigenous nations and has the potential to make life easier and better for their communities and the entire nation. More work remains to be done on the creation of solutions, political, legal, and social, that will foster better communication, consultation, and partnership between various actors involved in development

that affects indigenous territories. However, this analysis has hopefully revealed the necessity of change to the closure mechanisms that the US uses to navigate these issues. Although DAPL was completed largely without integration of the Oceti Sakowin's interests, indigenous writers put it best when they say:

*"#NoDAPL wasn't a failure because DAPL was ultimately built. [...] It provided, for a brief moment, a collective vision of what the future could be."*

*Nick Estes and Jaskiron Dhillon*

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