

Chapter 10

Navigating a Colonial Quagmire: Affirming Native Lives in the Struggle to Defend Our Dead

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“The most significant challenge of our generation is to safeguard what remains.”

—Wallace Coffey¹

For Native peoples, the Native American Graves Protection and Repatriation Act (NAGPRA 25 U.S.C. 3001) is about protecting the physical remains, the graves, the spirits, and the dignity of our ancestors. Yet there is something even more fundamental at stake. NAGPRA is about our very survival as Native peoples. It is about our ability to maintain our own identities, to define our worlds and histories for ourselves, to know and to teach our children who we are. The future of NAGPRA is inextricably tied to Native peoples’ ability to resist political, judicial, and epistemological attacks on our status as sovereign peoples. NAGPRA is about power.

Defending NAGPRA’s integrity, as Indian law designed to protect Native ways of knowing and being from the aggressions of hostile archaeologists and physical anthropologists, is resistance to forced assimilation. Attacks on NAGPRA actively erase Native peoples as distinct cultures and political entities. Resisting requires contesting the naturalization of anthropological narratives. To challenge the colonial power of scientists, we must point to the cultural and historical, and not panhuman, bases of their desires, beliefs, and self-perceptions. We will not win in the courts and halls of government without confronting their cultural stories, including their tales of “objectivity.”

As Natives, should we fail to recognize and interrogate the thoroughly colonial qualities of the cultural domains where the battle to define NAGPRA is occurring, we risk ceding our right to self-representation, and ultimately our self-understandings, to non-Indians.

I begin by introducing myself and describing how I came to the battle for this law. I then consider some of the not-always-obvious complexity of insisting on

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Natives' cultural and political uniqueness, complexity that comes to light when we acknowledge the overwhelming power of American colonialism to influence Native self-understandings. Next I sketch out a modest portion of the cultural history that gave birth to our scientific opponents' desires. I locate epistemological longings of contemporary American archaeology and physical anthropology in the politics and history of Europe. My goal is to show that the passions of these scientists originate, like all human political articulations, from the cultural intrigues of specific times and places. I then assess the double standard afforded the scientists' cultural constructs in the courts, where the future of NAGPRA will almost certainly be decided. Finally, I conclude with a brief suggestion of strategy for organizing ourselves as Native peoples and allies to confront the most obstinate NAGPRA resisting scientists and institutions.

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Introduction

Waq lisi (Hello.) *gew ?a seesas Clayton Dumont.* (My name is Clayton Dumont.) *noo ?a ?ewksiknii* (I am Klamath.) I am also a professor of sociology at San Francisco State University. I have been studying and writing about NAGPRA for a little more than a decade. My motivations are personal, tribal, pan-Indian, and academic.

My first experience with the horror of grave desecration happened while I was a teenager. I had driven to one of the reservation cemeteries where many family members, including my great-grandparents, are buried. The sound of my pickup bouncing up the dirt road brought a tribal member and his very large dog from a nearby house out to greet me. The sight of recently disturbed graves and freshly turned dirt explained his vigilance. I remember feeling sick to my stomach as I walked among the violated burials, looking at the familiar names of tribal families on the headstones. Many of these ancestors were dead before I was born, but I felt like I knew them from the stories I had heard from elders. Not too many years later, my uncle told me of "some asshole" who knew that "an Indian lived in the house" he rented in Springfield, Oregon, and so knocked on his door trying to sell contents of Indians' graves. When this same uncle was younger, we kids joked that he would one day pack his guns and head off to join the American Indian Movement (AIM). As a young adult, that rather animated conversation in Springfield helped me understand why he could be so stridently serious about being Native.

Almost a decade later, I was a newly minted PhD, interviewing for a job at the small university near our traditional lands in southern Oregon. In my application letter, I had written of my desire to be close to the Klamath Tribes and of my hope that a strong tradition of tribal youth attending the campus could be created. After the morning preliminaries, I was taken to lunch by the resident archaeologist. The department to which I was applying was a joint sociology/anthropology faculty, and

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he wanted to know how I, as a potential colleague, felt about the still new NAGPRA. The Klamath Tribes had regained our federal recognition only a few years earlier, but our Culture and Heritage Department officers were already using the statute to frustrate his desire to “excavate” in our country. I forgot where I was and responded to his questions in a blunt Klamath way, breaching the norms of upper-middle-class, academic culture.

When we returned to campus, the whole hiring committee was waiting to conduct the main interview. I was led into a room with human remains stacked in open boxes and laid out on shelves surrounding the table where I was invited to sit. I was caught off guard and the intensity of my survey of the room was no doubt noticed. (Given the location of the university, I thought there was a strong possibility that these dead could have been my relatives.) It was not long before we were discussing how I felt about the prospect of coming to a joint department. This led to a long discussion of the racist history of anthropology. I stayed academically polite this time, but it was clear to all that the discussion did not help my case as an applicant for the job.

Although less intense, many graduate school experiences left me curious about the cultural origins of scientific hubris. How was it possible that these folks were so bloody sure that they alone were called to access the real, the true, and the “objectively empirical”? Only among some Christians had I encountered such self-assured zeal. These experiences led to my ongoing academic interest in the politics and cultural history of science, particularly the human sciences. I have spent much of the last twenty years studying the cultural genealogy of the scientific self. NAGPRA, as a site of cross-cultural knowledge politics, fits naturally within this pursuit.

Hard honesty about what remains and how we safeguard it

At first glance, Mr. Coffey’s call in the epigraph to “safeguard what remains” appears straightforward. No one need explain to Native peoples why it is imperative to protect what remains of our languages, our oral histories, our ceremonies, and knowledge of our ancestors’ ways. Yet, if not read carefully, the assumption of a tidy intellectual separation between the Native and the non-Native world that it must be protected from is both naïve and dangerous. Such a careless reading mistakenly assumes the possibility of a relationship of exteriority between these existences.

In other words, an unscrutinized and assumed separation conjures the fantasy that centuries after contact, some untouched “authenticity” is holding on, some quickly drying reservoir of the purely Native that must be preserved and replenished. But Native studies scholars have long since pointed to the links that this imagery shares with the racist history of anthropological desire and with the romantic nationalism of centuries of European American popular culture.² Indeed, a central function of our still-unique National Museum of the American Indian (NMAI) is to expose,

interrogate, and contest the power of non-Native expectations of and about Natives.³

Sometimes I imagine how a conversation with my great, great, great grandfather, who made his mark on our treaty with the United States in 1864, might go. How would Kilo'kaga (translated as: "warrior of small stature" by the 1890 ethnographer Albert Gatschet⁴) or "Kellogue," as his identity was recorded on the treaty, understand "authenticity," "tribe," "tribal chairman," "Culture and Heritage Department," and "blood quantum"? Or for our more specific concern with the future of NAGPRA, how would he decipher "preponderance of the evidence," "culturally unidentifiable," and "a relationship of shared group identity which can be reasonably traced historically or prehistorically"? Imagining the maddening if not prohibitive discordance of such a conversation, it seems to me, begins to get at the thoroughly permeating power of colonialism that underwrites the cultural spaces we now inhabit.

In her brilliant, some would say heretical, text, *Native Acts*, Lenape scholar Joanne Barker has proclaimed, "I do not believe that there is an authentic tradition to be revitalized from a past that transcends 'Western Ideology.'"⁵ She is not suggesting that Native peoples are or have ever been without distinct ways. Nor is she saying that there are no "real Indians" left. Rather she means to encircle that whole line of questioning with a careful consideration of how Native peoples have been constructed in the narratives of the colonizers. Barker means to assert an inevitable relationship of conceptual interiority between Native and non-Native cultural spaces in the early twenty-first century.⁶ She is cajoling us, warning us against underestimating the impact of colonialism on (what we should *not* consider "inauthentic") contemporary Native thinking.

My great, great, great grandfather probably articulated responses to mid-nineteenth century American cultural constructs. These were no doubt fashioned, not in the ways of "the tribe," but of his s?aaMaks (relations). He and his relations lived in a specific place near ?ews (Klamath Lake), and they were distinct from ma'klaks (other, now "Indian" people) who lived elsewhere on the lake, on ya'aga (Lower Williamson River), and from the e'ukshi ma'klaks (Klamath Marsh people). But he and all the once-distinct communities that became the federally recognized Klamath Tribes (the Klamath, Modoc, and Yahooskin peoples) had to learn to see themselves in ways that mattered to the United States.

Anthropology, including archaeology, has a long history of serving the interests of the federal government and American nationalism.⁷ Prestigious and racist scientists asserted the biological inferiority of indigenous peoples as justification for the theft of Native homelands by the United States. Indeed, much of the anthropological invention (and thus desperate pursuit) of "authentic" Natives came from scientists' belief that Darwin had foretold our demise through natural selection.⁸ We were inferior, this thinking went, so it was natural that our racial and cultural superiors should

take what we had; but it was also anthropologists' duty to "objectively" record the "authentic" qualities of "full bloods" so that future generations could have access to that "knowledge."

"Race," a now discredited invention of earlier generations of scientists, was put to use by the United States to subjugate non-white peoples.⁹ The racialized "Indian" became part of what Gerald Vizenor has called a "literature of domination,"¹⁰ deployed by self-congratulatory European Americans as they actively destroyed the ways of those who inhabited North America before their own immigration. "Blood quantum" is a colonial creation closely connected to the invention of race. Inasmuch as it is said to measure true "Indian-ness," it institutionalizes and apparently documents the demise of the anthropologists' "authentic" Natives.¹¹ It thus serves the interest of the United States and current generations of Americans by hastening the end of their constitutional and treaty obligations to Native peoples.

As the survivors of this cultural genocide, living Natives must confront the ongoing privilege and power attached to these concepts and the stories they propagate.¹² Consequently, I think it makes sense for us to be careful about how, when, and why we employ cultural constructs that have been inherited from this colonial history. Which is not to say that we can avoid them. (This is what I meant above when I said it is naïve to assume the possibility of a relationship of exteriority.) Certainly some tribes/nations retain more of their own languages and the cultural differences that reside there than others. But English, the prestige of science, and the dictates of constitutional law now pervade Indian country. Nevertheless, we *can* work to understand why these foreign cultural constructs were developed, where and when they originated, and how they were and are being used against us. We can thus learn to be strategic about how and when we choose to deploy or contest them.

As late as the 1930s, my great grandfather and his brothers were still translating our tribal council meetings from English to Klamath because the elders' thinking remained in their own language. But bigotry, greed, boarding schools, Christianity, and ultimately the Termination Act did their work.¹³ Now, in our council meetings we fight over the legal meaning of "*our* Constitution" and parliamentary procedure.

It is right to feel despair about this, about having lost so much. However, it is a mistake to feel bad about it because we think we are no longer "authentic." Our traditions *are* who we are as Native peoples. They *are* that important. But this is not the same thing as being persuaded that we have lost what were *always only* colonial concoctions, admixtures of what earlier generations of anthropologists, government agents, and missionaries expected and demanded from their encounters with our ancestors. We need to insist that *we are* the Natives! As one of my favorite parts of our NMAI exhorts in a way that strikes me as beautiful, dry Native humor: "We are the EVIDENCE."

The point of Joanne Barker's words, quoted above, is that we can no longer definitively separate understandings of our ancestors' ways from anthropological renderings carried out for unfriendly political purposes. (I doubt that our pre-contact Native ancestors foresaw their coming status as anthropologists' "evidence.") As she says, "the Native' and 'traditions' are conditional . . . they are made meaningful and relevant again and again in specific contexts in which they are articulated."¹⁴ This, I argue below, is precisely the complexity from where the future of NAGPRA will be decided.

Despite the fact that NAGPRA was passed to protect Native peoples from archaeologists and physical anthropologists, we are being called on to *be* the colonizers' anthropologically authentic Indians. We are being told that anthropological ideals of "material culture," "biologically distinct populations," and scientific "reliability" must be met and approved by scientists, or they will not return the dead whose graves they justify violating using these same constructs. In short, we are being told (yet again) to make ourselves "meaningful and relevant" for the anthropologists, archaeologists, and the courts, using terms and concepts they currently value, if we are to continue successfully using a law designed to protect us from these same scientists.

It is important to continue working to "safeguard what remains" of our political and cultural independence. Fighting to stop the Society for American Archaeology (SAA), the American Association of Physical Anthropologists (AAPA), and the American Association of Museums (AAM) from twisting NAGPRA into a caricature of itself is part of this work.¹⁵ We can succeed, it seems to me, in safeguarding what remains of our cultural independence, including our responsibility to our deceased ancestors, by studying the European development of the American colonizers' intellectual gaze.

I want to suggest that we should learn to narrate this history for them. By confronting current generations of NAGPRA resisting archaeologists and physical anthropologists with the often contentious, political births of their sacred (anthropological, nationalist, moralizing) stories, we can denaturalize and disturb their authority. Locating scientists' desires in philosophy, theology, and politics that are specific to their own societal backgrounds, and not to Natives' histories, destabilizes their megalomaniacal claims to panhuman relevance.

Through these efforts, we also make ourselves aware of the role that colonial agendas (conceived alongside European self-appraisals) play(ed) in the development of our own agencies (selves) as Native peoples. This awareness allows us to make more informed and strategic choices about how we negotiate our own identities, both within our tribal communities and in our dealings with outside governments.¹⁶ Knowing the colonizers' epistemological history and, when necessary, teaching it to them may begin leveling the political playing field and help us extend greater control over how our self-presentations are read by non-Natives.

Confronting the cult of value-neutral “objectivity”

The belief in “objectivity” or the quest to be “unbiased” is a form of idol worship that Native peoples attempting to protect our dead must continuously confront. Many biological anthropologists and archaeologists simply assume that these (ultimately faith-based) pursuits transcend culture.¹⁷ For the deepest believers, the social and political origins of their objectivity pilgrimage are invisible and irrelevant.

Lauraelyn Whitt describes this inability to critically assess their own cultural ways: “[T]he ideology of western science, wedded as it is to the thesis of value-neutrality, insists that issues of power do not enter into knowledge making or shape the dynamics of knowledge systems. The relations of domination and assimilation which characterize imperialism (whether in its historical or contemporary variants), and which facilitate biocolonialism, are thus neither acknowledged nor acknowledgeable.”¹⁸

Much of American archaeology remains anachronistically mired in what scholars who study the history of science recognize as “positivism.” Positivism is a philosophy of science that arose in the nineteenth century and sought to erase all ideology and indeed all human influence from what proponents assumed would become purified depictions of the natural and social worlds. Positivists believed that knowledge could be purged of preconceptions; scientists would learn to record only what existed before the prejudices of perception interjected themselves. Despite Whitt’s simplifying and homogenizing label (“the ideology of western science”¹⁹), positivism has relatively few adherents among contemporary social scientists. Nor is such extreme “mechanical objectivity”²⁰ widely and uncritically invoked across disparate natural sciences. As the progressive archaeologist Tamara Bray has observed, “Hiding behind the trousers of positivist science, one notes a stubborn determination on the part of the archaeological establishment to cling to antiquated notions of objectivity, the search for truth, and the neutrality of scientific practice—features that most of our sister social sciences have long since rejected. To date, there remains something of a vacuum in the theorization of knowledge production within the field (2007:81).”²¹

While far too expansive and complex to do justice here, it is important to my argument that readers get a glimpse of the political and cultural origins of assertions of value neutrality in the human sciences. While the intellectual genealogy of these assumptions extends as far back as ancient Greece and the early Christian church, the most immediate political utility of such assumptions was manufactured from the strife generated in the European Enlightenment.

In only a few centuries (roughly the seventeenth and eighteenth), the intellectual authority of the Catholic church and political power of the monarchies that it validated were successfully challenged. Political authority threatened to, and sometimes did, break down. (Thousands of French citizens were guillotined in the civic

chaos that wealthy classes across Europe feared could inundate their own borders.) Eventually, constitutional governments (like the United States) codified the rights of “individuals,” regardless of whether they were born noble or common.²² These rights included the unbridled pursuit of wealth through commerce and private property.

By the nineteenth century, industrial capitalism and urbanized, gross economic inequality had followed. In the United States, in particular, the gap between the wealthy and the poor was ethnic, racial, and too proximate to avoid. Newly crowded cities lacked adequate infrastructure. They were hastily built, dirty, and disease ridden. Factories employed children, were not governed by safety codes, and there was no eight-hour day or minimum wage. Urban rivers, lakes, and air were horribly polluted. Unequally distributed misery meant that the potential for political unrest was always at hand. Revolutionaries promoting an array of hostile political solutions were plentiful.

Nineteenth century positivists claimed they could cut through politics, religion, and ideology. They endeavored to ease the societal unrest wrought by the Enlightenment with pure, value-neutral scientific methodology. Auguste Comte, one of the founding proponents of this philosophy, asserted that positivism would “establish a general harmony in the entire system of ideas.”²³ It would do so “by imposing a series of indisputable scientific conditions on the study of political questions.”²⁴ Despite vowing to admit “only well-prepared and disciplined minds” who would uncover “the fundamental law of continuous human development,”²⁵ positivism was a dismal failure.

Nineteenth and early twentieth century positivists simply validated the prejudices of their gender, social class, and “race.” Indeed what we now recognize as bigotry was wholly invisible to their “disciplined minds.” They assumed that their sexist and racist beliefs *were reality* and that they were merely observing and documenting the natural order of things. Comte, for example, claimed that positivist science would “prove that the equality of the sexes, of which so much is said, is incompatible with all social existence.”²⁶

Claims to value-free social science were thoroughly discredited by the late middle twentieth century. The influx of women and racialized minorities into universities, both as faculty and students, during the civil rights era reduced positivists to a relatively small and marginalized camp. Although value-free objectivity remains the stated goal of most American social scientists, very few claim that they can achieve it. More importantly, there is now a large corpus of scholarship detailing and debating the gendered, racialized, cultural, hetero-normative, and class-based qualities of social scientific knowledge.²⁷ But as Bray noted above, positivism maintains a curious hold on mainstream archaeology and physical anthropology, particularly among the most vehement resisters of NAGPRA.

Yet change is afoot. Writing loosely under the title “Indigenous Archaeology” is a growing collection of Native and non-Native scholars who as Stephen Silliman says, “seek to interrogate, repair, and hopefully move beyond the colonial origins of the discipline and its treatment of Native people.”²⁸ This is overdue, Michael Wilcox points out, because “the privileged position” of researchers, so carefully interrogated by cultural anthropologists decades ago, was “brought to the attention of archaeologists by the passage of repatriation legislation” but “has never been adequately addressed by many archaeologists, particularly in North America.”²⁹

Chip Colwell-Chanthaphonh and T.J. Ferguson, long time proponents of taking Native criticisms of archaeology and physical anthropology seriously, are equally clear that less progressive colleagues must learn to think critically about the politics of their own ways of knowing: “Data, the basis of archaeological knowledge, were long thought to be self-evident, simply ‘discovered’ through scientific study. A raft of scholarship in recent decades, however—principally following from Foucault’s critique of power/knowledge—has shown that knowledge derived from archaeological work is itself a social, political, and economic process, constructed through selective interpretive strategies throughout a research project.”³⁰

Such sentiments are exactly the kind of honorable humility that can lead to an ever more productive relationship between scientists and Indians. Most of the Native people that I know are not against archaeology per se. But we are against colonialism. When biological anthropologists and archaeologists assume the mantle of extra-cultural purveyors of “objectivity,” they are behaving like colonizers. The way forward is for them to stop chasing their own tales of “value-neutrality” at Indians’ expense and consider how their own cultural history has led them to what *they* consider imperative questions.

Epistemological anxieties themselves, worries over techniques and their limits in a quest to accumulate empirical facts, are not traditional concerns of peoples outside of Europe and its diaspora. The scientific quest for essential structure in the world and a singular logic that organizes it originates in Christian monotheism and Greek philosophy. Indeed, scientists did not begin openly asserting their independence from Christianity until the nineteenth century.

In its Neo-Platonist and Enlightenment era forms, the theological and scientific pursuit of the logic of the biblical Creation required extreme attacks on the body and physical senses.³¹ In between, Christian Aristotelians, who dominated the European Middle Ages, jealously and zealously debated relationships between the parts of the Creation, even as half the planet remained unknown to them.³² No wonder that this European history is littered with the blood of “heretics,” those whom their prosecutors deemed insufficiently able to discipline themselves in pursuit of the light of the one true God and orthodox truth. Once beyond the shores of Europe, this mission

became what Vizenor has called “the puritanical destinies of monotheism.”³³ Science and Christianity were the complimentary twin engines of colonialist expansion and missionary-ism across the globe.

My purpose in all too briefly citing this history is not to assert that modern, NAGPRA-resisting archaeologists and physical anthropologists are deists. Nor do I think they are literally missionaries or believe themselves “racially” superior to Native peoples. Rather, I think they have failed to interrogate the role this extended cultural history continues to play in their desires and assumptions. I am suggesting that there are unexamined, metaphysical (faith-based) presuppositions at work in their stated needs and self-appraisals. I think that all of us, Natives and scientists, will get farther down the road toward genuinely respectful collaborations, if and when members of the scientific community can be persuaded to look carefully at the intellectual genealogy of their own epistemological quests.

Sociologists sometimes describe the difficult work of recognizing one’s own cultural assumptions as “fish trying to see water.” Yet even a few weeks’ study of Plato’s dialogues, of René Descartes’ *Meditations on First Philosophy*, or Francis Bacon’s *Advancement of Learning* could help modern positivists recognize culturally inherited presuppositions at work in their own narratives. For example, there is a remarkable overlap, given that they are approximately 2,400 years apart, between Plato’s attack on the oral historians of ancient Greece (the “poets”) and Ronald J. Mason’s scientific dismissal of Native oral histories.³⁴

Plato assumed that the oral keepers of the community’s past (the storytellers/poets) were dangerous. In *The Republic* he warns of the “magic of poetry.”³⁵ Oral history is dangerous, he admonishes, because “its hearers [should] fear its effects on the constitution of their inner selves.”³⁶ Plato distrusts feelings, and the empathy for others cultivated by oral re-collections of ancestors’ lives is sure to breathe unwanted passion and sentiment into the self-governance and moral regulation of the community. As he says, “Very few people are capable of realizing that what we feel for other people must infect what we feel for ourselves.”³⁷

For most Native peoples, this warning is not just curious; it seems kind of crazy. Why would any sane person not want the young members of their community to feel deeply, particularly in consideration for the well-being of others? After all, the community is the source of one’s own identity and its health is the basis of our own well-being. However, Natives who have repeatedly been told to control our emotional pining for our dead ancestors will also recognize that Plato’s disdain for feelings, which he recognizes are experienced by the body, is one clear source of the colonizers’ cultural belief that important decisions must be governed by rationality and “objectivity.” As Plato warns, upon hearing “the sweet lyric or epic muse, pleasure and pain become your rulers instead of law and rational principles.”³⁸

For Mason, orally re-collecting the episodes of ancestors' lives, including the empathy-based moral lessons that they carry, is an embrace of "folkloric chaff" and a "wasteful diversion in the search for a trustworthy past."³⁹ Stories about "when mother was a girl," "before the old chief's house burned down," or "the dream time," are the product of "limited horizons and short tenure."⁴⁰ Presumably his reference to "limited horizons" and "short tenure" is an assertion of Native parochialism. He is saying that we Natives are limited by the close-up needs of and feelings for our communities. But science, he is suggesting, is not so encumbered. "Western science and historiography have achieved a hitherto and elsewhere unparalleled independence from religious and other extraneous considerations in the pursuit of objective knowledge."⁴¹

Both Plato and Mason are claiming to defy feelings and emotions in the service of a way of knowing that exceeds the needs of any one group, place, or time. They are both saying that they may speak for all peoples because they alone have developed a capacity to cut through the humanity that limits the rest of us. In Mason's own words: "I do mean to assert the epistemological superiority of Western or Euroamerican achievement in reconstructing human (and indeed universal) history over all its predecessors and contemporary would-be rivals. The former is and does what the latter are not and cannot do: it is critically reflexive and evidence-bound, and it is capable of comprehending the others in their own terms while concurrently deconstructing them in a search for whatever of their component elements may be testable by independent methods."⁴²

Ironically, Mason's claim to "critical reflexivity" and "independence from religious and other extraneous" influences is neither. His "pursuit of objective knowledge" is firmly rooted in the theology of his cultural ancestry, and the fact that he is apparently unaware of this epistemological inheritance belies his claim to "independence." Further, if he is unaware of the roles his cultural ancestors continue to play in his self-understanding, then he is wrong about being "critically reflexive." That is, he is unable to think critically about his own assumptions. As Whitt said above, "The relations of domination and assimilation which characterize imperialism . . . and which facilitate biocolonialism, are thus neither acknowledged nor acknowledgeable."

"Objectivity," as we now understand the word, is only as old as the mid-nineteenth century.⁴³ It has had multiple cultural incarnations, most of them steeped in the metaphysics of theology.⁴⁴ However, one historical constant is concern with the impact of the sensual self on what the scientist believes s/he perceives. Often, this took the form of an ascetic purging characterized by severe self-disdain.

For example, Descartes' self-loathing reads like a window into neurosis. His desperate attempt to free himself from prejudice leads him to assert that he will stop his ears, shut his eyes, and withdraw all bodily senses. And those sense-based

perceptions that he cannot finally purge, he will force himself to regard as “vacuous and false.”⁴⁵ At one point he goes so far as to question whether he really exists, even entertaining the possibility that an evil demon is present and merely tricking him into thinking that he can think. Ultimately, he solves his inability to crawl outside his own skin with his faith in his God. “I know by experience that there is in me a faculty of judgment which, like everything else which is in me, I certainly received from God. And since God does not wish to deceive me, he surely did not give me the kind of faculty which would ever enable me to go wrong while using it correctly.”⁴⁶ “If I were unaware of God,” this foundational figure in the development of the modern scientific self proclaims, “I should thus never have true and certain knowledge about anything.”⁴⁷

Think about this for a moment. It is not at all obvious that Descartes’ theological justification for “true and certain knowledge” is unrelated to Mason’s “pursuit of objective knowledge.” On the contrary, given the similarity of their stated desires, I do not think anyone should simply accept Mason’s, or his archaeological colleagues’, claims to being only “evidence bound.” All of us, Natives and scientists, should be asking whether Mason and his positivist colleagues can really muster better than theological reasons for claiming that they can escape the prejudicial experiences of earthly living. And if, as I believe, it can be shown that scientists are mere mortals, living human lives with human concerns rooted in human values and prejudices, then we should also be asking why they are not reflexively rethinking their penchant for chasing their own metaphysical aspirations.

Mason says he is “capable of comprehending others [Natives] in their own terms while concurrently deconstructing them in a search for whatever of their component elements may be testable by independent methods.” It seems to me that this “capacity” to be value free (“independent”), which he says spells the “epistemological superiority of Western or Euroamerican” ways of knowing, is an unexamined inheritance of the faith-based assertions of Plato and Descartes.

Consider that, much like Mason today, Plato thought that the poets/oral historians of ancient Greece taught only context specific lessons. For example, they moved listeners to understand how Odysseus felt as he fought on the beaches outside Troy. Good storytellers involved the bodies of their listeners, helping them to smell the salt air, feel the hot blood of wounds, and experience the pride that rippled through the Greek ranks when Hector was slain by Achilles. But, Plato charged, they never asked what is pride *itself*, outside of and beyond any context. The poets were dangerous, he asserted, because their listeners were so enraptured by feelings that they never asked about the non-story-based reality of events and people. Plato’s remedy was indicated with the Greek word *eidos*, which would become the Latin *forma* and eventually the English “essence.”

Plato claimed that an abstract world of essences existed behind the physical life available to the senses. There were many individual chairs in the world, this thinking went, but there was also an essential “chair-ness.” In short, he posited a world of context-independent truths (essences) available only to the mind. And these truths could only be obtained by disciplining the subterfuge of the body and its confusing emotions.

Mason’s asserted ability to “search for whatever of their [Native oral traditions] component elements may be testable by independent methods” is a direct cultural descendent of Plato’s claim to gain independence from feelings and contexts in pursuit of “essences.” Mason is asserting that he can measure (“testable”) essential qualities in Natives’ oral traditions. As he says, “while there is no substitute for indigenous North American oral traditions in all their singularities . . . so also is it true that none of them can be properly understood in geographical or single disciplinary isolation. They are all variable instances of a universal phenomenon.”⁴⁸ Again, let us think carefully about this claim. Mason is asserting that all the real earthly stories told in all the different and evolving languages for all the daily reasons over thousands of years by all the different peoples that became the Europeans’ “Indians” can be reduced to: “variable instances of a universal phenomenon.”

Such a dubious assertion prompts the question: Has anyone ever seen an essence? How is the claim that all these differences can be reduced to some ghost-like essence/“universal phenomenon” not a metaphysical/faith maintained claim? If essences really exist, why do careful scholars repeatedly qualify their analyses with warnings against assuming them: “There is no singular scientific community” and “Natives are a diverse population of different cultures”? Once again, then, I think Mason and his like-minded colleagues should look carefully and critically at the philosophical and theological origins of their beliefs. Native peoples whose oral traditions Mason claims to “comprehend in their own terms” using “independent methods” have a right to some serious explanation. Why is this European-derived story of an invisible world of universal essences gleaned from a disembodied mind (Descartes’ “faculty”) anything more than the faith-based invocations of a powerful cult of true believers?

To be clear, I think Native peoples, because we are constantly on the receiving end of scientists’ pious appeals to “objectivity,” have a right to expect some genuinely reflexive thinking from our scientific antagonists. How, exactly, do contemporary archaeologists and physical anthropologists understand their cultural links to the phantasms of Platonist, Cartesian, and Christian metaphysics?

Assessing the threat to “oral traditional” evidence in NAGPRA

It is clear that the future success of NAGPRA will depend on Native peoples’ ability to defend the status of our oral histories as legitimate “evidence” in disputes with

scientists. Despite the fact that Congress placed “oral traditional” evidence side by side with scientific ways of knowing in the statute, many archaeologists and physical anthropologists insist that (because of their scientific credentials) they expect to be the final judges of the value of our oral histories.⁴⁹ Never mind that the whole purpose of NAGPRA is to protect Indians from scientists. These critics have made it a priority to convince the courts that it remains their right to determine what Indians do and do not understand about our own histories.

As most readers of this book know, more than two decades after the passage of the law, only about 25 percent of the ancestors being held by federally funded institutions have been returned to the control of their closest living relatives. It is increasingly evident that there are specific institutions and even specific individuals within those institutions that are responsible for resisting the return of the approximately 120,000 deceased Natives who remain stranded in the drawers, boxes, and laboratories of these archaeologists and physical anthropologists.

Of the thirty-two institutions reporting the possession of more than 1,000 Native dead, thirty are responsible for labeling more than 73,000 as “culturally unidentifiable.” Sixteen of these museums claim that 90 to 100 percent of the ancestors in their possessions are culturally unidentifiable. Five declared a full 100 percent of those they hold to be so. Nine of the eleven institutions holding the largest numbers of bodies (each with more than 2,400) maintain that in excess of 85 percent are culturally unidentifiable. These nine museums alone are holding more than 45,000 Indian dead.⁵⁰ Given that we know where these relatives are, it is now a matter of coming together as Native peoples and allies to insist that the wishes of their closest living relatives are followed. Looking briefly at two major court cases, each of which has gone against the tribes and moved to erase the legislated importance of Native “oral traditional” evidence, can help us understand the extent of the colonial power that we will confront in the coming months and years.

In *Bonnichsen v. United States*,⁵¹ Judge Ronald M. Gould returns hostile scientists to their pre-NAGPRA position of unchecked colonial power.⁵² He permits Native ways of knowing to be reduced to objects for positivist scientists’ Platonic and Cartesian gaze. By returning the Columbia River tribes to the status of scientific specimens whose only real significance derives from anthropological narrations, the judge destroys the legislated attempt to award Native ways of knowing a small measure of equality with those of the scientists. The following rather long quote from near the end of the decision illustrates this mistake.

But evidence demonstrates that oral histories change relatively quickly, that oral histories may be based on later observation . . . and deduction (rather than on the first teller’s witnessing ancient events), and

that these oral histories might be from a culture or group other than the one to which Kennewick Man belonged. . . . [W]e conclude that these accounts are just not specific enough or reliable enough to show a significant relationship of the Tribal claimants with Kennewick man. Because oral accounts have been inevitably changed in context of transmission . . . because the value of such accounts is limited by concerns of authenticity, reliability, and accuracy . . . we do not think that the oral traditions . . . were adequate to show the required significant relationship.⁵³

This passage is then footnoted with the judge's thanks to two anthropologists who provided him with this scientific rendering of Native oral traditions. "We find of considerable help the explanations of the uses and limits on oral narratives as explained and documented with scholarly authority by amicus curiae Dr. Andrei Simic . . . and Dr. Harry Glynn Custred."⁵⁴ The footnote includes a lengthy list of accolades attesting to the anthropologists' ability to demarcate "the role of folklore and oral tradition in developing cultural identity of ethnic groups."

The tone of these passages effuses privilege. There is not a hint of self-interrogation, of reflexive self-awareness. There is zero evidence that the judge or the scholars he cites are conscious of their own cultural presumptions or their history. These are pronouncements made by and for fellow believers, for other members of the cult of value-neutral objectivity in conversation among themselves. They assume and expect that their own representations of Natives will function as ground zero reality for everyone involved. This *is* colonialism.

Of course no extra-cultural evaluation of the court's assertions is possible. Claiming to possess such a superhuman capacity is precisely the culturally derived fantasy of the judge and the "scholarly authority" he relies on. As I have tried to show, this faith descends to them from their Greek and Christian ancestors. I want, then, to advance a more modest critique. I want to consider whether these judicial and scientific narrations can stand up to their own criticisms. Imagining for a moment that the court was able to honestly apply the same criteria it invokes in its attack on Native knowing, to a consideration of the value of scientific traditions, how would the archaeologists' and anthropologists' stories fare?

Judge Gould questions the "reliability" of Native oral histories because they "have been inevitably changed in the context of transmission" and "may be based on later observation . . . and deduction (rather than on the first teller's witnessing of ancient events)." The scientists whose credentials he cites make the same criticism. "[O]rally transmitted narratives change over time to meet the evolving needs and aspirations of the people who tell them."⁵⁵

Although Natives from the Columbia River area, where the ancestor they call “the Ancient One” was found, are faulted for change and evolution in stories that are thousands of years old, do not anthropological narratives also change often, sometimes in the course of a single scholar’s lifetime? And can anyone seriously dispute that this “change over time [is] to meet the evolving needs and aspirations of the people who tell them”? Even a cursory review of the last 100 years of scientific claims about Native people shows indisputably that archaeologists and physical anthropologists have altered their “truth” over and over again, depending on cultural and political contexts. Scientists themselves do not dispute this failure of “reliability.” (Scientific reliability is the ability to obtain a consistent result when repeating a scientific investigation.)

Glancing at the first page of the first chapter of a randomly chosen introductory archaeology textbook, I found the following:

The history of archaeology is . . . in the first instance a history of ideas, of theory, of ways of looking at the past. . . . The main thing to remember is that every view of the past is a product of its own time: ideas and theories are constantly evolving. . . . When we describe the archaeological research methods of today we are simply speaking of one point on a trajectory of evolution. In a few decades or even a few years time these methods will certainly look old fashioned and out of date. This is the dynamic nature of archaeology as a discipline.⁵⁶

If scientists are allowed to change and grow, then why not Indians? Archaeologists admit that their own “ideas and theories are constantly evolving” and that their “every view of the past is a product of its own time,” but the court chastises the modern descendants of the Ancient One “because oral accounts have inevitably changed in the context of transmission.” The fact is all human understandings change, and all of our “histories [are] based on later observation . . . and deduction (rather than on the first teller’s witnessing of ancient events).” No one now living met Abraham Lincoln or was an eyewitness to anything he did or said. Despite the fact that he has only been dead for about 150 years (far from “ancient”) and that we have pictures and documents penned in his own hand, historians continue to debate and change their minds about the meaning and significance of multiple parts of his biography.

If things were reversed, if Indians had the power and felt the need to hoard important “artifacts” of early American history, the logic outlined in the court’s decision could not be relied upon to force their return to modern American citizens. Capable and determined Native lawyers could easily show that modern interpretations of earlier U.S. history are “based on later observation . . . and deduction (rather than on the

first teller's witnessing . . . events)." It would be a simple matter for Native attorneys to demonstrate that the history told and re-told by American scholars "changes relatively quickly."⁵⁷ If they could muster enough audacity, a well-paid Native legal team could argue that this obvious instability of narrative leads to "concerns of authenticity." Indians could claim that because the Americans' stories continue to change they lack "reliability" and therefore are not "adequate to show the required relationship" between contemporary Americans and their own ancestors.

The issue of "authenticity," of whether contemporary Natives are "from the same culture" as the dead ancestors that they want returned has also surfaced in a high profile court dispute between the Northern Paiute peoples and the Nevada office of the Bureau of Land Management (BLM).⁵⁸ Archaeologists desecrated ancient burials from a cave in Northern Paiute territory in 1940. Despite admitting that these dead are Native people and from the traditional lands of the Northern Paiute, the BLM refuses to return them. The scientists argue that Paiute country "shows significant cultural changes through time" and "evidence of discontinuity in material culture, settlement patterns, and subsistence strategies" over the past ten millennia.⁵⁹ To support their finding that "the culture history of the western Great Basin shows a pattern of changes in cultural adaptations . . . over the last 10,000 years," the scientists point out that the textiles found in burials in Paiute country are not static over the past 100 centuries.⁶⁰ This evolution, they claim, proves that these dead are "not the same culture" as modern day Northern Paiute.

What if George Washington's grave had been disturbed by Natives who were now arguing in court that the clothes ("textiles") he was buried in were significantly different from those found in contemporary Americans' burials? No doubt a mere 213 years since Washington's death is sufficient to show a "discontinuity in material culture." Obviously, clothing styles and grooming habits have changed. (Was Washington buried in a wig?) New materials (e.g., nylon) and new production techniques unimaginable in Washington's time are now common. Although I am not an expert on American mortuary history, I suspect that physical preparation of bodies has also evolved. What about the vessels in which the deceased were laid to rest? Are these the same now as they were in 1799 when Washington passed? What about the laws governing burials, and therefore the techniques and locations permitted then and now? (If I desire it, can I be buried, as Washington is, on my estate, i.e., in my backyard?)

It is no more difficult to prove that American "settlement patterns and subsistence strategies" are far different in the early twenty-first century than they were in 1799. In the late eighteenth century, 90 percent of the American workforce was rural farmers. Most ate what they grew and what others grew regionally. There was no refrigeration. Outside of salt, modern preservatives were unavailable. Livestock was not filled with antibiotics and there were no genetically modified organisms.

Like the Paiute and the Columbia River tribes, then, American culture also “shows a pattern of changes in cultural adaptations.” Given that this obvious “evidence of discontinuity in material culture, settlement patterns, and subsistence strategies” has occurred over barely two centuries, how is it fair to expect Natives to remain static Platonic essences for 100 centuries?

In their amicus curiae brief in support of the scientists seeking to hold and study the Columbia River tribes’ ancient ancestor, Glynn Custred Jr. and Andrei Simic register their concern for “diffusion” in oral traditions. These anthropologists maintain that “even if an element [of a Native oral history] can be associated with a specific geographic region, there is no assurance that it was not borrowed from earlier inhabitants.”⁶¹ Worse still, they argue, “North American Indian narratives also include elements and tales borrowed from European sources.”⁶² The Indians’ stories, then, “cannot be dated and are clearly the result of diffusion.”⁶³

I think this criticism of Native ways of knowing is the most ridiculous of all of the scientific “evidence” I have cited. The idea that Custred’s and Simic’s narratives are not similarly a product of “diffusion” and “borrowed” from earlier societies is ludicrous. They are writing in English! Their English words are diffused from older Greek and Latin languages. The Constitution governing their country (a fairly important element of “material culture”) is indisputably an outgrowth of the European Enlightenment and the French revolution.⁶⁴ As I have already argued, their science is an outgrowth of ancient Greek philosophy and Christian theology.

If all human societies change, evolve, and borrow from each other, then these scientists and the courts that rely on their “scholarly authority” are demanding that Indians present ourselves as the unobtainable, faith-based ideals of their own inherited desires. Despite the human impossibility of doing so, as Barker said above, we are being told to be “the Native and traditions” that the scientists demand lest they refuse to deem us “meaningful and relevant.”

After all, there has never been any “objective” place where one culture begins and another leaves off. For example, how does one decide which parts of American culture are *purely* American and which ones are contaminated (“diffused”) by the ways of earlier peoples and other societies? (Most would agree that salsa derives from south of the American border, but it is now reportedly the most popular American condiment, outselling even ketchup.) What about the differences that exist *within* American society? Are these all part of one culture or are they each distinct? Rural Georgia, where I have visited, is cultural light years away from San Francisco, where I work. But if these are distinct cultures, where should we draw the line between them? Perhaps we should use speech patterns? Political opinions? Diet? Religion? Even if we can come to agreement about these criteria, there are always more (non-objective) decisions to address. *Exactly* how must a southern

drawl be articulated before it is *authentically* Georgian, and not diffused from, say, North Carolina and Alabama?

In other words, all such decisions are arbitrary and therefore political choices. Diffusion and change among human cultures is a constant, multidirectional process and as such “cannot be dated.” Yet in the world of Custred, Simic, and the courts ruling against Natives in these two cases, cultures are static, isolated, Platonic essences that scientists with disembodied Cartesian minds can reliably and objectively assess. If Native cultures do not resemble this scientific fantasy, they are said to lack “authenticity.” As Pawnee scholar and activist James Riding In observes, “It is as if those individuals had lived in cultural isolation, having never intermarried with outsiders and having never shared their technologies, ceremonies, and worldviews with others.”⁶⁵

Again, why should anyone, except on the basis of unexamined faith, accept such goofy claims? Riding In’s observation that “this scenario is a convenient rationale devised by institutions to circumvent the reburial intentions of the repatriation laws” is a distinct possibility.⁶⁶ Another, as I have tried to argue here, is that these scientists are largely ignorant of their own intellectual history. Consequently, they seem wholly unaware that they are perpetrating what should be a ridiculously obvious double standard.

Simic and Custred assert that “the authenticity and accuracy of oral narratives can only be determined by critical analysis”⁶⁷ and that this “analysis should be as objective as possible.”⁶⁸ They warn against seeking to “justify a preconceived conclusion.”⁶⁹ If, as I claim, preconceptions are a consequence of life among humans, then it is fair and right to cast doubt on these anthropologists’ invocation of an unobtainable ideal.

One of these scholars, Custred, has a long record of working against the interests of racialized minorities. In addition to his service to the scientists working to disembowel NAGPRA, he co-authored California ballot measure 209 which outlawed state-based affirmative action programs in 1996. He also publicly endorsed Proposition 54, a 2003 measure designed to force the state to cease tracking racial inequalities.⁷⁰ In 2005, he published an attack on Mexican immigrants in the right-wing periodical, *American Spectator*. There he blamed immigrants for abusive “consumption of tax supported services . . . due to their high fertility,” charged that “illegal aliens account for 95 percent of all outstanding warrants for homicide,” and blamed them for “pushing down wages” for Americans. He also accused the Mexican government and military of complicity because ostensibly Mexican migration is “a potential means for manipulating the American political system.”⁷¹

Therefore, the history of at least one of the scholars relied upon by the Ninth Circuit Court of Appeals in its anti-Native ruling suggests that he may have “preconceived conclusions” about the status of brown and black peoples in American society.

Again, no one is “objective.” No one has ever been. I do not fault Custred for this; I fault him and his colleague for not recognizing and admitting that their scientific narratives rely on faith-based fantasy diffused to them from their own cultural ancestors.

The way forward?

Many NAGPRA-resisting members of the scientific community are fond of asserting warm and growing relationships between the tribes and their own NAGPRA-implicated institutions. Sometimes these assertions are genuine. In those instances, we can all feel some relief that great injustices are finally being honorably addressed. However, as the numbers reported above (of ancestors labeled “culturally unidentifiable” by scientists) indicate, too often this amounts to “happy talk” designed to obscure resistance to NAGPRA.

As I have tried to show, this resistance to the law is often grounded in a lack of cultural reflexivity. That is, scientists and the courts that have so far agreed with them appear incapable or unwilling to seriously examine their own cultural genealogy. They have yet to carefully consider scientific ways as cultural phenomena. Consequently, they remain unable to critically examine, or even recognize, the implications of theological and metaphysical assumptions that they have inherited from earlier generations of European intellectuals.

I think it is important that Native peoples, struggling at this moment with specific institutions for the return of their ancestors, have confidence asserting that science, although powerful, provides no supernatural access to any secrets of human existence. Despite the megalomaniacal claims of some archaeologists and physical anthropologists, they have no superhuman insight into reality. Like Natives, scientists are mere mortals, limited and enabled by their cultural histories and their humanity. Moving forward requires that they admit this.

Genuine collaboration between equals is only possible when both scientists and Natives are humble enough to recognize that our own ways of knowing are not panhuman imperatives. Despite the welcome and relatively recent inroads of “indigenous archaeology,” thus far, this self-awareness has been grossly one-sided. When scientists espouse such colonial hubris, they are not only validating the desecration of Indian dead, they are also insisting that Native peoples accept scientific agendas as the basis of our own self-understandings. They are insisting that we participate in completing our own forced assimilation. And let there be no illusions. Failing to insist on our cultural independence will further threaten our political sovereignty.

I would like to close with a suggestion for further discussion. What if Native peoples and our allies, from Alaska to Maine to Florida to Hawaii, organized some form of an electronic/technological central location where we could share and compare our experiences with specific institutions and their personnel? (When I

made this suggestion at the NAGPRA at 20 Symposium in November of 2010, one prominent archaeologist angrily compared me to Senator Joseph McCarthy hunting communists.) It seems to me that organizing ourselves in this way could allow us to identify specific problems with specific institutions that, as Natives and allies working to free Indian dead, we may have in common. At the same time, there would be no requirement that any culturally inappropriate revelations be made. All entries of information would be voluntary and explicitly “opinions.”

Sharing experiences would allow defenders of NAGPRA around the nation to identify any behavioral inconsistencies at individual institutions dealing with multiple tribes. Should consultation-based push come to legal shove, such knowledge might be useful. Sharing experiences would also allow us a way to gain some insight into the interpretations of the statute, character, and cooperativeness of specific museum personnel, before setting foot on the premises. In other words, knowing something about the quality of the relationships between other Native peoples and a museum’s staff could help us prepare our own NAGPRA claims on the same institutions.

All of this might eventually function as a kind of informal check on the behaviors of these museums. Knowing that Native peoples around the country might gain access to knowledge of ill treatment or genuine collaboration could be an incentive to behave in an honorable way. Finally, such sharing of experiences might further develop a community of intellectual and emotional support among those doing the NAGPRA work for their tribes and nations. Ultimately, this could lead, when appropriate and necessary, to political collaborations and shared strategy targeting specific museums.

Regardless of whether others think this an idea worth pursuing, I feel honored to have been asked to share my thoughts here about our responsibilities to our deceased ancestors. *Mak’laks* (Native people) and allies, please contact me if I can be of any NAGPRA related help to you. *sepk’ee’c’a* (Thanks.)

Notes

- 1 Quoted in Rebecca Tsosie and Wallace Coffey, “Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations,” *Stanford Law and Policy Review* 12 (2001): 191–210.
- 2 See Robert Berkhofer, *The White Man’s Indian: Images of the American Indian From Columbus to the Present* (New York: Random House, 1978); Phillip J. Deloria, *Playing Indian* (New Haven, CT: Yale University Press, 1998); Paige Raibmon, *Authentic Indians: Episodes of Encounter from the Late Nineteenth Century Northwest Coast* (Durham, NC: Duke University Press, 2005); and Gerald Vizenor, *Manifest Manners: Narratives on Postindian Survivance* (Lincoln, NE: University of Nebraska Press, 1994).
- 3 See Joanne Barker and Clayton Dumont, “Contested Conversations: Presentations, Expectations, and Responsibility at the National Museum of the American Indian,” *American Indian Culture and Research Journal* 30, No. 2 (2006): 111–40.

- 4 Albert Gatschet, *Contributions to North American Ethnology Vol. 2, Part 2: The Klamath Indians of Southwestern Oregon, Dictionary—Klamath-English* (Washington DC: Washington Government Printing Office, 1890), 130.
- 5 Joanne Barker, *Native Acts: Law, Recognition, and Cultural Authenticity* (Durham, NC: Duke University Press, 2011), 15.
- 6 The idea here is that there is no longer any absolute externality. Being Native is understood, in part, as being other than white. That is, the non-Native has become a ubiquitous and inevitable reference point for Native-ness. It is therefore part of the possibility of Native self-definition. And this co-determined “white/Indian” binary has been a fundamental source of self-understanding for many generations, reflecting colonial ideas about who and what Indians were and are in every American political era since contact.
- 7 See Robert Bieder, *Science Encounters the Indian: 1820-1880* (Norman, OK: University of Oklahoma Press, 1986) and *A Brief Historical Survey of American Indian Remains* (Boulder, CO: Native American Rights Fund, 1990); Tsosie and Coffey, “Rethinking the Tribal”; Alice Kehoe, *The Land of Prehistory: A Critical History of American Archaeology* (New York: Routledge, 1998); Nancy Parezo and Don D. Fowler, *Anthropology Goes to the Fair: The 1904 Louisiana Purchase Exposition* (Lincoln, NE: University of Nebraska Press, 2007); Laurajane Smith, *Archaeological Theory and the Politics of Cultural Heritage* (New York: Routledge, 2004); Rebecca Tsosie, “Indigenous Rights and Archaeology” in *Native Americans and Archaeologists*, Nina Swidler and Kurt E. Dongoske et al., eds. (Walnut Creek, CA: Alta Mira Press, 1997), 64–76.
- 8 Douglas Cole, *Captured Heritage: The Scramble for Northwest Coast Artifacts* (Norman, OK: University of Oklahoma Press, 1985); James Riding In, “Repatriation: A Pawnee’s Perspective,” *American Indian Quarterly* 20, No. 2 (1996): 238–50; Michael Wilcox, “Dialogue or Diatribe?: Indians and Archaeologists in the Post-NAGPRA Era” in *Spirit Wars: Native North American Religions in the Age of Nation Building*, Ronald Niezen, ed. (Berkeley, CA: University of California Press, 2000), 190–93.
- 9 Tomas Almaguer, *Racial Fault Lines: The Historic Origins of White Supremacy in California* (Berkeley, CA: University of California Press, 1994); James Davis, *Who is Black: One Nation’s Definition* (University Park, PA: University of Pennsylvania Press, 1991); Carl Degler, *Neither Black Nor White: Slavery and Race Relations in Brazil and the United States* (Madison, WI: University of Wisconsin Press, 1971); Cheryl Harris, “Whiteness as Property,” *Harvard Law Review* 106, No. 8 (1993): 1710–91; Michael Omi and Howard Winant, *Racial Formation in the United States: 1960s to the 1990s* (New York: Routledge, 1994).
- 10 Vizenor, *Manifest Manners*.
- 11 J. Kehaulani Kauanui, *Hawaiian Blood: Colonialism and the Politics of Sovereignty and Indigeneity* (Durham, NC: Duke University Press, 2008); Kimberly Tallbear, “DNA, Blood, and Racializing the Tribe,” *Wicazo Sa Review* 18, No. 1 (2003): 81–108.
- 12 Robert Warrior, *Tribal Secrets: Recovering American Indian Intellectual Traditions* (Minneapolis: University of Minnesota Press, 1995).
- 13 House Concurrent Resolution 108 passed in 1953. It “terminated” the federal recognition of more than 100 tribes and 11,000 Natives.
- 14 Barker, *Native Acts*, 21–22.
- 15 Jon Daehnke and Amy Lonetree, “Repatriation in the United States: The Current State of the Native American Graves Protection and Repatriation Act,” *American Indian Quarterly* 35, No. 1 (2011): 87–97; Clayton Dumont, “Contesting Scientists’ Narrations of NAGPRA’s Legislative History: Rule 10.11 and the Recovery of ‘Culturally Unidentifiable’ Ancestors,” *Wicazo Sa Review* 26, No. 1 (2011): 5–42; James Riding In, “Decolonizing NAGPRA,” in

For Indigenous Eyes Only: A Decolonization Handbook, Angela Wilson and Michael Yellow Bird, eds. (Santa Fe, NM: School for Advanced Research Press, 2005), 53–66; and “Graves Protection and Repatriation: An Unresolved Universal Human Rights Problem Affected by Institutional Racism,” in *Human Rights in Global Light: Treganza Museum Anthropology Papers* 24–25, Mariana L. Ferreira, ed. (2007–08): 37–42.

16 Barker, *Native Acts*.

17 Tamara Bray, “Repatriation and Archaeology’s Second Loss of Innocence: On Knowledge, Power, and the Past,” in *Opening Archaeology: Repatriation’s Impact on Contemporary Research and Practice*, Thomas Killion, ed. (Santa Fe, NM: School for Advanced Research, 2008), 79–90; Kehoe, *The Land of Prehistory*; Smith, *Archaeological Theory*; Larry Zimmerman, “Multivocality, Descendant Communities, and Some Epistemological Shifts Forced by Repatriation” in *Opening Archaeology*, Killion, ed., 91–108.

18 Laurelyn Whitt, *Science, Colonialism, and Indigenous Peoples: The Cultural Politics of Law and Knowledge* (New York: Cambridge University Press, 2009), 219.

19 This is also why Barker places the phrase “western ideology” in quotation marks in the first passage I cited: “I do not believe that there is an authentic tradition to be revitalized from a past that transcends ‘Western Ideology.’”

20 Lorraine Daston and Peter Galison, *Objectivity* (New York: Zone Books, 2007).

21 Bray, “Repatriation and Archaeology’s,” 81; See also Ann Kakaliouras, “An Anthropology of Repatriation: Contemporary Physical Anthropological and Native American Ontologies of Practice,” *Current Anthropology* 53, No. 5 (2012): 210–221. Apparently equally frustrated, Kakaliouras observes that “counter to the hopes of indigenous archaeologists and their allies” twenty years of experiences with repatriation by archaeologists and physical anthropologists have not “transformed the basic positivistic and universalist premises with which these sciences operate,” 212.

22 At the time it was authored, these “individual” rights applied only to white men who owned property.

23 Quoted in Irving Zeitlin, *Ideology and the Development of Sociological Theory* (Saddle River, NJ: Prentice Hall, 1997), 84.

24 *Ibid.*, 85.

25 *Ibid.*, 84–85.

26 *Ibid.*, 87.

27 Clayton Dumont, “Toward A Multicultural Sociology,” *Teaching Sociology* 23, No. 4 (1995): 307–20, “The Analytical and Political Utility of Poststructuralism: Considering Affirmative Action,” *Canadian Journal of Sociology* 23, Nos. 2–3 (1998): 217–37, *The Promise of Poststructuralist Sociology: Marginalized Peoples and the Problem of Knowledge* (Albany, NY: SUNY Press, 2008); Russell Ferguson and Martha Gever et. al., *Out There: Marginalization and Contemporary Cultures* (Cambridge, MA: MIT Press, 1990); Sandra Harding, *The Science Question in Feminism* (Ithaca, NY: Cornell University Press, 1986), *Feminism and Methodology*, ed. (Bloomington, IN: Indiana University Press, 1987), *Is Science Multicultural? Postcolonialisms, Feminisms, and Epistemologies* (Bloomington, IN: Indiana University Press, 1998); Susan Hekman, *Gender and Knowledge: Elements of a Postmodern Feminism* (Boston: Northeastern University Press, 1990); Patricia Hill-Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Boston: Unwin-Hyman, 1990); Paul Hirst and Penny Woolley, *Social Relations and Human Attributes* (New York: Tavistock Publications, 1982); Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy* (London: Verso, 1985); Michael Mulkay, *Sociology of Science: A Sociological Pilgrimage* (Bloomington, IN: Indiana University Press, 1990); Steven Seidman, *The Postmodern Turn*

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- 28 Stephen Silliman, "The Value and Diversity of Indigenous Archaeology: A Response to McGhee," *American Antiquity* 75, No. 2 (2010): 217–20, 219.
- 29 Michael Wilcox, "Saving Indigenous People From Ourselves: Separate But Equal Archaeology is Not Scientific Archaeology," *American Antiquity* 75, No. 2 (2010): 221–27, 223.
- 30 Chip Colwell-Chanthaphonh and T.J. Ferguson, "Introduction: The Collaborative Continuum," in *Collaboration in Archaeological Practice: Engaging Descendant Communities*, Chip Colwell-Chanthaphonh and T.J. Ferguson, eds. (New York: Alta Mira, 2008), 14. See also: Sonya Atalay, "Indigenous Archaeology as Decolonizing Practice," *American Indian Quarterly* 30 (2006): 280–310 and "Community Based Participatory Research: Methods and Applications for Archaeological Collaboration," presented at the annual meeting of the Society for American Archaeology (2008); Bray, "Repatriation and Archaeology's"; Chip Colwell-Chanthaphonh, "Opening America's Skeleton Closets," *Denver Post*, May 9, 2010, <http://www.denverpost.com/opinion/ci>; Jon Daehnke, "A Strange Multiplicity of Voices: Heritage Stewardship, Contested Sites, and Colonial Legacies on the Columbia River," *Journal of Social Archaeology* 7, No. 2 (2007): 250–75; Alan Goodman, "Racializing Kennewick Man," *American Anthropology Association Newsletter* 38, No. 7 (1997): 3–5; Dorothy Lippert, "In Front of the Mirror: Native Americans and Academic Archaeology," in *Native Americans and Archaeologists*, Swidler and Dongoske et al., eds., 120–27; Larry Zimmerman, "A New and Different Archaeology," *American Indian Quarterly* 20, No. 2 (1996): 297–307, "Public Heritage, A Desire for a 'White' History of America, and Some Impacts on the Kennewick Man/Ancient One Decision," *International Journal of Cultural Property* 12 (2005): 265–274, and "Multivocality, Descendant Communities, and Some Epistemological Shifts Forced by Repatriation."
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- 36 Ibid., 608.
- 37 Ibid., 607.
- 38 Ibid.
- 39 Mason, *Inconstant Companions*, 9.
- 40 Ibid., 2.
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- 42 Ibid., 6.
- 43 See generally, "Symposium on the Social History of Objectivity," *Social Studies of Science* 22 (1992).
- 44 Daston, "Baconian Facts"; Daston, *Objectivity*; See also Lorraine Daston and Peter Galison, "The Image of Objectivity," *Representations* 40 (1992): 81–128.
- 45 Descartes, "Meditations on," 24.
- 46 Ibid., 37–38.
- 47 Ibid., 48.
- 48 Mason, *Inconstant Companions*, 97.
- 49 Peter Jones, *Respect for the Ancestors: American Indian Cultural Affiliation in the American West* (Boulder, CO: Bauu Institute Press, 2005); Stephen Ousley, William Billeck, and Eric Hollinger, "Federal Repatriation Legislation and the Role of Physical Anthropology in Repatriation," *Yearbook of Physical Anthropology* 48 (2005): 2–32; Andrei Simic and Harry G. Custred Jr., Motion for Leave to File Brief of Amicus Curiae in Support of the Plaintiff-Appellees. *Bonnichsen vs. United States Nos. 02-35996* (2004): District Court No. 96-1481 (D.Or.).
- 50 Lauren Miyamoto, public presentation at NAGPRA Review Committee Meeting (November 19, 2010, Washington DC). These nine institutions are, in descending order, starting with those holding the largest number of ancestors: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley; Peabody Museum of Archaeology and Ethnology at Harvard University; Ohio Historical Society; Illinois State Museum; University of Alabama Museums, Office of Archaeological Services; University of Kentucky, William S. Webb Museum of Anthropology; University of Tennessee, Knoxville, Frank H. McClung Museum; University of Missouri, Columbia; University of Tennessee, Knoxville, Department of Anthropology. (If the two University of Tennessee units are combined, they rank 4th in the number of deceased Indians held.)
- 51 Robson Bonnichsen et al. vs. United States of America et al., and the Confederated Tribes of the Colville Reservation, et al. (2004): United States Court of Appeals for the Ninth Circuit No. 02-35994, D.C. No. CV-96-01481-JE.
- 52 Walter Echo-Hawk, "Testimony Before the United States Senate Committee on Indian Affairs," July 28, 2005.
- 53 *Bonnichsen*, 1607.
- 54 Ibid., n.23: 1607.
- 55 Simic and Custred Jr., Motion for Leave, 3.
- 56 Colin Refrow and Paul Bahn, *Archaeology: Theories and Methods* (New York: Thames and Hudson, 2005), 19. As part of some very helpful criticism, an anonymous reviewer of an earlier draft of this chapter suggested that my illustration of the instability of archaeological truth is much like the claim advanced by Vine Deloria Jr. in *Red Earth, White Lies: Native Americans and the Myth of Scientific Fact* (Golden, CO: Fulcrum Publishing, 1997). Like all

Native academics I owe a great debt to Professor Deloria, whom I never had the high honor of meeting, but I am not a fan of this particular book. At least as I read, he seems to be saying there that archaeologists are simply wrong. This is not my claim, at all. Rather I am arguing that scientific selves and self perceptions, desires and questions, methods and interpretations, are of an extended cultural genealogy originating in Europe and its cultural histories. Although a source of powerful explanations, there is therefore no pan-human reason to assume that archaeologists' desires and questions are relevant for living well on the earth. Arguing "truth" with archaeologists, then, is not wholly unlike pagans entering a church to debate scripture with fundamentalist Christians. Indeed, I remember that my concern as I turned the pages of *Red Earth, White Lies* was that it could be read as implying that more research could determine who was right.

- 57 There are now more than 14,000 published biographies of Lincoln. One scholarly documentation of his malleability through time is Barry Schwartz, *Abraham Lincoln in the Post-Heroic Era: History and Memory in Late Twentieth-Century America* (Chicago: University of Chicago Press, 2008).
- 58 Fallon Paiute-Shoshone Tribe v. United States Bureau of Land Management, United States District Court for the District of Nevada (2006).
- 59 Pat Barker, Cynthia Ellis, and Stephanie Damadio, "Summary of the Determination of Cultural Affiliation of Ancient Remains From Spirit Cave, Nevada" (Bureau of Land Management Nevada Office, July 26, 2000).
- 60 Ibid., 97.
- 61 Simic and Custred Jr., Motion for Leave, 28.
- 62 Ibid.
- 63 Ibid., 32.
- 64 The evidence is strong that the U.S. Constitution and its precursors (The Albany Plan of 1754 and the Articles of Confederation) were in part modeled after the governance structure found among the Six Nations. In other words, American governance is at least partly diffused from Native tradition. David Wilkins, *American Indian Politics and the American Political System* (New York: Rowman and Littlefield, 2007), 129–130; Vine Deloria Jr., "Anthros, Indians, and Planetary Reality" in *Indians and Anthropologists: Vine Deloria Jr. and the Critique of Anthropology*, Thomas Biolsi and Larry Zimmerman, eds. (Tucson, AZ: University of Arizona Press, 1997), 217.
- 65 Riding In, *Graves Protection*, 39.
- 66 Ibid.
- 67 Simic and Custred Jr., Motion for Leave, 3.
- 68 Ibid., 11.
- 69 Ibid.
- 70 Justin Jones, "Prop 209 Co-Author Glynn Custred Endorses Prop 54," *Free Republic*, 2003, accessed June 28, 2010, <http://www.freerepublic.com/focus/f-news/971051/posts>.
- 71 Glynn Custred, "Where are My Juice and Crackers?" *The American Spectator* (July/August, 2005), 2.