THE DEVELOPMENT OF INDIGENOUS ENVIRONMENTAL LAW IN THE UNITED STATES: FROM THE NINETEENTH CENTURY TO THE DAKOTA ACCESS PIPELINE CONTROVERSY

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The area of Indigenous land rights highlights the intersection of environmental law and human rights law. This is due to the intimate connection many Indigenous communities perceive between themselves and nature. Indigenous peoples have struggled to achieve justice through the modern legal system, due in good part to the unreceptiveness of Western legal systems to Indigenous understandings of land. Rather, these legal systems endorse Western, capitalist theories of the relationship between humans and land, wherein humans are entitled to dominate nature and exploit it for their own ends. This article examines the struggle of Indigenous peoples in pursuing justice through the United States (U.S.) legal system, focusing on early nineteenth century case law and the present-day Dakota Access Pipeline (DAPL) controversy. These two lines of case law exhibit how the U.S. legal system developed a bias against Indigenous theories of land and how this bias has persisted over time. Lockean and Kantian theories, as well as Robert Cover's concept of jurispathy, can help further explain the implications of the U.S. legal system's bias against Indigenous peoples. This article also analyses how Indigenous communities can best navigate this bias to achieve justice.

INTRODUCTION

While the Western environmental view emphasizes the separation of humans from nature and prioritizes economic efficiency,[1] Indigenous communities often perceive an intimate relationship between themselves and the land.[2] From an Indigenous perspective, environmental law and

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[1] *See* CAROLYN MERCHANT, RADICAL ECOLOGY: THE SEARCH FOR A LIVABLE WORLD (2nd ed. 2005).

[2] For a more in-depth analysis of Indigenous conceptions of nature, see Erin L. Bohensky et al., *Indigenous Environmental Values as Human Values*, 2 COGENT SOC. SCI. 1 (2016).

human rights are necessarily inseparable. The Dakota Access Pipeline (DAPL) controversy is a recent example highlighting the struggle of Indigenous peoples to obtain justice through law, showcasing how the U.S. legal system favors expansion and is insufficiently receptive to Indigenous claims for justice.[3] A case study of the DAPL controversy can help analyze how Indigenous environmental and land right claims have evolved over time.[4] The philosophies of John Locke and Immanuel Kant offer further understanding of this area of law.[5]

Part I of this article analyzes legal and political theory concerning land and government, focusing on Lockean and Kantian theories and how they relate to Indigenous understandings of land. Part II examines early U.S. case law dealing with Indigenous rights, including *Johnson v. M'Intosh,*[6] *Cherokee Nation v. Georgia,*[7] and *Worcester v. Georgia,*[8] viewed through Lockean and Kantian theories. Part III analyzes, through the lens of DAPL case law, how Indigenous environmental law has developed since those early cases. Part III also examines the extent to which present-day environmental law accommodates the Sioux's understanding of land. Robert Cover's jurispathy theory, Lockean philosophy, and Kantian philosophy are particularly useful in explaining the law's continuing bias against Indigenous environmental theory.

I. THEORETICAL APPROACHES TO LAND AND PROPERTY

A. Overview of Locke and Kant

John Locke's philosophy begins from the "state of nature" – a time in human history without politics or law.[9] For Locke, the state of nature was on one hand hypothetical, as it was part of a thought experiment that

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[3] For a detailed biography of the DAPL controversy, see *Updates & Frequently Asked Questions: The Standing Rock Sioux Tribe's Litigation on the Dakota Access Pipeline*, EARTHJUSTICE, https://earthjustice.org/features/faq-standing-rock-litigation [https://perma.cc/UHZ4-67SZ].

[4] For a broader discussion of the historical relationship between DAPL and previous Indigenous resistance to the invasion of and construction on their land, see Nick Estes, *Fighting For Our Lives: #NoDAPL in Historical Context*, THE RED NATION (Sept. 18, 2016), https://therednation.org/fighting-for-our-lives-nodapl-in-context/ [https://perma.cc/2J63-PL8A].

[5] I focus particularly on JOHN LOCKE, TWO TREATISES OF GOVERNMENT (1689); IMMANUEL KANT, *The Doctrine of Right*, *in* THE METAPHYSICS OF MORALS (1797); and IMMANUEL KANT, PERPETUAL PEACE: A PHILOSOPHICAL SKETCH (1795).

[6] Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823).

[7] Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 15-17 (1831).

[8] Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 543 (1832).

[9] JOHN LOCKE, TWO TREATISES OF GOVERNMENT 61, 106-12 (1689).

allowed him to develop a moral approach to major political issues. On the other hand, it was also an empirical observation because Locke described certain communities, including Native Americans, as living in the state of nature. Locke believed that a Christian's duty was to take over the "un-owned commons" in the state of nature and make productive use of the land.[10] In doing so, one's claim of land ownership was justified. According to this theory of justified acquisition, the dispossession of a person's land is justified if the person's use of the land is unproductive and there is sufficient unowned land for others to acquire.[11]

In contrast to Locke, Immanuel Kant saw property as a relationship between individuals, not between an individual and the land.[12] Kant distinguished empirical possession—the physical and literal holding of something—from intelligible or noumenal possession, a more profound process whereby an external physical item is internalized in the individual through the idea of belonging.[13] According to Kant, an individual could only make an external possession internal through the consent of others.[14]

B. Analysis

European colonialists frequently encountered Native American governments in the form of a confederation of nations bound together by an assembly of National Chiefs.[15] Land in these Indigenous communities was usually communally owned.[16] Locke described 'America'— by which he meant the 'unexplored' lands of North America, from a colonial, European perspective—as being in the state of nature in *Two Treatises of Government.*[17] He considered Native American government illegitimate because it was not state-centered, such as in Europe.[18]

James Tully, a Professor Emeritus at the University of Victoria and expert in political theory and Indigenous politics, argues that there are two

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[10] *Id.* at 106.
[11] *Id.* at 118.
[12] IMMANUEL KANT, *Doctrine of Right*, *in* METAPHYSICS OF MORALS [6:261] (1797).
[13] Id. at [6:245].
[14] Id. at [6:261].
[15] JAMES TULLY, AN APPROACH TO POLITICAL PHILOSOPHY: LOCKE IN CONTEXTS 152 (1993). As Tully notes, this is a simplification of various, elaborate forms of political organization. For a more nuanced analysis, see Anthony F. Wallace, *Political Organization and Land Tenure among the Northeastern Indians 1600-1830*, 13 SW. J. ANTHROPOLOGY 301, 301-21 (1957).
[16] Tully, *supra* note 15, 151.
[17] Locke, *supra* note 9, at 125.
[18] Tully, *supra* note 15, at 153.

main consequences of Locke's approach to the concepts of government and property.[19] First, Locke's consideration of Indigenous government as illegitimate served as justification for bypassing their self-perceived autonomy in managing their own affairs.[20] Second, appropriation of Indigenous land without consent was justified by Locke's belief that Indigenous communities unproductively made use of their land.[21] The following sections explore Locke and Kant's theories of property and government as they relate to Indigenous land claims and relevant case law.

II. EARLY U.S. CASE LAW ON INDIGENOUS RIGHTS AND LAND

Johnson v. M'Intosh, *Cherokee Nation v. Georgia,* and *Worcester v. Georgia* are all seminal cases in the development of how U.S. law conceives of Indigenous rights and land claims. While *Johnson* and *Cherokee* represent a Lockean approach, *Worcester* reflects a Kantian perspective.

A. Overview of Case Law

Johnson v. M'Intosh concerned a dispute between two non-Indigenous parties, both of whom claimed title to the same land in southern Illinois.[22] The plaintiffs inherited the land from their father, who purchased it from the Indigenous Piankeshaw Tribe, whereas the defendants bought the same land from the U.S. government.[23] In writing for the majority opinion, Justice Marshall developed the Discovery Doctrine and held that Indigenous land rights were discarded once the United States came into existence.[24] Accordingly, Indigenous peoples could not privately sell their land, making the transfer of the land from the Piankeshaw Tribe to the plaintiffs invalid.[25]

In *Cherokee Nation v. Georgia,* an Indigenous community in Georgia claimed that the state's laws, which took away the rights of Indigenous peoples with the aim of removing the Cherokee from the tribe's land, should be struck down because the laws destroyed any meaningful sense of Indigenous autonomy.[26] The Supreme Court held that because the Cherokee

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[19] *Id.* at 142.
[20] *Id.* at 151.
[21] *Id.* at 145.
[22] *Johnson*, 21 U.S. at 543.
[23] *Id.* at 543-545.
[24] *Id.* at 544-545.
[25] *See id.* at 596.
[26] *Cherokee Nation*, 30 U.S. at 1.

Nation was not a foreign nation, it could not sue a U.S. state.[27] Instead, the Court reasoned that the Cherokee Nation had a ward-type relationship with the United States in which the federal government had plenary power over Indigenous affairs.[28]

In contrast to how the Court in *Johnson* and *Cherokee Nation* dealt with Indigenous rights, the Supreme Court in *Worcester v. Georgia* took a different approach. Justice Marshall, again writing for the majority, held that the relationship between the United States and its Indigenous communities is one of nations.[29] The Court reasoned that Indigenous nations were not considered wholly independent, but were granted some sovereign status so that the U.S. federal government, rather than individual U.S. states, would engage with them.[30] Although this ruling was ignored by President Andrew Jackson[31] and the oppression of Native Americans continued, Marshall's opinion served as the basis for the development of tribal sovereignty in the twentieth century.[32]

B. Johnson *and* Cherokee Nation*: A Lockean Approach*

While Steven T. Newcomb, an Indigenous rights scholar and co-founder of the Indigenous Law Institute, argues that Justice Marshall's reasoning in *Johnson* and *Cherokee Nation* reflects Christian nationalist philosophy, Marshall's majority opinions can also be explained through Lockean theory.[33] Support for Newcomb's argument can be found in Justice Marshall's opinion in *Johnson*. He reasoned that the United States' dominion over Indigenous peoples was justified in part because, in the original establishment of relations with Native Americans, European rulers believed that the introduction of Christianity and European culture to Native Americans was ample compensation for "unlimited independence."[34]

The two main principles governing a nation's territory during the time of the *Johnson* decision were property and sovereignty.[35] Had Justice

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[27] *Id.* at 20.

[28] *Id.* at 17.

[29] *Worcester*, 31 U.S. at 519.

[30] *Id.*

[31] *Worcester v. Georgia: United States law case*, BRITANNICA, https://www.britannica.com/topic /Worcester-v-Georgia [https://perma.cc/FM93-GPC3].

[32] Daan Braveman, *Tribal Sovereignty: Them and Us*, 82 OR. L. REV. 75, 75-76 (2003).

[33] See Steven T. Newcomb, *The Evidence of Christian Nationalism in Federal Indian Law*, 20 N.Y.U. REV. L. & SOC. CHANGE 303 (1992).

[34] J*ohnson*, 21 U.S. at 573.

[35] Newcomb, *supra* note 33, at 321.

Marshall extended these principles to Indigenous nations, the United States would have been legally prohibited from profitably selling off Indigenous land—though, the president could conceivably have ignored such a prohibition.[36] Instead, the majority's refusal to recognize the property rights and sovereignty of Indigenous nations allowed the United States to continue to sell Indigenous land to private parties. This reasoning also reflects Lockean philosophy in several ways because it delegitimizes Indigenous sovereignty and property rights by emphasizing the "superiority" of Christianity and European agricultural methods. For example, it resembles the Lockean view that Christians are justified in annexing heathen lands because it is their God-given-duty.

Locke's view that European colonizers could seize Native American land because their working of the land was considered inefficient and their property rights invalid is also relevant here. In disregarding Indigenous claims to their own land, Marshall referred to the supposed "savage" nature of Native Americans and their perceived inability to self-govern.[37] He noted that principles of justice would only be applied when dealing with "civilized nations" who possessed "perfect independence."[38] Because Indigenous people were "uncivilized," they were not entitled to full sovereignty rights.[39]

Alexander Anievas, an Associate Professor of Political Science at the University of Connecticut, and Kerem Nişancıoğlu, a Lecturer in International Relations at SOAS University of London, argue that the "state of nature" theory as used in Lockean philosophy was neither an empirical observation nor an innocent thought experiment.[40] Instead, it was an imperialist invention used to justify and further the colonial exploitation of Indigenous people.[41] Anievas and Nişancıoğlu contend that excluding Indigenous peoples from the social contract due to their perceived inferiority has been critical in legitimizing their colonial oppression.[42]

There is strong evidence to corroborate this claim. The practical outcome of *Johnson* was to facilitate the continued selling of Indigenous land by the United States, and concepts such as the Discovery Doctrine

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[36] *Id.*
[37] *Johnson*, 21 U.S. at 563, 590.
[38] *Id.* at 572.
[39] *Id.*
[40] ALEXANDER ANIEVAS & KEREM NIŞANCIOĞLU, HOW THE WEST CAME TO RULE: THE GEOPOLITICAL ORIGINS OF CAPITALISM 134 (2015).
[41] *Id.*
[42] *Id.*

served to further colonialism. Similarly, Locke was personally invested in the slave trade and had roles in writing constitutions and laws for several early state governments within the United States.[43] Thus, the legal application of Locke's conception of the "state of nature" furthered his own financial interests, albeit two centuries before cases such as *Johnson.*

C. Worcester*: A Kantian Approach*

In contrast to *Johnson* and *Cherokee* reflecting Lockean reasoning, *Worcester v. Georgia* exhibits a Kantian approach. In *Perpetual Peace: A Philosophical Sketch*, Kant described the cosmopolitan right as the right of a "foreigner" not to be treated as an enemy when they arrive on another person's land."[44] Krista K. Thomason, an Associate Professor of Philosophy at Swarthmore College who specializes in Kant's moral theory, argues that Kant's cosmopolitan right is aimed at securing a vision of "perpetual peace."[45] That vision is centered around the permanent establishment of peace between people and states.[46] However, because imperialism undermines the aim of attaining this peace, there is a Kantian justification for Indigenous sovereignty and property rights.[47] This is despite Kant's view that Indigenous peoples lived in the state of nature and should ideally leave and join "civilized society."[48] Thus, while intelligible possession is (1) ordinarily persevered for those in civil society; and (2) normally attained through others' consent, a history of imperialism grants Indigenous peoples sovereignty and necessitates that their property rights be respected in the pursuit of perpetual peace.

A similar approach to Indigenous rights was presented by the majority opinion in *Worcester,* where Justice Marshall noted several treaties that committed the United States to engaging in peaceful dialogue with Indigenous communities.[49] He also argued that Indigenous nations have the right to be respected as somewhat sovereign entities. On this reading, the United States must recognize the legitimacy of Indigenous property and sovereignty because not doing so would facilitate continued colonial violence against Indigenous communities and make the attainment of

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[43] Tully, *supra* note 15, at 140.

[44] IMMANUEL KANT, PERPETUAL PEACE: A PHILOSOPHICAL SKETCH 11 (1795).

[45] Krista K. Thomason, *A Kantian Argument for Sovereignty Rights of Indigenous Peoples*, 6 PUB. REASON 21 (2016).

[46] Kant, *supra* note 44.

[47] *Id.* at 26.

[48] *Id.* at 24.

[49] *Worcester*, 31 U.S. at 519.

perpetual peace in the United States impossible. [50] Therefore, for perpetual peace to be obtained, Indigenous sovereignty and property rights must be respected.

II. DAPL CASE LAW: PRESENT DAY INDIGENOUS ENVIRONMENTAL LAW

A. Overview

The Dakota Access Pipeline runs from North Dakota to Illinois.[51] The Standing Rock Sioux Tribe, an Indigenous community inhabiting the Standing Rock Reservation, claims that the presence of the pipeline under Lake Oahe and the Missouri River poses a threat to their water source, agriculture, and religious practices.[52] In a series of ongoing cases that began in July 2016, the Sioux have sought to stop construction of the pipeline—and, later, to shut it down.[53]

First, the Sioux argued that the pipeline's presence threatened them spiritually and potentially endangered their water supply.[54] In *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, the D.C. District Court refused emergency relief because the Sioux could not identify the specific harm they would suffer if the pipeline were completed.[55] Neither the possibility of harm nor harm to "abstract" concepts were sufficient.[56] Second, the court rejected the Sioux's claim that the pipeline's presence would interfere with a religious ceremony due to a time-constraint technicality.[57] Finally, the Sioux claimed that the Army Corps of Engineers' ("Corps") environmental review, mandated under the National Environmental Policy Act (NEPA), was flawed because it ignored key findings and Indigenous theories of environmental justice.[58]

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[50] *Id.*

[51] EARTHJUSTICE, *supra* note 3.

[52] *Id.*

[53] *Id.*

[54] Compl. Decl. and Inj. Relief at 20-21, Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers (*Standing Rock I*), 205 F. Supp. 3d. 4 (D.D.C. 2016) (No. 16-1534), 2016 WL 4033936.

[55] *Id.* 26-27.

[56] *Id.*

[57] Int.-Pl. Cheyenne River Sioux Tribe's Mot. Prelim. Inj. at 1-4, Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers (*Standing Rock II*), 239 F. Supp. 3d. 77 (D.D.C. 2017) (No. 16-1534), 2017 WL 1454128.

[58] Pl. Standing Rock Sioux Tribe's Mem. Supp. Mot. Partial Summ. J. at 14-18, Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers (*Standing Rock III*), 255 F. Supp. 3d 101 (D.D.C. 2017) (No. 16-1534), 2017 WL 1454134.

While the majority did not focus on the Indigenous environmental justice argument, they held that the environmental review carried about by the defendant was inadequate under NEPA.[59] Justice Boasberg ordered the Corps to conduct a more comprehensive environmental analysis of the possible consequences resulting from the pipeline's construction.[60] In March 2020, the same court struck down the defendant's pipeline permit, noting that the Corps failed to consider important consequences, such as the chance of the pipeline's leak-detection system failing and the inaccuracy of the worst-case scenario spill estimate.[61] The Court again ordered the defendant to conduct a full environmental review.[62] It has yet to be definitively settled whether the pipeline should be shut down while the Corps conducts a more comprehensive environmental review.

B. Analysis

In explaining how the common law develops biases, Robert Cover, a former Yale Law School professor who wrote widely about the relationship between law and violence, developed "jurisgenerative" and "jurispathic" principles of law.[63] "Jurisgenerative" refers to how courts create legal principle, while "jurispathic" refers to how courts kill particular understandings of law over time.[64] Danielle Delaney, a Ph.D. candidate researching Indigenous rights law at the University of Wisconsin-Madison, argues that U.S. common law has developed a bias against Indigenous understandings of land through a process of jurispathy.[65] The courts consistently rejected the Sioux's arguments based on Indigenous understandings of land; for example, that harm to their water equates to harm to them. Due to the unreceptiveness of the judiciary to this reasoning in pre-2020 case law, the Sioux's procedural environmental claims were more successful than those based on Indigenous rights.[66]

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[59] *Id.*

[60] *Id.*

[61] Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers (*Standing Rock IV*), 440 F. Supp. 3d 1 (D.D.C. 2020); *see also Standing Rock Sioux Tribe Prevails as Federal Judge Strikes Down DAPL Permits*, EARTHJUSTICE (March 25, 2020), https://earthjustice.org/news/press/2020/standing-rock-sioux-tribe-prevails-as-federal-judge-strikes-down-dapl-permits [https://perma.cc/9UF E-DQPJ].

[62] *Standing Rock IV*, 440 F. Supp. 3d at 2

[63] *See* Robert Cover, '*The Supreme Court, 1982 Term - Foreword: Nomos and Narrative,*' 97 HARV. L. REV. 4 (1983), *reprinted in* YALE L. SCH., *Faculty Scholarship Series*, Paper 2705 (1983).

[64] *Id.* at 40.

[65] Danielle Delaney, *Under Coyote's Mask: Environmental Law, Indigenous Identity and #NoDAPL*, 24 MICH. J. RACE & L. 299, 322 (2019).

[66] *Id.* at 321.

Building on Delaney's argument, some observations can be made about the March 2020 judgement. The Sioux's successful argument was a procedural claim focusing on the environmental review, rather than one based on Indigenous environmental theory.[67] This appears to validate Delaney's expectation that the Sioux are most successful when they pursue a purely procedural approach. While Delaney seems correct in arguing that U.S. environmental law has a bias against Indigenous understandings of land, it is necessary to examine whether the problem lies with statutes or common law.

Some argue that judges are restricted in accepting arguments based on Indigenous environmental theory. Using Cover's jurispathy approach, it appears that the common law has developed a hostility towards Indigenous understandings of nature that limits the interpretations available to judges. This legal hostility can be traced back to Justice Marshall's complete repudiation of Indigenous understandings of land in *Johnson* and *Cherokee Nation.* While this legal aversion has mellowed somewhat since these early cases, the continued unreceptiveness to Indigenous theories of justice in the DAPL case law shows how this bias persists. Due to the common law's lengthy history of hostility to Indigenous theory, judges may not believe that they could legitimately reverse this trend through a jurisgenerative embrace of Indigenous environmental theory in the common law. Thus, to facilitate Indigenous interpretations of environmental law, it might be necessary to introduce legislation specifically allowing such interpretations. Alternatively, it is conceivable that a trusteeship model of protection could facilitate the legal embrace of Indigenous theories of environmental justice.[68] Such a situation would allow Indigenous communities to argue on behalf of nature, rather than arguing that harming nature is the same as harming themselves.

C. Lockean and Kantian Approaches

A Lockean approach would likely support the pipeline's completion on the grounds that the transporting of fossil fuels is an efficient use of land. Following the logic of *Johnson* and *Cherokee Nation,* the Sioux's understanding of their relationship with nature should be disregarded on behalf of their "uncivilized" nature and "unproductive" use of the land. In contrast, a Kantian approach would facilitate the legal recognition of Indigenous understandings of land. The encroachment of the pipeline on the

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[67] *Standing Rock IV*, 440 F. Supp. 3d at 2

[68] Such a model could follow the New Zealand approach. *See, e.g.,* Abigail Hutchison, *The Whanganui River as a Legal Person*, 39 ALT. L. J. 179 (2014).

land and resources of the Sioux without their consent could arguably be considered a form of neo-imperialism, especially considering the uncertainty over the pipeline's safety.[69] Consequently, in pursuit of perpetual peace, the Sioux should have their right to the land and their Indigenous understanding of nature reflected in legal principle. Justice Marshall's proposition in *Worcester* to respect the sovereignty of Indigenous communities could arguably be extended here to necessitate the recognition of theories of Indigenous environmentalism in law.

CONCLUSION

This article has argued that *Johnson v. M'Intosh* and *Cherokee Nation v. Georgia* reflect a Lockean approach to Indigenous rights and environmental law. Justice Marshall's Discovery Doctrine, reinforcing the Lockean concept of the "state of nature," served to justify colonialism and the abuse of Indigenous communities. In contrast, Marshall's ruling in *Worcester v. Georgia* portrays a Kantian approach, whereby the recognition of Indigenous property and sovereignty is necessary in the pursuit of perpetual peace.

In analyzing the DAPL case law, this article has argued that a legal bias persists against Indigenous understandings of land. Because the common law is generally unreceptive to Indigenous theory, procedural mechanisms such as mandatory environmental reviews have been best placed to further the Sioux's claims. This common law bias can be explained through Cover's concept of jurispathy, through which judges close off particular interpretations of law over time. While a Lockean approach would appear to favor the pipeline's continued presence, a Kantian approach would justify legal recognition of Indigenous understandings of land. This might be best carried out through statutes that explicitly facilitate these interpretations or a trusteeship model whereby Indigenous communities could argue on nature's behalf.

Few areas of law exhibit the intersection between environmentalism and human rights more than Indigenous law. While Indigenous communities often emphasize the intimate connection they have with nature, the Western environmental view sees land primarily as an economic resource for

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[69] *See, e.g.*, Kyle Powys Whyte, *Why the Native American Pipeline Resistance in North Dakota is About Climate Justice,* THE CONVERSATION (Sept. 16, 2016), https://theconversation.com/why-the-native-american-pipeline-resistance-in-north-dakota-is-about-climate-justice-64714 [https://perma.cc/N443-SA7B]; Kyle Powys Whyte, *The Dakota Access Pipeline, Environmental Injustice, and U.S. Colonialism*, 19.1 RED INK 154 (2017).

humans to exploit. This article has analyzed two main sets of case law: early, seminal cases dealing with Indigenous land issues and the ongoing DAPL controversy. Studying these cases, and exploring Lockean and Kantian theories relating to land, shows how Indigenous environmental law in the United States has developed over time.

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