

Incorporating evidence from news reports, editorials, and Native American perspectives, Panoutsos takes on the controversy surrounding the Keystone XL pipeline. He not only constructs a compelling argument against the project but also reflects on what this debate reveals about eminent domain and our obligations to the environment. (Instructor: Lorelei Ormrod)

THIS LAND IS YOUR LAND

Nick Panoutsos

The year is 1981. The city is Detroit. Mayor Coleman Young has enthusiastically endorsed General Motors' plan to construct a new plant in the quiet neighborhood of Poletown. With the promise of six thousand jobs and a new source of tax revenue, the plant seemed a panacea for Detroit's ailing economy (Safire). But there's a catch. The plant's construction requires 465 acres to be evacuated and razed, forcing out thousands of Poletown's residents and dooming the town's local businesses (Safire). The hospital, the church, and everything in between will soon be dust. Residents have taken their concerns to the Supreme Court of Michigan, which has ruled in the city's favor, claiming that the new plant will benefit the public (Safire). As demolition day grows closer, the families and shopkeepers of Poletown pack their bags and leave with a consolatory government stipend and shattered hopes.

What stands in place of that resilient little town today is a four hundred-acre testament to the power of eminent domain. First exercised in *Kohl v. United States* (1876) to condemn a private residency for use as a post office, eminent domain allows the government to acquire private property for public use with fair compensation to the owners ("Kohl v. United States"). The final caveat is key: many residents don't feel like any amount of money could match the subjective value of their homes and way of life, no matter what the public use is. In the Kohl case, an argument for public use was clear enough. A post office is a public building, not the site of a private business. In Poletown, however, the Supreme Court's decision muddied the legal waters surrounding public use. No one could deny that the plant

would have a significant public purpose: reviving Detroit's economy and retaining local jobs seemed an enticing prospect, even for those who opposed the displacement of Poletown's residents. Public use was harder to advocate. Typically reserved for government buildings or roads, public use is the legal lubricant that keeps the machine of eminent domain running smoothly. Because General Motors is a private corporation, their plant would be shut off from the public, meanwhile generating more profit for the company than the city would ever see from it (Safire). But Mayor Young and the city of Detroit were desperate. What would it really hurt for them to stretch the definition of public use?

But Young and the Supreme Court of Michigan established a dangerous precedent. Justice Ryan, the canary in the coalmine, claimed that the Poletown case "seriously jeopardized the security of all private property ownership" (qtd. in Safire). Since Poletown, there's been no shortage of prickly and emotionally fraught lawsuits involving eminent domain. An overwhelming majority of these cases rule in favor of the city, not the residents, resulting in government condemnation of homes for the price of 'fair' compensation. So what happens when the case involves a massive private infrastructure project spanning multiple states and crossing national boundaries? The construction, or prevention thereof, of the Keystone XL pipeline will set a new precedent for how the government mediates the intricate dance between corporations and the people who have made a home on the land that those corporations desire.

Proposed by multibillion dollar oil company TransCanada, the Keystone XL (KXL) Pipeline would transport crude oil from Alberta to Steele City, Nebraska, where it would then join the existing Keystone Pipeline that stretches all the way to Texas's Gulf Coast (Laughland and Mathieu-Léger). Initially vetoed by President Obama, the pipeline has recently been resuscitated by the Trump administration, which has approved its construction despite enormous backlash (Laughland and Mathieu-Léger). Supporters of the pipeline argue that it would decrease U.S. dependence on foreign oil and create domestic jobs, but its opponents criticize the pipeline's environmental and sociological impact, arguing that the pipeline would increase dependence on fossil fuels and cut through fragile ecosystems

as well as Native American lands (Laughland and Mathieu-Léger). The construction of KXL has turned into a wildly polarizing debate that has been smoldering since its conception during the Obama administration. The narrative surrounding this controversy has transformed into a symbolic David and Goliath battle between the pipeline's opponents and Big Oil.

TransCanada calls KXL "safe" and "reliable" on their website ("Keystone XL Pipeline"). However, environmentalists and Native American inhabitants of the affected areas aren't sold. The pipeline passes through the Ogallala Aquifer, which comprises roughly eighty percent of drinking water for people in that area ("Native Americans"). Tribal rights attorney Tara Houska says, emphatically avoiding an 'if' scenario: "*When* the pipeline leaks, it will contaminate the water for the people in that area" (qtd. in "Native Americans"; emphasis added). She goes further to claim that the pipeline is not only a "death warrant" for native people, but for the nation at large: the United States obtains thirty percent of its irrigation water from the Ogallala Aquifer, so any leakage in the pipeline would result in a devastating blow to the nation's farming and livestock industries ("Native Americans"). For Houska and other KXL opponents, TransCanada's assurance that a spill is unlikely simply isn't enough.

The *New York Times* Editorial Board views the pipeline as a dangerous, unnecessary risk, claiming that the U.S. does not need the oil. Citing domestic oil sources in Texas and North Dakota as well as more rigorous fuel economy standards, the Times writes that the pipeline would have a minimal impact on U.S. energy security due to falling demands for importation (Editorial Board). For the cost of increasing carbon emissions that are at an "already dangerous [level]," the pipeline simply isn't worth it, especially given the damaging emissions caused by extracting and burning tar sands (Editorial Board). The Editorial Board also debunks TransCanada's lofty estimate of 9,000 jobs created overnight, citing a State Department analysis that estimates only 3,900 short-term jobs and only fifty permanent jobs would be created. On an international level, the pipeline would damage America's credibility as a leader in combating climate change: its authorization would make us complicit in destroying Canada's boreal forests and releasing more deadly emissions into the atmosphere.

Despite the debunked job myths and environmental risks, many right-wing supporters of the pipeline are still spellbound by the promise of energy independence. *NewsMax*'s Jerry Shaw praises the pipeline as a reliable source of North American oil, potentially freeing us from hostile foreign suppliers. Rancher Jeff Swanson echoes Shaw's sentiments, telling *The Guardian*, "Our country needs oil. Why import it from Middle Eastern countries when we can take it right from our Canadian neighbor?" (Laughland and Mathieu-Léger). Somewhat bafflingly, Shaw also writes that the pipeline contributes more to clean energy in the long run "than any other means of energy production," citing Canada's "strong" environmental laws for drilling and TransCanada's reclamation process for drilled land. While these factors might marginally reduce the environmental impact of oil production, Shaw makes a bold claim. To state that our reliance on fossil fuels contributes to clean energy more than wind, solar, or hydroelectric power is disconcerting at best and simply false at worst (Shaw). It's worth mentioning that the *NewsMax* article is punctuated by advertisements which read, in red capital letters: "IS GLOBAL WARMING A HOAX?"

Forbes's John Tamny takes a slightly more refined position (no pun intended), defending the KXL pipeline as a beacon of private sector entrepreneurship that should be free of government meddling. Unlike Shaw, Tamny realizes that the pipeline won't be the magic potion for U.S. jobs and oil independence, but he still encourages its construction so that the U.S. can expend less capital on domestic oil, and more on other projects, like "[creating] the next Cisco." Tamny offers little elaboration on what this vague musing could mean. He criticizes Obama's "obnoxious" delay on the pipeline's construction, claiming that he's only "[placating] green interests." The free market demands the construction of KXL, and the government should get out of the way in the name of liberty. Right-wing KXL supporters are left with the question of whose liberty comes first: the corporation, or the landowners on the pipeline route?

Over the course of the KXL debate, the pipeline's construction has come to symbolize the future of energy infrastructure in the U.S., under both administrations. Its construction or prevention will be predictive of our future dependence on fossil fuels, specifically the

“dirty oil” derived from Canada’s tar sands. In one of Obama’s speeches regarding the pipeline, he reminded audiences throughout the country that our reliance on fossil fuels will eventually render the earth “not only inhospitable but uninhabitable in our lifetimes” (qtd. in Editorial Board). As an advocate of energy efficiency, Obama saw the pipeline as a step in the wrong direction. His successor, however, is an outspoken supporter of the pipeline. Having tweeted that global warming is “expensive bullshit,” President Trump’s support of KXL is likely rooted in desire for profit, not the planet’s welfare. His rhetoric surrounding eminent domain and the pipeline betrays an aggressive urge to push the project through the legal system, at whatever cost.

In a 2016 Republican primary debate, Donald Trump and Jeb Bush engaged in a clumsy squabble regarding the nature of the pipeline (Gillespie). Both candidates supported the pipeline’s construction, but neither could agree on whether it was a public or private job. Bush, who seemed to possess a stronger understanding of eminent domain, fruitlessly tried to convince Trump that KXL is a public project, a necessary precondition for eminent domain (Gillespie). Trump, in response, didn’t seem to care (or know) about the legal fine print. Trump told Bush, “It’s a private job” (Gillespie). Trump’s assertion is deeply concerning: he isn’t even operating under the guise that KXL is a public project. TransCanada and oil refineries clearly stand to profit from the pipeline, yet Trump has made it clear that he will rely on eminent domain to justify the pipeline’s construction on private property (Gillespie). This wouldn’t be the first time the real estate mogul has used eminent domain to support endeavors of private profit. In 1994, he unsuccessfully attempted to force elderly resident Vera Coking out of her Atlantic City home to make room for a limousine parking lot for Trump Casino (Boaz). Now the stakes are higher; multiple homes and Native American lands are on the line, and the Trump administration shows no sign of curbing its abuse of eminent domain.

The pipeline has also sparked a debate about dispossession of native lands. Citing the “despicable” 2014 Apache Land Grab as a precedent, Houska says the U.S. has a “very long history” of dispossessing land from Native Americans (“Native Americans”). Continuing a tradition as old as Christopher Columbus, the KXL

pipeline will infringe on Native American land without permission and with the risk of dire consequences. The pipeline would pass through the boundaries of the Ogalala Sioux and Fort Peck reservations, among others, and their inhabitants have called this passage an “act of war” (“Native Americans”). Tressa Welch, a member of the Lakota tribe, says, “Our people call it the black snake because it is evil” (Laughland and Mathieu-Léger). Why such extreme rhetoric? The pipeline crosses the Lakota’s primary water source, the Missouri River, on the Fort Peck reservation, and any leakage would contaminate their water supply, disrupting their safety and way of life (Laughland and Mathieu-Léger). Welch and her group of “water protectors” have taken up the cause of fighting the pipeline’s construction, inspired by earlier protests against the Dakota Access Pipeline at Standing Rock (Laughland and Mathieu-Léger).

Not everyone in Montana feels the same instinct to shield their land from KXL development. Mayor JoDee Pratt of Baker, Montana, welcomes the pipeline as a valuable asset to the preexisting oil community that will help restore her city’s economy (Laughland and Mathieu-Léger). As a Trump supporter and climate change denier, Pratt feels confused by, and, in her own words, “ashamed of,” the pipeline protests (Laughland and Mathieu-Léger). She has admitted that she doesn’t understand the protests. This reveals a fundamental flaw in the dialogue about the KXL pipeline: those in office seem to be deaf to the grievances of their communities. If Pratt were aware of the dire implications that the pipeline has on the neighboring Lakota water supply, maybe she would think twice before calling the protests “appall[ing]” (Laughland and Mathieu-Léger).

To further examine the impact of the pipeline on surrounding communities, director Leslie Iwerks interviewed residents along the KXL’s route. In Iwerks’s documentary, *Pipe Dreams*, Nebraskan rancher Teri Taylor chronicles her struggle with TransCanada as she morosely traces the route of the pipeline on a map with her finger. Taylor’s property has been in her family for six generations. Now she faces the prospect of having the KXL pipeline run through it, a time bomb ticking towards leakage. The David and Goliath analogy comes into full force at the mention of eminent domain, which TransCanada used to validate their construction of the pipeline. Taylor says, “We

don't have a choice" (*Pipe Dreams*). Residents face an uphill battle when competing with the power of eminent domain. As history has shown, the government typically rules in favor of the corporation, not the people.

For instance, in 2005, the city of New London, Connecticut, made plans to sell private property to outside developers, claiming that development would "create jobs and increase tax revenues" ("Kelo v. New London"). Public good, right? Susette Kelo wasn't so sure. As one of many New London residents displaced by the proposed plans, Kelo sued the city, claiming that it was violating the Fifth Amendment's takings clause, which explicitly lists "public use" as grounds to exercise eminent domain ("Kelo v. New London"). Dissenting Justice Clarence Thomas appealed to the sanctity of the home in Kelo's defense ("Kelo v. New London"). This concept holds that the home has an intrinsic or subjective value to the owner that exceeds anything the government can offer for compensation. Kelo's little pink house on the water meant more to her than any lump sum the City could offer her. More than a decade later, Nebraskan rancher Teri Taylor invokes the sanctity of the home in her battle against the Keystone XL development. She is not ready to see her family's property violated, and likely contaminated, by Big Oil. When Taylor spoke up at a TransCanada open house about her disapproval of the pipeline's construction on her property, she was told that the organization would "unfortunately have to resort to eminent domain" (*Pipe Dreams*). TransCanada has made clear that it will construct the KXL pipeline regardless of public disapproval. Like Kelo, Taylor is fighting against private development on her property. What remains to be seen is her fight's legal outcome. Nebraska is one of the last states whose legislatures haven't approved the pipeline, and Taylor's voice, among those of other local residents, can shape a new future for eminent domain policy.

What can explain the seemingly irreconcilable differences between Keystone XL's supporters and opponents? Maybe it's a fundamentally different perception of what it means to live on the land. Kiowa writer N. Scott Momaday writes that we tend to think of land in terms of ownership in Western society. This mindset causes an important and dangerous chain reaction: "ownership implies use, and

use implies consumption” (Momaday 28). If we think we own the land, what can stop us from buying and selling it, exhausting all of its resources, and pushing people off it? Momaday points to the Native American perception of the land as a fascinating foil. As a Native American, Momaday acknowledges the necessity of using the land, but emphasizes his love of the land as the “first truth” that shapes his consciousness (28). In a culture that celebrates the beauty of the natural world, good stewardship is a no-brainer. Momaday writes: “Man invests himself in the landscape . . . This trust is sacred” (27). How radically different would the Keystone XL debate look if the Americans adopted a relationship of sacred trust to the land? Suddenly, eminent domain would seem irrelevant. Who are we to evict another inhabitant of the land? Transporting tar sands would lose its appeal. Why not harness the powers of the wind and sun instead of penetrating the earth and exhausting her resources? Poletown and New London would be relics of a bygone era—a time when profit dominated our commitment to the earth and to each other.

As the final inhabitants along the pipeline’s route are still fighting TransCanada for rights to build on their property, America faces a troubling prospect, or, rather, an affirmation, that corporate interests can trump the sanctity of our homes and the safety of our resources. Aristotle’s astute words from *Politics* come to mind: “For that which is common to the greatest number has the least care bestowed upon it” (26). The impending fate of the pipeline’s construction will either perpetuate or reverse this age-old tragedy. We can only hope that the outcome alerts us to our obligation as inhabitants of the earth—to honor the land and protect it for future generations.

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