

The Countersovereignty of Critical Infrastructure Security: Settler-State Anxiety versus the Pipeline Blockade

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Abstract: Scholars argue that blockades of infrastructure pose an economic threat to capital circulation. This explains how activists can gain power through strategic spatial occupations and why states seek to protect “critical infrastructure” from disruption. However, Indigenous-led blockades of pipelines gain power not (only) by disrupting economic flows alone, but by eliciting state anxieties about the racialised political, psychic and economic project of settler colonialism. Analysing public discourse surrounding the Keystone XL and Dakota Access pipelines, including legislative measures introduced to criminalise protest since the blockade at Standing Rock, we reframe critical infrastructure security as a component operation of settler *countersovereignty*. The criminalisation of Indigenous dissent through the state’s escalation of protest legislation is an investment in maintaining settler political authority, leading us to conclude that blockades must be understood not only as a form of anti-capitalist resistance, but also as a locus of anti-colonial struggle.

Keywords: blockades, countersovereignty, Indigenous sovereignty, settler colonialism, racial capitalism, oil pipelines

Introduction

Why is the settler state so focused on punishing and pre-empting Indigenous dissent through the criminalisation of blockades? Since the gathering of tens of thousands of water protectors to fight the Dakota Access Pipeline (DAPL) at Standing Rock in 2016, state governments in the US have increasingly sought to criminalise pipeline and highway blockades in the name of critical infrastructure security (CIS). From 2017 to 2021, at least 42 bills seeking to criminalise protest around critical infrastructure have been introduced in 24 state legislatures. 16 US states and one Canadian province have enacted legislation that expands the scope for “criminal trespass”, encompassing any property containing structures designated as “critical infrastructure” (ICNL 2021).

In designating oil and gas projects as critical infrastructure to be secured, these measures frame Indigenous-led resistance as a threat to economic systems while positioning extractive projects as essential to collective survival. Legislation attempts to heighten penalties for those who “interfere with economic activities” (Georgia SB 1, 2017), and criminalises anti-pipeline protests as “riots” and “economic terrorism” (North Carolina HB 249, 2017; Washington SB 5009, 2018). These bills reveal the way that extractive industries and settler governments are evolving their responses to land disputes with Indigenous communities (Crosby and Monaghan 2018), casting racialised efforts to prevent Indigenous resistance as purportedly non-racial security measures to protect the operation of the national economy.

More pointedly, this article examines efforts to re-classify Indigenous activism into acts of “terrorism”. We argue that such measures are undertaken because reassertions of Indigenous sovereignty threaten the political, economic, and psychic sovereignty of the settler state. While scholars and activists often cast the power of blockades in terms of their capacity to interrupt economic flows (Carse et al. 2018; Mitchell 2013; Tarr and Us-Sabah 2019), we argue that within the settler North American context, studies of activist blockades ought to also centre the role of settler violence in understanding state responses to the criminalisation of protest disruption. Drawing on the concept of *countersovereignty* from the work of Glen Coulthard (2014) and Manu Karuka (2019), we argue that CIS is an expression of settler countersovereignty. States do not only regard Indigenous blockades as threats because they interrupt the capital circulation essential to the state’s economic functioning, but also because as assertions of Indigenous jurisdiction (Pasternak 2017) and modes of relationship (Karuka 2019:20–37), blockades strike at the heart of the racialised economic and psychic operations of the state. While defending their land against extractive projects, Indigenous nations have also built alliances across “constellations” (Simpson 2017:213) of environmentalists, non-Indigenous working-class allies, and transnationally with other Indigenous protectors, leading to mass solidarity actions across Canada and the US such as those at Standing Rock, Unist’ot’en Camp, and multiple points of the Line 3 pipeline. Even when unsuccessful, these blockades evidence the capacity to build lasting land defence alliances, and to practise a politics of what Leanne Betasamosake Simpson (2017) calls “generative refusal”—enacting another way of relating to the world while rejecting the assumed sovereignty of the settler state. They thus create problems for economic circulation *and* reveal the instability of the state’s sovereign project. Blockades, in this way, represent a lasting threat to the settler colonial capitalist order.

This article proceeds in three sections. First, we examine existing assessments of the disruptive power of blockades, which argue that the blockade’s power is premised on its interruption of economic circulation. We contend that economic disruption only partially explains the style and focus of state retaliation against Indigenous-led blockades. By situating disruption with the operations of racial capitalism and settler colonialism, we can more fully understand how pipeline disruptions function as threats to both economic and sovereign interests. Second, we explicate settler countersovereignty as a way to read CIS as a specifically *settler*

reaction expressed in racialised economic, political, infrastructural, and affective operations. Our final section substantiates these arguments by showing how numerous operations of official and everyday CIS were expressed and legislatively produced in defence of the Keystone XL (KXL) and Dakota Access (DAPL) pipelines. We examine legislative texts themselves, the expressed concerns that motivated them, and the public events through which CIS was actualised. We argue in conclusion that while Indigenous blockades appear as a cathexis of settler anxieties and thus reveal the racialised and settler colonial logics underpinning states' efforts to arbitrate land dispossession, they are actually sites of where alternative forms of infrastructural life are (re)produced. Highlighting CIS as countersovereignty reveals both the reactive nature and underlying instability of settler authority, as well as the relational and disruptive power of blockades beyond settler economies.

Racial Capitalism, Settler Accumulation, and the "Threat" of the Blockade

Over the last two decades, geographers, social movement scholars, and activists have evaluated the role of blockades in challenging contemporary circuits of accumulation. Such assessments have understood the blockade as a tactic of resistance and disruption across a diversity of struggles, from Indigenous land defence (Pasternak and Dafnos 2018) to climate justice (Russell 2012), coal miner strikes (Mitchell 2013), anti-apartheid solidarity (Cole 2018), and more. The blockade's power is said to lie in its capacity to interrupt the economic flows crucial to the circulation of capital (Alimahomed-Wilson and Ness 2018; Carse et al. 2018). Critical logistics scholars have likewise argued that the blockade's tactical significance has risen in tandem with global shifts in strategies of accumulation, increasingly centred on the just-in-time circulation of goods (Chua et al. 2018; Clover 2019; Cowen 2014). In turn, states have reorganised "supply chain security" around the "critical infrastructures" of global energy and trade flows (Cowen 2014:55).

Within this political economic context, infrastructures of circulation central to logistical distribution—ports, highways, railways, and other supply chain conduits—have become key sites for the application of state and capitalist power, and fertile chokepoints for resistance to capitalist dispossession and exploitation. For Joshua Clover (2019), the blockade's emergence as a central tactic of struggle marks the transformation of working-class resistance into "circulation struggles". Excluded from the workplace, surplus populations express their immiseration through interruptions in spaces of circulation, rather than through strikes in spaces of production. In locking arms and bodies to the large-scale infrastructure of railyards, highways, and pipelines, activists target "chokepoints" as materialised expressions of the violence elicited by late capitalism. The blockade is thus a visible disruption of commodity flows that calls attention to forms of segregation, policing, land theft, and pollution that are produced through the intensified circulation of capital (Alimahomed-Wilson and Ness 2018; Carse et al. 2018; Klein 2014:29–336; Mitchell 2013).

Economic disruptions caused by popular blockades have thus become a source of anxiety for the state. Whether disrupting highways, pipelines, or oil rigs,

popular struggles against capitalist and state power have been met by strategies of governance organised around risk management and mitigation known under the broad category of “critical infrastructure security” (CIS). CIS is a set of risk management and emergency preparedness measures aimed at anticipating and preventing the emergence of future disruptive events (Collier and Lakoff 2008; Massumi 2015). As the US Department of Homeland Security put it, the state has a responsibility to safeguard infrastructures “essential to the Nation’s security, public health and safety, economic vitality, and way of life” (DHS 2003:viii). Critical infrastructures are, according to the originary USA PATRIOT Act definition, those physical or virtual systems and networks that are “so vital to the United States” that their “incapacity or destruction ... would have a debilitating impact” on American ways of life, including “damage to our national prestige, morale, and confidence” (DHS 2003:6, viii).

These framings of CIS are deliberately broad in their justification for criminalising threats to economic flows, often seeking to expand the discretionary scope for interpreting various forms of disruption as “terrorist” threats. Although this paper does not examine its longer history, it is important to note that critical infrastructure thinking is not new, but draws from a longer biopolitical state project to manage the relations between things and populations (Collier and Lakoff 2015). Nonetheless, the escalation of CIS legislation against pipeline protests in recent years evinces what Pasternak and Dafnos (2018) term a “logistical logic”, in which the circulatory system of capital has become a primary object of national security. Policies, practices, and technologies are poured into securing the infrastructural conduits of electricity, power, and commodities, which states frame as critical for securing the essential conditions for modern collective life.

While these literatures illuminate the structural and political economic reasons for CIS in the face of the potentially disruptive power of blockades, the explanatory primacy of these economic motives is incomplete without understanding the centrality of racialisation and settler colonialism to capitalist accumulation. As numerous authors have argued, it is certainly the case that CIS legislation targets Indigenous movements and environmental justice activists on the basis of the risk they pose to the smooth functioning of critical infrastructure (Dafnos 2013; Monaghan and Walby 2017; Pasternak 2017:240–244; Pasternak and Dafnos 2018; Spice 2018). But does the power of blockades (and the CIS response they elicit) rest only on their interruption of “key sites” of capital or energy flows, as some suggest, following Mitchell’s (2013:40, 47, 67, 103) foundational argument? If we understand these economic and material flows within the context of racial capitalism and settler colonialism, we argue, a more complex problematic emerges.

In North American and Anglo-settler contexts, racial capitalism and settler colonialism are intertwined projects as state and capital differentiate, racialise, and systematically devalue Indigenous populations in order to dispossess and commodify Indigenous land (Bledsoe et al. 2019; Coulthard 2014; Day 2016; Dorries et al. 2019; Estes 2019; Goldstein 2017; Pasternak 2020; Toews 2018; Van Sant et al. 2021). Racial capitalism, as Cedric Robinson (1983) foundationally argued, operates as a structuring logic of settler colonial capitalism. Capitalism arose not with the homogenisation of populations through their abstract capacity to labour, but

rather through partitioning along axes of racialised, gendered, nationalised, and physical difference, which were in turn used to subordinate, exploit, and dominate. Racism is not the *consequence* of the emergence of capitalist relations; rather, capitalism was birthed within European societies that had already begun to “exaggerate regional, subcultural, and dialectical differences into ‘racial’ ones” (Robinson 1983:26). Capitalism mobilises race as social difference to secure accumulation while accordingly reproducing group-differentiated and systematic vulnerability to premature death (Gilmore 2007:28). In this sense, racialised differentiations are not superstructural or epiphenomenal, but constitute the concrete and structural relations necessary to reproduce class society and capital accumulation.

Robinson, however, limits US settler colonialism to a historical episode wherein the figuring of Indigenous people as “the Savage” provided a rationale for the development of capitalism. Yet, as numerous scholars have noted, racialised dispossession is not so much a temporal prior in the teleology of modern capitalism as it is a continual structure of ongoing violence. As Nichols (2020) and Simpson and Le Billon (2021) demonstrate, settler states have to continually invest in insecure acts of authority-making that require the exercise of both recurring state violence through dispossession, and attempts to reconcile Indigenous and settler legalities. Although states recursively seek to figure colonial dispossession as *past*, it is actually an ongoing process. In this sense, colonialism functions both retrospectively and *prospectively*: it was both foundational to the formation of continental North America and continues to shape ongoing expropriation in conjunction with other differential devaluations of racialised subjects (Goldstein 2017:45).

In this regard, Moreton-Robinson (2015; see also Bosworth 2021) argues that racialised domination structures the expropriation of Indigenous land by commodifying land, water, and bodies as “white possession”. These racialised property regimes produce different forms of domination across different settler contexts and capitalist interests.¹ In the context of the state’s need to secure the movement of oil, Indigenous opposition through land defence entails their apprehension as “bearers of antivalue” (Jefferson 2020:94), hindrances to the movement and valorisation of capital. For Kul Wicasa historian Nick Estes, the construction of DAPL reflected a racialised logic based on such systematic anti-valuation of the Kul Wicasa and other Oceti Sakowin lands and peoples (Oyate). “Our lands, and lives, were targeted not because they held precious resources or labour to be extracted. In fact, the opposite was true. Our lands and lives were targeted and held value *because they could be wasted*” (Estes 2019:12, *emphasis added*). Such analysis helps us see how capital regards Indigenous populations and lands as valuable through disposability. Hence the state production of what Traci Voyles (2015) dubs “wastelanding”, a process through which governments seek to produce Indigenous land and lives as “worthless” so as to give unfettered access to private companies for development. If the structural logic of capitalism is to racialise different populations with regard to their relations to accumulation, ongoing Indigenous resurgence threatens both the ability for oil infrastructure firms to accumulate across space, and the stability of the state’s claim to defend property and jurisdiction.

Understanding the links between racialised differentiation and settler dispossession in this way leads us to both agree with and extend Pasternak and Dafnos' (2018:747) argument that the "logistics logic" of the state-capital nexus prioritises resource flows so that they are made to promise more value than Indigenous life or jurisdiction. The settler state protects the "critical infrastructure" of pipelines because their interruption threatens not only the continuity of capital accumulation, but also the stability of settler claims to past and present sovereignty. Importantly, the latter includes its citizens' indoctrination into settler society. As Pasternak (2017:33) demonstrates elsewhere, Indigenous jurisdictional claims overlap and conflict with settler legal orders, often challenging and "creating a 'problem' for the stability of the settler project". Thus, despite an increasing focus in social movements and scholarship on arresting the circuits of capital, pipeline blockades are not *just* economic blockages, they are at the same time political blockages that contest the assumed supremacy of the settler state. They simultaneously arrest the flow of capital, and the underlying sovereignty claims that uphold the security of that capital.²

By enacting geographies of Indigenous jurisdiction, we argue the KXL and DAPL blockades should not be understood primarily as *interruptions* of existing land and circuits, since this spatial expression can presuppose the legitimacy of existing US settler colonial relations. Rather, they act as regimes of *countervalorisation* that trouble proprietarian regimes of settler accumulation. The generative nature of Indigenous blockades includes, as Coulthard (2014:169) puts it, an "affirmative enactment of another modality of being, a different way of relating to the world". This "grounded normativity" unsettles the state and capital in ways that are more than financial or physical (Coulthard and Simpson 2016). Indigenous modes of relationship destabilise the supremacy of settler epistemologies by nurturing responsibility to the land, thereby disrupting extractive regimes of value and the settler colonial establishment on which they rely (Coulthard 2014:118). In this deadly dance between the state's criminalisation of land defence and Indigenous assertions of grounded normativity, the state's actions should be understood as an expression of countersovereign anxiety. We unpack this argument in the next section.

Countersovereignty: The Settler Logic of Critical Infrastructure Security

Yellowknives Dene scholar Glen Coulthard argues that Indigenous blockades are an expression of "disruptive countersovereignty" (2014:118). The blockade is a threat to settler society because it is both a reciprocal relation through which Indigenous communities assert responsibility to land and life, and an assertion of Indigenous jurisdiction in opposition to settler accumulation.³ As Coulthard writes, "the material form that expressions of Indigenous sovereignty took on the ground—the blockade, explicitly erected to impede the power of state and capital from entering and leaving Indigenous territories respectively—must have been particularly troubling to the settler-colonial establishment" (*ibid.*).

Although Coulthard's invocation of countersovereignty is brief, situating it within his understanding of Indigenous "struggles oriented around the question

of *land*" (2014:60) affords an elaboration. As a material and reciprocal relation, Coulthard writes, Indigenous struggles are struggles not only "for land, understood now as material resource to be exploited" (2014:78) but also "deeply informed by what the land as a mode of reciprocal *relationship* ... ought to teach us about living our lives in relation to one another and our surroundings in a respectful, nondominating, and nonexploitative way" (2014:60). This grounded normativity positions countersovereignty not as a reactive force, in the sense of struggling over who will be sovereign on terms already set by colonial conceptions of rule (see Mann 2016). Rather, given the centrality of reciprocity to Coulthard's account, Indigenous blockades both counter the assumed legitimacy of "the dual imperatives of colonial sovereignty and capitalist accumulation" (2014:64) and in doing so, reveal how these expansionary efforts are "an affront to our [the Dene's] normative understanding of what constituted proper relationships" between humans, their environments, and institutions of authority (2014:62). The deep relationalities forged at the protest camp may interrupt economic circuits of power, but they also nurture a "praxis-organising intention" that is "completely antagonistic to, and capable of superseding, the differentiations racial capitalism requires between people, of territories, and in value" (Melamed 2015:84). Countersovereignty, in these formulations, is the antagonistic force exercised by Indigenous people and their constellations of allies both *against* the settler colonial state and *for* relations otherwise.

While this notion of Indigenous countersovereignty powerfully calls into question the relations of authority on which settler colonialism is founded, in our argument we invert the subject-object relation and understand countersovereignty as that which is exercised by the *settler state* in reaction to the *prior sovereignty* of Indigenous nations. We draw this argument from Manu Karuka (née Vimalassery), who positions countersovereignty as a state practice of reactionary violence. For Karuka, US colonial sovereignty is "always necessarily a reactive claim" (2019:2), relationally positioned to the prior existence of Indigenous modes of relationship, which he reads as kinship relations "in and with land", with "nonhuman animals, plants, rocks and waters" that form the foundations for collective life (2019:19). As US empire expanded in the 19th century through the transcontinental railroad, it encountered alternative and competing Indigenous sovereignties along its way. In response to these existing relations to land, the US settler state could only posit the fiction of sovereignty as an originary claim through a "recognition of Indigenous modes of relationship, however muted or displaced" (2019:2). US sovereignty claims are thus actually claims of settler *countersovereignty* in their begrudging recognition of Indigenous sovereignties that came before. In Karuka's conception then, countersovereignty carries similar connotations to counterinsurgency and counterrevolution: as reactionary state practices, they exercise a "mode of political authority" (2019: xii) aimed at delegitimising resistance to rule. Unlike counterinsurgency and counterrevolution, the notion of settler countersovereignty highlights a historical relation to a prior landed relation: there is no United States of America without the conquest and domination over Indigenous sovereignties that came before it, and whose assertions of responsibility to the land continue into the present.⁴

Focusing on the reactive nature of the state further highlights that US “continental imperialism” (Karuka 2019) has an affective dimension—it is a *nervous* juxtaposition among multiple competing sovereignties rather than any simple unfolding of colonial rule. This persistent “settler anxiety” (Mackey 2016; Tuck and Yang 2012) underwrites the criminalisation of blockades in particular and the instability of the settler colonial project more generally. The imperial project appears “laden with fear and anxiety” because of its self-consciousness about the “ongoing, unfinished nature of a colonial process ... [and] the incomplete sanctity and integrity of the capital that emerges from continental imperialism” (Karuka 2019:4, 1).

Anxieties stemming from the persistence of Indigenous modes of relation explain why the state might seek a racial form of “felt legitimacy” from the broader public alongside and through CIS public policy. Felt legitimacy indicates the “affective experience of authorising state power”, which names “the way that the legitimation of state action is often generated out of subjectively experienced affect” (Anker 2014:111). The state performs and elicits legitimacy from democratic publics, enrolling its citizens in and through affective scenes that actively “produce the legitimacy it presupposes” (Anker 2014:114). If this applies in Elizabeth Anker’s analysis to national security and foreign policy, it extends to the countersovereign project of CIS. The state must circulate fear and anxiety amongst the public in order to derive and authorise its power of exception to perform infringements upon rights (such as free speech or assembly) that the public might otherwise refuse. It is thus notable that CIS is defined in the USA PATRIOT ACT. The ongoing production and extension of settler desires and fears—including of Indigenous people as well as of their disruption to everyday economic life—becomes an integral and necessary part of countersovereignty. Our examination of the affects of security and anxiety below further demonstrates the ineluctability of the racial form this anxiety takes in public performances surrounding pipeline legislation. We emphasise racial (rather than only settler) geographies because, as we show, the security state relies on a blurring together of its fears of Black, Indigenous, and Arab disruption into a terrorist threat all the more ominous for being both “internal” and foreign to the state. In this way, while the xenophobic, anti-Black, and settler effects of this racial project are not symmetrical or generalisable, they are integrated.

Thus, the fundamental anxiety that motivates state power and settler subjects to continually protect critical infrastructure has its sources in an economic project of securing flows that takes shape as a racial-colonial project of reaction and extermination. In legislating the state’s protection of the private oil transportation sector against the assertion of Indigenous sovereignty, racial capitalism reproduces its foundational role as “a technology of anti-relationality” premised on partitioning Indigenous modes of relationship from relationships of accumulation (Melamed 2015:78). Constituted alongside national security policy and circulating through public space, racial illogics and settler anxieties are not mere supplements to the political economy of CIS, but rather inhere in its core. We next demonstrate how the settler state’s repression of the KXL and DAPL blockades through critical infrastructure legislation rests on a longer history of countersovereignty.

Countersovereign Anxiety against the Oceti Sakowin: Historical Background

Settler investments in infrastructure development have long provided justifications for countersovereign land seizure in North America. Although DAPL construction took place in territory claimed as North and South Dakota, this land should be understood as governed by the 1868 Fort Laramie Treaty. This agreement between the US federal government and the Oceti Sakowin Oyate outlawed “white settlement without Indigenous consent”, granting 32 million acres the “permanent reservation” of the Oyate and another expanse for hunting grounds, making the total territory of the Oceti Sakowin more than 70 million acres (Estes 2019:108). Article 16 of the treaty also contained a provision that “lands north of the Great Sioux Reservation ... would be maintained as ‘unceded Indian territory’” (Ellis 2019:183). Although the US Army Corps of Engineers assert jurisdiction over the Missouri River, the Oceti Sakowin hold that treaty territory encompassed the entire channel, and the Missouri River was never legally ceded (Estes 2019:135, 148). The 1868 treaty was signed 21 years before South and North Dakota even became states.⁵

Although the US federal government was forced into the Fort Laramie treaty by its ongoing military defeat by the Oceti Sakowin Oyate, it also considered the mostly-arid Dakota Territory to be less economically valuable prior to the discovery of gold in the Black Hills in 1874. Nonetheless, the settler state’s perception of the Dakotas as an economically marginal and politically fractious space still served the imperial project when it became the space for German and Irish immigrants to settle (Grandin 2019). When the agricultural and gold boom times ended in the 1890s, the value of marginal land could be rehabilitated through state-backed infrastructure development. To make land available for the construction of KXL and DAPL, the settler state had to not only ideologically produce the idea of land as wasted, but also “twice stolen”: first from Native nations via white squatters of the late 1800s, and only later by the oil industry via the eminent domain powers of the federal government (Valandra, quoted in Estes 2019:27).

This pattern did not end with the turn of the century and the supposed “closing of the frontier”. The largest rail lines of the earliest 20th century took advantage of the allotment of reservation land, in which reservations were converted into private property parcels—this time, with “surplus” being sold by the government to settlers (see Estes 2013; Hufstetler and Bedeau 2007). Similarly, state infrastructure programs such as the 1940s–1950s damming of the Missouri River and the 1960s–1970s Minuteman Missile programme took advantage of the devaluation of the land of western South Dakota, and in the case of the former, expanded the lands under Army Corps of Engineers jurisdiction. Although, as Nichols (2020:17) has traced, the sovereign right to expropriation originally required that the state pay proper compensation for land seized, in practice “the sanctity of private property never applied to Indigenous peoples” (Estes 2019:27). The building of pipelines is only one contemporary instance of longer histories in which “Indigenous genocide and removal had cleared the way for private ownership of land” (Estes 2019:27).

CIS in the 21st century is both a continuation and evolution of these histories of countersovereign land dispossession. It represents an instance of state response to

consistent and radical Indigenous resistance against further dispossession, from termination to resource extraction to police violence. The (racialised) construction of “economic terrorism” as a threat to US national security allows the state to present and represent such acts as if they are apolitical and deracialised. And yet, we demonstrate that pipeline CIS remains a racial and settler project in its framing threats around energy independence, economic security, and counter-terrorism. During the US-led ongoing “War on Terror”, long-standing fears of supposedly anti-democratic “foreign oil” from the Middle East made both domestic production for “energy independence” and Canadian “ethical oil” appealing for US state interests (Grant 2014). Outsized and Orientalist fears of “foreign oil” had been present at least since the 1970s (Herbstreuth 2016; Huber 2013; Vitalis 2020), but the concern with terrorism amplified desires within the state for other sources of oil. At the same time, following 11 September 2001, DHS began to highlight the increased importance of pipelines to economic security (Collier and Lakoff 2008; Farrell et al. 2004). As a 2004 congressional report on pipeline security put it, “the possibility of terror attacks” was particularly concerning since “pipelines are inherently vulnerable because of their number and dispersion”, a problem resulting from “the essential role pipelines play in our economy” (Parfomak 2004:3). CIS is further vital because an attack might “adversely affect the nation’s morale” (Moteff et al. 2002), owing to the crucial role of oil exports and energy independence to US perceptions of economic supremacy.

This argument for CIS was, from the beginning, racialised in both its economic and affective dimensions. In the wake of increased latitude for counterterror provided by DHS in the mid-2000s, Indigenous land defenders, “foreign terrorists” and animal rights and environmental activists taking direct action to stop ecological violence were increasingly described and targeted as “eco-terrorists” (Potter 2008). For example, a 2007 report, “Assessing Terrorist Motivations for Attacking Critical Infrastructure”, prepared for the Department of Energy, suggests that while “Marxist-Leninist” groups possess some global threat, critical infrastructure in the US is most threatened by “Islamist terrorist groups”, “domestic right-wing ‘militias’”, or “violent fringes of the radical ecology movement” (CNS 2007:xvii). Although terrorist attacks on oil pipelines in North America were largely unprecedented at the time, the US security state was already conflating environmental activism with threat to American order.

Further, national security efforts to define and protect “critical infrastructure” evince the interwovenness of state and corporate power. 85% of all US “critical infrastructure” is privately managed and owned, but numerous federal agencies, including DHS and the Federal Emergency Management Agency (FEMA), are involved in emergency preparedness for disruptions to privatised infrastructure. For example, after the #NoDAPL blockade at Standing Rock, investigative journalists uncovered that the oil lobby groups Association of Oil Pipe Lines and the American Fuel & Petrochemical Manufacturers distributed a model bill, the “Critical Infrastructure Protection Act”, to state lawmakers nationally. The template legislation, distributed by the conservative fossil-funded nonprofit American Legislative Exchange Council (ALEC), was used as the basis for nearly every new state-level law designed to criminalise pipeline protests (Fang 2019; Fang and

Surgey 2019). The complicity of national security projects with extractive private infrastructure is no coincidence. In the post-1970s abdication of the state's responsibility to provide stable jobs, guaranteed wages, and full employment, corporations have invested in regions suffering from economic decline. In this context, governments are not just reluctant to enact policies that might cause capital flight, but also seek to ensure the continuity of extractive investments as a source of state revenue (Proulx 2014:85).

Reorganisations of state security around disruptive threats have thus blended racialised anxieties about foreign terrorism with racialised anxieties about Indigenous land defence and environmental activism. These three national security concerns—energy independence, national-economic security, and counter-terrorism—each fed into the project of pipeline CIS in the 2010s.

Pipelines and the Anxieties of Countersovereignty: KXL, 2010–2015

The KXL pipeline system was first proposed in 2008 to transport around 700,000 barrels per day (bpd) of heavy crude or bitumen from the Alberta tar sands and 100,000 bpd of light crude from the Bakken formation in North Dakota to Gulf Coast refineries. At the time, oil prices had hit well over \$100 per barrel, and tar sands investment and development rapidly expanded to capitalise on this price spike. Along with Energy East, Northern Gateway, TransMountain, and Keystone I pipeline systems, KXL was meant to relieve landlocked Canadian oil, as well as satisfy the maximum capacity of refineries in Texas and Louisiana. For oil producers, pipeline contracts—typically in the order of decades—allow financial security from the price fluctuations of transportation by rail. The existence of a large reserve of oil also made pipeline infrastructure helpful for securing long-term international buyers. However, the infrastructure system became embroiled in national anxieties concerning terrorism, in part because the pipeline system's international status meant that the US State Department, as lead agency, suggested their approval would hinge on a decision of whether KXL was in the US "national interest". Anxiety circulated through the state's approach to managing dissent as well as in media atmospheres, emergency drills, corporate security briefings and advertisements, and information-sharing "fusion" meetings among corporate, federal, and state bodies. This section provides a non-exhaustive narrative of attempts to secure felt legitimacy through the circulation of settler anxieties surrounding KXL, a central component of countersovereignty.

In 2013, opposition to KXL in South Dakota had been brewing for several years, led by the staunch refusal of the Oceti Sakowin nation. The pipeline system had also received national attention, with formal and informal opposition in Washington, DC as well as along its entire route. Blockade efforts were organised by groups in Texas and Oklahoma. In South Dakota, spontaneous and planned blockades had also been emerging for some time, such as a March 2012 blockade of trucks transporting oil sands equipment via reservation highways (Norrell 2012). By May 2013, frustrations were coming to a head. A tribal consultation meeting held in Rapid City, SD by the US Department of State concerning KXL

ended prematurely when tribal leaders walked out. Rosebud Sioux Tribal President Cyril Scott explained the decision: “The Oceti Sakowin are united in this effort to stop the pipeline. It will not cross our lands. When we come together we have the power to stop anything” (quoted in Ecoffey 2013).

Oceti Sakowin resistance to KXL was a source of both anxiety and antipathy for state officials and law enforcement, who understood opposition primarily as a security threat. In 2014, a non-Indigenous organiser explained to one of us the situation they expected if KXL were approved:

It’s going to be bad. The Natives are really militant and very willing to do a lot of things to stop ... [KXL]. And I think you’re going to get landowner clashes with Natives, I think you will get police clashes with Natives, and I think you will get police clashes with young activists from around the country ... so that part of things is going to be horrible. TransCanada has basically gone up and down the road and trained police forces on how to get people out of lockboxes, so they know what’s coming, and they don’t care. They know the police are going to be on their side. So they don’t care that it’s going to be bad. And that’s the thing: they literally do not care.⁶

As this organiser suggested, the security regime surrounding KXL was already robust years before the DAPL blockade.

In May 2013, several school districts in western South Dakota engaged in an emergency drill scenario designed to test communications among various school bodies. Early in the morning, a Hot Springs, SD school bus driver reported being followed by a “suspicious SUV”. Following this report, at noon a student delivered a letter to the school principal, which threatened that “things dear to everyone will be destroyed unless continuation of the Keystone pipeline and uranium mining is stopped immediately”. Finally, “a young male was reported to be rattling doors at the school, attempting to gain entry”, resulting in the school undergoing a lockdown procedure. Early reporting on the drill suggested that “the use of pertinent and timely issues seemed to make it more realistic” (Nettinga 2013). The scenario was designed by two emergency planners from Butte and Lawrence County in the northern Black Hills. After a minor local controversy erupted over the claim that fictional pipeline and uranium mining opponents were constructed as terrorist threats, officials claimed that this aspect of the scenario was not necessary to the drill. Nonetheless, the performance of such a drill is not so much about real efforts to understand future threats, but rather a “means of affectively elevating the merely contingent—the hypothetical—into a species of imminent and existential threat that demands official action” (Masco 2014:165).

Beyond anticipating direct confrontations with opponents, this atmosphere of anxiety about pipeline activism was refracted onto concerns with terrorism both foreign and national, which can be seen in TransCanada’s public relations strategies at the time. A TransCanada television advertisement from October 2013 demonstrates the combined economic and racialised affect on which this project was based. The 30-second spot begins with images of crowds of people with visible turbans or head coverings rioting in dusty, sepia-toned cities, likely recalling the Arab Spring uprisings of recent years. A narrator voices: “We see it every day. Unrest halfway around the globe affects us here at home. America imports

millions of barrels of oil from the Middle East every week" (TransCanada 2013). Among other activities, one shot shows rioters overturning a standard shipping container, the ubiquitous symbol and infrastructure of circulatory capital. The commercial then takes a melodramatic turn. From an image of an importing oil tanker, the narrator explains: "We don't have to" rely on this crude economy. As relief floods over the viewer and cheery music plays over b-roll of the Canadian taiga, we are told that KXL will "eliminate America's reliance on unstable and often unfriendly foreign energy in 10 to 20 years". Canada, it seems, is not "foreign", as we are shown a friendly-looking white family of five smiling along with their golden retriever dog. "Let's build the TransCanada Keystone XL pipeline" (TransCanada 2013). The dramatic contrast between the "unrest" of the Middle East and the "peace" brought by energy independence attempts to enrol its viewers in an affective project to legitimate economic circulation as a path to national security, while casting foreign "unrest" as the spectre haunting domestic stability; unrest which the viewer should want to avoid unfolding at home. Though directed at beltway insiders, the advertisement gains further meaning when such fears are understood within the context of already-occurring interruptions of pipeline construction along KXL. Though Indigenous peoples are not mentioned, the confluence of the commercial's demonisation of protest with widespread news of Indigenous-led blockades in North America is not a coincidence, but rather forms the unspoken backdrop for the advertisement's message.

Although it is not the aim of this paper to establish direct lines of causality between the circulation of threats in security drills and commercials and official state policy, we know that inflated fears of both "eco-terrorists" and Indigenous rebellion were used by TransCanada in their trainings of local law enforcement officers along the KXL route. Investigative journalism revealed knotty mergers of public and private interests, such as through the "fusion centres" like the DHS Critical Infrastructure Partnership Advisory Council (CIPAC). Such information sharing networks facilitate relationships among pipeline firms, local and state law enforcement, and federal agencies like the FBI—networks which have also been used against First Nations pipeline opponents in Canada (Crosby and Monaghan 2018). Freedom of Information Act requests revealed the FBI infiltrated and surveilled direct action trainings for pipeline blockades, in the name of critical infrastructure security (Federman 2013). The state of South Dakota, to justify continued DHS funding, suggested that opposition to KXL and uranium mining in the Black Hills was a source of potential terrorism. On a per capita basis, South Dakota received the sixth greatest amount of federal funding for homeland security from 2003 to 2011 (O'Sullivan 2014).

That settler anxieties were expressed in the security drill, the TV advertisement, news reports, law enforcement trainings, and funding schemes are not incidental. They are indexical events that reflect public and state anxieties, and their circulation on TV and through schools produces an anticipatory atmosphere of panic and fear intended to prompt a crisis response. As Massumi writes, "Fear is the anticipatory reality in the present of a threatening future", in which "the felt reality of threat legitimates pre-emptive action, once and for all" (2015:191). Startlingly, this frame was seen to be so effective that it was also used by some

pipeline opponents—billionaire climate activist Tom Steyer, through NextGen Climate America, hired as a consultant retired Navy SEAL chief David Cooper to produce a “threat assessment” demonstrating that the pipeline would be vulnerable to terrorist attack—and thus ought to be rejected (Sheppard 2014). The simulation of pipeline attacks further generated anxiety by narrating the state’s and citizens’ *vulnerability*, thus authorising pre-emptive state action (Bosworth forthcoming). In so doing, these acts crystallised settler anxiety as a reaction to Indigenous assertions of sovereignty. Linking risk and threats to economic security to Indigenous-led resistance, public anti-terrorism messages act as pre-emptive temporalities that seek to foreclose other possible anti-capitalist futures, while also producing visibly incorrigible and thus apprehensible subjects onto which countersovereign power can be later applied. In the next section, we argue that the circulation of settler anxiety-oriented publics to think about pipeline opposition according to racialised frames, further authorising behind-the-scenes policy interventions—acts of countersovereignty—that sought to dampen and prevent pipeline blockades.

Countersovereign Legislation in the Wake of NoDAPL, 2016–2021

In April 2016, a camp was started on the Standing Rock Sioux Reservation, across the Cannonball River from the planned route for Energy Transfer Partners’ (ETP) DAPL. At the invitation of the Oceti Sakowin youth and elders, Native and non-Native water protectors built and maintained the Sacred Stone camp as material opposition to the pipeline and a site that could maintain a different political and spiritual responsibility towards the land, water, and each other. The single camp soon multiplied into a sprawling and beautiful series of encampments next to and across the Cannonball River, as Standing Rock opponents were joined by other council fires of the Oceti Sakowin and eventually by members of some 400 Native Nations from around the world (Estes 2019; Estes and Dhillon 2019; Whyte 2017). In response to a protracted series of direct actions that sought to prevent pipeline construction from being completed, private security forces, local police, and the state of North Dakota engaged in surveillance, counterterrorism tactics, resource and knowledge sharing with the oil industry, public relations massaging, and militarised tactical responses. These were heavily racialised, drawing on settler traditions of anti-Indigenous and Islamophobic frames (Bosworth forthcoming; Brown et al. 2019). In news releases and public discourse concerning resistance to DAPL, water protectors’ blockades were often painted as forms of unlawful and fear-inducing activity that would later beckon new legislative acts.

In a new release in response to “protest activities” on 23 October 2016, Morton County Sheriff Kyle Kirchmeier condemned the actions, saying that they were “intentional, planned, coordinated, and outright unlawful. From halting traffic with their own roadblocks, trespassing on private property and endangering lives with illegal drones, these are the tactics of out-of-state agitators who have an agenda of causing fear, terror, and economic devastation. Once again, their tactics indicated it was not a peaceful event” (Morton County PIO 2016). The

rhetoric of unlawful outside agitators employed by Morton County law enforcement agencies is parroted in ETP's own promotional material. In 2017, ETP's DAPL website wrote that while they respected the concerns of the Standing Rock Sioux Tribe, the tribe's interests had been "overtaken by politically-motivated, anti-fossil fuel protesters who are using this issue as a cover for their often violent and extremist efforts to cause disruption". The report further asserted that these agitators' actions "deny private property rights and freedoms to the landowners ... and deny American citizens and businesses the energy they need to produce jobs and build a vital and healthy economy" (ETP 2017). In addition, the high-profile exposé of private security firm TigerSwan revealed that private security officers drew analogies between Indigenous water protectors and "jihadists" (Brown et al. 2019; Estes 2019).

Just as viciously-trained dogs, water cannons, and militarised equipment unleashed on Standing Rock water protectors have been widely understood as the state's criminalisation of blockades, subsequent reactionary state legislation should be viewed as long-term efforts to authorise counter-insurgent police violence and to prevent future blockades through the criminalisation of protest as a deterrent force. They should also be understood as countersovereign settler anxieties. As we noted in the introduction, since the Standing Rock blockade, between 2017 and 2021, 16 bills have passed criminalising pipeline protests through the language of critical infrastructure.⁷ Although all the bills share a startling similarity in structure and content, in the analysis below, we hone in on South Dakota's legislative efforts as among the most punitive and revealing of countersovereignty as a racialised economic, political, and psychic defence operation.

Immediately in the wake of the Standing Rock blockade and President Trump's executive memo approving KXL and DAPL in 2017, South Dakota lawmakers began working on a state bill to increase legal powers in the event of a future KXL blockade. In the name of infrastructure security, early drafts of South Dakota 2017 SB 176 would give the governor authority to establish "public safety zones" in which a form of spatial emergency powers could be declared. Another draft of the bill (as South Dakota 2017 HB 1145) sought to enhance the governor's powers if such a "no-go zone" were produced by "community organising efforts" in the area. Effectively, this language sought to prevent the construction of future encampments like that of Sacred Stone. Notably, the odd phrase "no-go zone" was directly copied from 2015 ALEC-funded Tennessee legislation arising from fictional delusions that Muslim-Americans in the state were establishing "no-go zones" for non-Muslims. Sponsor representative Susan Lynn suggested: "You might find it with gang activity, you might find it with organised crime, and of course we have heard that there were some places where it is happening with certain religious groups ... There are some people who claim that there are some areas of Tennessee where they feel this is happening ... when there's activity happening where people sort of feel intimidated, there's not exactly a sign up on the wall. But it's just an overall feeling of intimidation" (quoted in Boucher 2015). Lynn's emphasis on intimidation as a ubiquitous structure of *feeling* centres the unspoken white subject's perceptions of insecurity, expanding the scope for

almost any racialised activity to be interpreted as threatening. Such an approach mirrors police training operations that increasingly rely on officers having *felt* threatened by racialised subjects—thus justifying pre-emptive (and frequently anti-Black) violence (Wang 2018).

The final version of South Dakota 2017 SB 176 ultimately nixed the inclusion of no-go zones, though it still relied on a similar abstract language of affective vulnerability as a veiled rationalisation of feelings of racial threat. The bill centred around the prohibition of groups of more than 20 persons if they threatened free movement of traffic flows, as well as the “presence of any person standing outside of a motor vehicle, on any highway or highway right-of-way”. The bill perversely describes the basis of the threat including that “the land may be damaged by the activity”, essentially suggesting that its purpose is the *ecological defence* of pipeline-developed land *from* water protectors. SB 176 was immediately criticised by tribal leadership, who pointed out that the legislation would likely unduly target Native dissent against pipelines. Addressing these charges, then-South Dakota Governor Denis Dugaard said that the bill was “directed at aggressive activists who threaten other people regardless of race. We’re trying to interrupt that revolving door of aggressive people being able to continue their aggression” (quoted in Ferguson 2017).

Law enforcement powers were set to be further augmented by the Riot Boosting Act, 2019 SB 189, signed by the new South Dakota Governor Kristi Noem. This bill sought to criminalise “riot boosting”, a term describing any financial or other activity that supports riot, defined as any use or threat of use of violence by three or more persons acting together. SB 189 was one of many laws which fed off the reactionary myth that water protectors at Standing Rock and elsewhere were “paid protestors”. Noem extended the myth in a superficially antisemitic manner by referencing liberal Jewish financing, suggesting: “I’d say the most typical national offender that we see funding these types of activities would be George Soros ... Those types of entities that want to come in and create disruption ... is what we’re hoping to shut down” (quoted in Strubinger 2019). Much like her predecessor Dugaard, Noem suggested there was no anti-Indigenous content to the law. “There is not a single reference to tribes or Native Americans in the bills. I don’t expect South Dakota’s tribal members to be rioters” (Noem 2019).⁸ Similarly, SD Chief of Staff Tony Venhuizen suggested that 2017 SB 176 is directed “not [toward] the people from in state, not the tribal members”, but instead against those deemed “outside agitators”, “paid protestors”, and “bad apples”. Venhuizen then suggested that the object of the bill was, counterintuitively, “to protect” the local “protestors who are there peacefully” (Epp 2017). Racialised understandings of criminality are invoked precisely through their denial: in bracketing tribal members outside the category of criminality, state actors attempt to positively represent the law as non-discriminatory, while denying that the *goals* and *effects* of the proposed legislation will produce material consequences for Indigenous people who resist infrastructure development on their land. Such CIS thus follows a long institutional tradition in which “the denial of racism also has a prominent role in the very reproduction of racism” (van Dijk 1992:96). Though 2019 SB 189 was overturned by a federal court after a lawsuit

successfully challenged its constitutionality, 2020 HB 1117 removed the offending language and replaced it with more conventional “incitement to riot” language. That bill was signed into—and remains—law in 2021.

These bills demonstrate how the codification of state powers into the abstract liberal language of legal contracts can mobilise and reinforce settler anxiety towards imagined, racialised threats of terrorism and riot. CIS is constructed as a formalised and “neutral” legislative response to the “aggressive” and “violent” actions of the water protectors at the Standing Rock blockade. Criminalisation of riot boosting further relies on racialised fears of riot and mythic understandings of out-of-state paid protestors. While neither makes a direct “reference to tribes” or “to race” in their text, we can read within the context of their countersovereign emergence their reactionary anxiety around Indigenous resistance. In these constructions, the claim to race-blindness effectively racialises Indigenous land defenders as criminal subjects if they refuse docility and assert jurisdiction over their unceded territory.⁹ While lawmakers avoid as much as possible the explicit suggestion that Native people pose a risk to pipeline construction, coded logics conveying settler anxieties about “aggressive outsiders” provide rhetorical justification for the state to shore up its supposed plenary power over Indigenous land defenders, environmental activists, and the governance of land.

While it is crucial to acknowledge internal contradictions within the direction that different segments of the state and capital take with respect to pipeline security (Benton-Connell and Cochrane 2020), in this case legislators seem to have acted as more or less conscious executors of capital’s interests. The oil lobby group American Fuel & Petrochemical Manufacturers (AFPM), whose members include Koch Industries Inc. and Marathon Petroleum Corporation along with ETP, drafted the model bill template which was used by many of the state legislatures to draft “critical infrastructure” bills. In a statement accompanying the release of the model, AFPM wrote that “there is nothing more important to the fuel and petrochemical industries than the safety of our people, our communities and our facilities—and wilful, disruptive, and dangerous interference with critical infrastructure puts that safety at risk” (Dlouhy 2019). These patterns evince Boyle and Speed’s (2018:226) argument that during the growth of CIS legislation, collaboration between state government and private owners was made “by presenting a ‘compelling business case’ that investments in assuring continuity of essential services would not only benefit the social body, but have fiduciary benefits as well”.

Legislative discussions of bills proposed to criminalise pipeline blockades thus highlight the economic threat of disruption articulated within an ideological field that also includes racialised anxieties concerning land, authority, infrastructure, disorder, and violence. Acts of disruption became opportunities to moralise about blockades as harmful to the national interest, where water protectors seen as “paid protestors” and “outside agitators” are pejoratively framed to be making things worse for common people. Settler legislation here performs a countersovereign function, monopolising the narrative of economic vulnerability to activate emergency powers against Indigenous-led disruption. In the process, CIS allows pipeline firms and state officials to frame blockades against settler

dispossession, environmental devastation, and the contamination of life-giving water as disruptive threats to the national interest, negating the political character of demands made by land defenders. In doing so, they naturalise the state's proprietary claims to land and resource theft, "while minimising or delegitimising Indigenous self-determination and resistance" (Proulx 2014:84).

Conclusion

By pitching Indigenous resistance as a threat to vital economic systems, the state discourse of CIS attempts to secure economic circulation and energy independence, but also to legitimate its own settler colonial authority. This is achieved by psychically framing infrastructure projects that cut through Indigenous territory in the name of national economic growth and morale, while nervously framing Indigenous occupation—regardless of its intent—as criminal and/or terrorist threats against independence, national interest, and livelihoods. Ultimately, as a response to Indigenous blockades, CIS legislation functions as a deflection of settler anxiety over prior existing Indigenous sovereignty onto proprietary claims of the state's right to protect and service future accumulation. This process turns legal contestation around land claims and treaty rights into worries about business resumption. Rather than being recognised as having prior sovereign right, Indigenous inhabitants of the land are themselves understood to be disruptions, and perversely, disruptions to the *state's* supposed "environmental defence" of that land. Political economic concerns are clearly at play in the relationships among public and private security apparatuses, state institutions at several scales, and infrastructure firms. Yet, if we understand the rise of CIS through the distinct history of settler countersovereignty, we see that the settler state's insistence on the economic importance of pipelines and other purportedly critical infrastructure is only made possible through a specifically racial capitalist order. This order has to simultaneously stake a reactive claim to the land that retroactively recognises the prior sovereignty of tribal authority, *and* to construct the bearers of that grounded authority (Pasternak 2017) as disposable. Taking the criminalisation of Indigenous dissent as an exercise of countersovereignty in this way leads us to conclude that any conception of the blockade as a form of anti-capitalist resistance to economic circulation will be incomplete without centring the necessity of anti-colonial struggle as well.

Yet, resolutely positioned against these countersovereign efforts to delegitimise land and water protectors are the Indigenous modes of relationship which blockades defend and through which they can flourish. These "constellations of co-resistance" (Simpson 2017) include relations amongst working-class settlers (themselves often racialised) and Indigenous nations, relations amongst Indigenous nations from around the world, and relations with nonhuman kin, the land, and water. The modes of relationship rehabilitated in, through, and on the blockade are more than economic interruptions. Rather, they are themselves "modes of relationship" and "alimentary infrastructures", efforts to build reciprocal responsibilities with the land that might gesture towards other possible futures (Karuka 2019; LaDuke and Cowen 2020; Spice 2018).

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Endnotes

¹ For example, while Audra Simpson (2008) argues that the successful Mohawk tobacco trade across Haudenosaunee territory was criminalised because it posed a threat of “lost revenue” for the Canadian economy, Shiri Pasternak (2020:302) shows that where extractive projects are concerned, Indigenous people’s economic rights are produced through contending invitations to participate in the market economy or through the denial of their jurisdiction and proprietary interest, constructing their assimilation into or segregation from citizenship and capital accumulation “depending on what the circumstances demand”. In this sense, racial capitalism is bound together with ongoing settler colonial projects by providing a mobile technology for either criminalising, predatorily incorporating, or excluding Indigenous peoples from their economic rights and relationships to land.

² We are grateful to anonymous Reviewer 1 for suggesting this formulation.

³ Many other scholars have used a concept of “countersovereignty” to understand and name Indigenous responses to settler-state and Eurocentric conceptions of sovereignty (Mann 2016; Melamed 2015; Pasternak 2020). While learning from these works and what they indicate about Indigenous modes of relation, here we use the term primarily as a descriptor for the settler state.

⁴ Considerable debate exists over whether Indigenous peoples had an emic understanding of sovereignty that pre-existed European settler relations of rule, which by some definitions, understand sovereignty integrally to be a non-reciprocal system of domination. While we recognise that employing the term “settler countersovereignty” implicitly suggests that Indigenous nations were invested in a notion of Native sovereignty, it is not within the scope of this paper to fully elaborate on theories of Indigenous sovereignty and their conceptions of governance. For now, we follow David Temin’s (2017) reading of the Dakota legal theorist Vine Deloria Jr. in arguing that Native sovereignty claims were about two struggles at once: “the struggle over sovereign boundaries and the struggle to establish respectful relations between peoples and land *beyond* current practices of sovereignty” (2017:373, emphasis added). For more discussion on Native conceptions of Native sovereignty, see Teves et al. (2015).

⁵ For more background on the Fort Laramie Treaty and the legal landscapes of the sovereignty of the Sioux Nation, see Curley (2019), Ellis (2019), Estes (2019:133–167) and Valandra (2019).

⁶ Bosworth, in-person interview with anonymous organiser, July 2014.

⁷ The 16 US states that have passed critical infrastructure legislation are: Oklahoma—HB 1123 (enacted in 2017); Louisiana—HB 727 (enacted in 2018); Indiana—SB 471, Missouri—HB 355, North Dakota—SB 2044, Tennessee—SB 264, Texas—HB 3557, and Wisconsin—AB 426 (enacted in 2019); Kentucky—HB 44, Mississippi—HB 1243, South Dakota—SB 151, West Virginia—HB 4615 (enacted in 2020); and Arkansas—HB 1321, Kansas—SB 172, Ohio—SB 33, and Montana—HB 481 (enacted in 2021). 21 other critical infrastructure bills were proposed and defeated or expired, and four bills introduced in Minnesota are currently pending. In Canada, one such bill, the Critical Infrastructure Defence Act, passed into law in Alberta in 2020.

⁸ The concept of “riot” in North America has deeply racialised roots, which the colonial referentiality of the South Dakota context makes particularly clear. Noem (2019) cites the 1977 legal ruling, *State v. Bad Heart Bull*. This case involved the defence of a police officer who choked Lakota woman Sarah Bad Heart Bull, mother of Wesley Bad Heart Bull, who had been murdered by the white man John Schmitz in 1973. Schmitz received a smaller-than-expected second-degree murder sentence, resulting in a protest in Custer, SD. *State v. Bad Heart Bull* upheld the charges of riot brought against Sarah Bad Heart Bull, suggesting that “Laws of this nature are needed and necessary to preserve good order and to protect all persons and all property from the violence of a few”.

⁹ It is important to note that these securitising moves expand legal discretion to interpret Indigenous people, regardless of their political intent, as threats to the state as long as they are in proximity to pipeline construction sites. For example, as Referee 3 pointed out to us in their reviewer comments, from 2019 to 2020, industry lawyers referred to anyone on Wet'suwet'en territory as "blockaders"—including "clients of the Unist'ot'en Healing Center, Wet'suwet'en matriarchs gathering berries, Indigenous hunters, and people inhabiting their own homes". While many Indigenous people occupy pipeline worksites with the intention to be "blockaders", the designation of terrorist threat to the "blockade" works to position anyone living within Indigenous re-occupations as criminal threats, regardless of whether they are there to "block" capital flows or simply to live. This move, then, effectively works to criminalise Indigenous life itself.

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