CULTURE, CONFLICT, AND HUMAN REMAINS: A COMPARATIVE CASE STUDY OF AMERICAN INDIAN AND AMERICAN MAINSTREAM CULTURE

by

Rebecca Jane Nelson

A thesis submitted to the faculty of
The University of Utah
in partial fulfillment of the requirements for the degree of

Master of Science

Department of Communication

The University of Utah

August 2013

The University of Utah Graduate School

STATEMENT OF THESIS APPROVAL

The following faculty members served as the supervisory committee chair and members for the thesis of Rebecca Jane Nelson.

Dates at right indicate the members' approval of the thesis.

James Anderson, Chair	04/24/2013 Date Approved
Danielle Endres, Member	04/24/2013 Date Approved
Dennis O'Rourke, Member	04/24/2013 Date Approved

The thesis has also been approved by Kent Ono, Chair of the Department of Communication, and by Donna M. White, Interim Dean of The Graduate School.

ABSTRACT

Limited coverage has been given to comparative studies involving the nature of cultural discourse between American Indians and American mainstream society. This thesis compares two incidents of American Indian and American mainstream discourse involving rare similar circumstances and substantially different outcomes.

In 1996, two sets of ancient remains were discovered, one eroding out of the banks of the Columbia River, in Kennewick, Washington, and one discovered during a cave exploration on Prince Wales Island, Alaska. The remains discovered in Kennewick became the focus of an almost decade long battle between a group of eight scientists and the landowners, the Army Corps of Engineers (USACE), which had denied the scientists access to study the remains. USACE, representing tribal interests, wished to repatriate the remains to five tribes who had submitted a claim of ownership. After years of dispute, the federal district court held that the remains were not Native American and therefore fell under the Archaeological Resource Protection Act (ARPA) making them a cultural resource, and granted the scientist plaintiffs the right to study the remains. The 9th Circuit court of Appeals upheld the District Court's opinion.

In contrast, the agreement by tribes to support study of the remains discovered at On Your Knees Cave in Alaska faced a 2-week discussion of government officials, interested scientists, and Alaska tribes. All agreed on a plan of scientific study and excavation of the site. Twelve years later, after all requested analysis had been

completed, a coalition of interested tribes filed a claim of ownership, and in 2008 the remains were repatriated and reburied.

The research question of this thesis was simple: What role did culture play in these two events, and, if it played a significant part, how did culture affect the resulting escalation and de-escalation of conflict.

This thesis explores the impact of culture, specifically, differences in cultural element placement, priority, and privilege that led to the disparate amounts of conflict.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

This research would not be possible but for the help of Jim Anderson, the chair of my committee. His guidance, encouragement, and support made the completion of this thesis and the completion of my degree possible. He never gave up on me. I cannot express enough appreciation for his dedicated help. My brother, Greg Nelson, also provided invaluable assistance, not only in editing this thesis, but also in untangling my thought processes whenever I called and needed a sounding board. Without his help I would still be trying to prove the impossible. I would also be remiss if I didn't offer my sincere thanks to Dennis O'Roarke who stepped in at the last minute and provided a needed perspective. Finally, I am grateful to my friends and family who have supported me throughout my graduate process, especially my parents, whose support I am lucky to never have done without. Thank you, Mom and Dad.

CHAPTER 1

INTRODUCTION

Limited coverage has been given to comparative studies involving the nature of cultural discourse between American Indians and American mainstream society. This thesis compares two incidents of American Indian and American mainstream discourse involving rare similar circumstances and substantially different outcomes.

The conflict surrounding what has become popularly known as the Kennewick man remains reached almost a decade in duration, and was marked by years of legal battles between eight scientists who wished to gather scientific data from the remains and the federal government, representing the interests of five claimant tribes that wished to see the remains reburied without scientific testing.

In contrast, far less well known is the incident involving remains uncovered during the On Your Knees Cave (OYKC) exploration and excavation, part of the Southern Alexander Archipelago of Alaska. Discovered 2 weeks earlier than the remains found near the Columbia River, the discourse regarding the disposition of the remains lasted 2 weeks, the scientific study performed by the scientists lasted 12 years, with conflict virtually nonexistent.

This thesis explores the impact culture might have had upon the two events, specifically differences in cultural element placement, priority, and privilege that led to

the disparate amounts of conflict.

1.1 Kennewick, Washington

On July 28, 1996 two young men discovered a skull washing out of the Columbia river in Kennewick, Washington. The Benton County Sheriff's Department retrieved the skull and called Floyd Johnson, coroner of Benton County, Washington to analyze the remains for a potential crime scene. Unable to determine if the remains were those of an "old Indian," or the result of a more recent pioneer death, he called James Chatters, an archaeologist consultant who served as a forensic anthropologist in situations when the coroner could not distinguish ancient remains from more recent deaths (Chatters, 2001, p. 20). Coroner Johnson brought the skull to Chatters that evening in "a drawstring plastic bag from a clothing store" and after examining the skull Chatters stated, "the characteristics were consistent with my initial sense that this was a white person, a Caucasian" (Chatters, 2001, p. 20).

Chatters and the police then went back to the site and gathered the rest of the remains amidst scattered debris,

> …rusted and crusted with sand—horseshoes, square and round nails, glass shard, bits of ceramic dinnerware, sawed bones, and the skulls of sheep and deer—the kind of trash typically found near homesteads of the late nineteenth and early twentieth centuries. (2001, pp. 26-27)

Based upon the physical characteristics of the skull that indicated to Chatters the remains were Caucasoid rather than Native American, and its association with historic debris found near the site, Chatters' preliminary determination of identification was "possible pioneer homesteader" (Chatters, 2001, pp. 26-27). As this determination cleared up the possibility of a recent crime scene and as the acting forensic

anthropologist, he took possession of the remains for further study.

The next day a report appeared in the Tri-City Herald, headlined: Skull Found on the Shore of Columbia (Stang, 1996). Within hours, Ray Tracy, archaeologist with the Walla Walla district, U.S. Army Corps of Engineers, contacted Chatters to ascertain if the remains were American Indian.

The Army Corps of Engineers (USACE), federal agency landowners of Columbia Park where the remains were found, had been contacted by Armand Minthorn, a tribal representative of the Confederated Tribes of the Umatilla Reservations, requesting repatriation of the remains. If the remains were Native American they were subject to the Native American Graves Protection and Repatriation Act (NAGPRA) and USACE was responsible for following the consultation and repatriation process it outlined.

NAGPRA, federally passed in 1990, provides a process for museums and federal agencies to return Native American cultural items such as human remains, funerary objects, sacred objects, and objects of cultural patrimony, to lineal descendants and culturally affiliated Indian tribes. NAGPRA includes provisions for unclaimed and culturally unidentifiable Native American cultural items, intentional and inadvertent discovery of Native American cultural items on federal and tribal lands, and penalties for noncompliance and illegal trafficking. All federal agencies are considered subject to NAGPRA and are required to consult with tribes upon all cases of potential repatriation (25 U.S.C. §3001(2),1994).

Unwilling to give Tracy an answer without more study and observation, Chatters (2001) stated he would contact Tracy when he knew for sure the race of the remains. Chatters and Tracy discussed the possibility of radiocarbon dating and DNA analysis, as

well as additional visual examination of the remains to help with identification.

Upon further analysis, Chatters discovered a foreign object embedded in the bone of the pelvis, and employed a local hospital to use their X-ray. From the X-ray Chatters determined the object was a cascade point, a stone arrow that dates from 5,000 to 9,000 years ago.

At this point, Chatters felt the evidence pointed in opposite directions. The physical features of the skull and the debris found near the discovery site indicated the remains were that of an early historic pioneer; however the spear point suggested Paleo-Indian origin with a much earlier source date. Chatters (2001) faced a dilemma if the remains were ancient; the spear might be evidence of early interpersonal conflict but also affirm Native American ancestry, and per NAGPRA, Chatters was afraid local tribes would claim and rebury the remains without further study.

Chatters decided his best course of action would be to radio-carbon date the remains which would determine their age with accuracy. If, however, the date came back as post-Columbus, Chatters felt he would be berated by the interested tribes so he placed a call to the USACE representative, Ray Tracy, to get approval. Tracy (USACE) agreed with Chatters request and stated, “it looks to me like the progression of analysis is going as it should, with care and sensitivity” (2001, p. 47).

On August 26, 1996 the radio-carbon date test results returned with a date of 9,500 years old.

On August 29, 1996 the mayor of the city of Kennewick held a press conference and asked Chatters to speak to the press about the discovery. No tribal members or USACE representatives were asked to attend the press event (Chatters, 2001).

Two days after the press conference, USACE ordered Benton County to stop all analysis and "transport the remains to a secure place," pending review and consultation with tribes. Chatters, having garnered the interest of the Smithsonian Museum, was in the process of transferring the remains to them. However, they were removed from Chatters' possession against his vehement objections.

> My excitement at the prospect of contributing so substantially to the body of knowledge about America's past was overshadowed by my realization that there would be precious little opportunity to study this exciting discovery...[NAGPRA] was being used by the Indian tribes to reclaim all ancient human skeletons, regardless of their age and often with little or no opportunity allowed for scientific investigation. Because the age meant that Kennewick man was not a pioneer, by process of elimination he would be assumed to be Indian. (Chatters, 2001, p. 54)

USACE had halted plans to relocate the remains to the Smithsonian Institution for further study once members of the Confederated Tribes of the Umatilla Indian Reservation [CTUIR], the Confederated Tribes of the Colville Reservation, the Yakama Nation, the Nez Perce Tribe, and the Wanapum Band, protested the initial lack of consultation regarding the remains (Burke, 2008; Chatters, 2000).

Once USACE took possession of the remains, numerous meetings were held with interested tribes, most of whom wished the remains immediately reburied. The exception was the Colville tribe. The Confederated Tribes of the Colville Reservation had a relationship with Chatters and had hired him for previous work with remains discovered on tribal land and other issues. The Colville tribe was in favor of allowing scientific study, but requested the remains be reburied after analysis was complete. The meetings included tribal council members, USACE representatives, and County and city representatives (Chatters, 2001).

On September 9, 1996, a tribal coalition consisting of the Umatilla, Colville,

Yakama, Nez Perce, and Wanapum Band, filed a claim of repatriation for the remains under NAGPRA.

Arnold Minthorn, tribal representative and member of the governing tribal council for the Umatilla, a tribe interested in repatriating the remains, gave a statement to USACE, local government leaders, and Chatters.

> Scientists and others want to study this individual. They believe that he should be further desecrated for the sake of science, and for their own personal gain. The people of my tribe, and four other affected tribes, strongly believe that the individual must be re-buried as soon as possible. My tribe has ties to this individual because he was uncovered in our traditional homeland… Scientists have dug up and studied Native Americans for decades. We view this practice as desecration of the body and a violation of our most deeply-held religious beliefs. Today thousands of native human remains sit on the shelves of museums and institutions, waiting for the day when they can return to the earth, and waiting for the day that scientists and others pay them the respect they are due. Our tribal policies and procedures, and our own religious beliefs, prohibit scientific testing on human remains. (Minthorn,1996, n.p.; Burke, 2008, p. 42)

Upon receipt of the official claim USACE stopped all scientific study and declared their intent to repatriate the remains to the tribal coalition, per a determination of the cultural affiliation for the tribal coalition claimants and the remains (Burke, 2008).

In response to USACE's notice of intent to repatriate, Congressman Hastings intervened at the request of Chatters and Doug Owsley, Curator of the Smithsonian Museum. Congressman Hastings requested USACE "postpone action until the origins are determined conclusively or until Congress has the opportunity to review this important issue" (Chatters, 2001, p. 90). Also, in an attempt to persuade the Umatilla tribe to allow more scientific testing, Owsley and Dennis Stanford, the chairman of the Smithsonian's Anthropology Department, contacted the tribal coalition members in a letter requesting their support "to conduct nondestructive studies…We offered to work closely with them and include them in any announcements that were to be made. We

sent the letter off in October and got no response" (Chatters, 2001, p. 97).

On October 16, 1996, after being denied their requests for testing by USACE, and determining they had no other recourse, eight anthropologists—Robson Bonnichsen, C. Loring Brace, George W. Gill, C. Vance Haynes, Jr., Richard L. Jantz, Douglas Owsley, Dennis J. Stanford, and D. Gentry Steele—filed suit in federal court requesting intervention to hold the repatriation and allow further study (Chatters, 2001).

Bonnichsen et al. argued that USACE did not prove with scientific certainty the remains were Native American, nor did USACE adequately prove cultural affiliation with the claimant tribal coalition. The plaintiffs argued both were required for NAGPRA to apply. Bonnichsen et al. also expressed concerns about the physical curation of the remains, claiming the remains were not receiving proper curation care.

In response to the Bonnichsen et al. suit, the Asatru Folk Assembly, an organization following a traditional Norse religion also filed suit, arguing that if the remains were Caucasian, the Asatru wished to claim cultural affiliation (Burke, 2008).

Magistrate Jelderks, the District Court Judge assigned to the case, stayed the repatriation and requested USACE respond to the plaintiffs' concerns.

In spring 1998, USACE answered the concerns of Bonnichsen et al. regarding care of the remains. As Bonnichsen et al. feared the remains were improperly housed and American Indian ceremonies were being conducted upon the remains thus diminishing their scientific value, Bonnichsen et al. requested such ceremonies be stopped. USACE reported five tribal ceremonies were conducted with the remains, and then presented evidence from a consultant conservator who verified the presence of ashes and cedar twigs. USACE defended their actions against the plaintiffs' claims of 'improper care' per

their obedience to the NAGPRA consultation policy. As part of a claim of ownership "the consulting claimant tribe or tribes make recommendations as to how the remains will be handled, what types of analysis will be permitted, if any, and the final disposition of the remains, including repatriation and/or burial" (Dongoske, 1996, p. 289).

Mediation sessions on curation concerns were held; however resolution was not reached, and in September 1998, having reviewed the adequacy of USACE's curation protocols, the Court ordered the remains moved to the Thomas Burke Memorial Washington State Museum at the University of Washington in Seattle for safekeeping.

Having made personal promises to the tribal coalition that no further study would be conducted on the remains and feeling they could no longer keep that promise, commanders at USACE turned the remains over to the Department of the Interior (DOI) to finish the NAGPRA process and requests of the Court (Chatters, 2001).

Per order of the District Court, the DOI presented a multiphase study plan but declared only nondestructive examinations would be conducted. The DOI presented the Court with a team of federally selected anthropologists, none of whom were plaintiffs (Burke, 2008).

Responding to the concern of the plaintiffs regarding a determination of the race of the remains, the DOI announced that per their age, 9,300 years old, the remains were Native American under NAGPRA, as "anyone who died on this continent more than 500 years ago is Native American" (Babbitt, 2000, n.p.). Shortly after this announcement the Asatru Fold Assembly withdrew from legal proceedings.

The DOI then continued study of the remains employing archaeological, ethnographic, linguistic, biological, genetic, and historical data gathering exercises, as

well as gathering traditional stories from the five tribes who filed claim (Ames, 2000; Boxberger, 2000; Fagan, 1999; Hackenberger, 2000; Huckleberry & Stein, 1999; Hunn, 2000; Kaestle, 2000; McManamon, Roberts, & Blades, 2000(a)(b); Merriwether & Cabana, 2000; Powell & Rose, 1999; Smith, 2000; Smith, Malhi, Eshleman, & Kaestle, 2000; Taylor, 2000; Walker, Larsen, & Powell, 2000). These efforts were made to determine cultural affiliation, as per required by NAGPRA. The five tribes laying claim to the remains strongly opposed the DOI decision to proceed with further DNA analysis arguing it required additional destruction of the remains and DNA testing would prove nothing more than that the remains were Native American.

Despite these protests, the DOI continued DNA testing in three different labs, all of which were unable to obtain results. The Yakama Nation, one of the five claimant tribes, then filed a motion to intervene as defendants in the lawsuit, but were denied as Magistrate Jelderks ruled the Yakama Nation had waited too long.

In September 2000 the DOI completed its studies regarding cultural affiliation. They found the remains should be repatriated to the claimant tribes as geography and oral tradition establish "a reasonable link between these remains and present-day Indian tribe claimants" (Babbitt, 2000, n.p.). In response, Bonnichsen et al. filed an appeal against the DOI's decision.

In August 2002, after 6 years of legal proceedings, Magistrate Jelderks ruled that the DOI was incorrect in its determination that Kennewick man was Native American, and cited geography and oral tradition as unpersuasive evidences. And, as the remains were therefore not Native American, the remains were to be treated as an archaeological resource under the terms of the Archaeological Resources Protection Act (ARPA) which

mandates “full scientific study and curation in the pursuit of knowledge in the interests of all citizens of the United States” (Burke, 2008, p. 35). Magistrate Jelderks ordered the remains turned over to Bonnichsen et al.

The DOI filed an appeal, as did the five claimant tribes with the 9th Circuit Court of Appeals. In February 2004, the 9th Circuit Court upheld the District Court’s ruling that, under the definition of Native American according to NAGPRA, there must be a persuasive link between remains and a modern day tribe to qualify as Native American. Instead, the Court determined the remains of the man fell under the auspices of the Archaeological Resources Protection Act (ARPA), the purpose of which is “to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands…” [16 U.S.C. 470aa (b)]. The remains of the man, now considered an archaeological resource, were granted to the plaintiff scientists who challenged the Department of the Interior’s decision to repatriate the remains to the five claimant tribes.

Rather than risk a trial with the Supreme Court, the DOI and the five claimant tribes determined to appeal to Congress and make specific changes to NAGPRA that would make all human remains, no matter the age (beyond 500 years) Native American under the Act. At this time (2013) three attempts have been made to change the statute, but as yet, the change has not occurred.

1.2 On Your Knees Cave Project, Alaska

On July 4, 1996, 2 weeks before the remains in Kennewick, Washington were discovered, researchers and spelunkers who were documenting and mapping the hundreds of caverns and fissures that riddle the limestone bedrock of the many islands in

the Southern Alexander Archipelago in Alaska, called the On Your Knees Cave Project, found several artifacts lying near "a jaw broken in two, partial ribs, some vertebrae, teeth and a broken pelvis" (Riley, 2006, n.p.). The excavation team halted work and contacted Terry Fifield, Forest Service Archeologist for Alaska's Prince of Wales Island, who was responsible for upholding NAGPRA for the Forest Service in the area and facilitated the disposition of recovered human remains (Riley, 2006, n.p.).

Before working for the Forest Service, Terry Fifield had worked for some years at the Alaska Native Claims Settlement Act Project Office on behalf of Native corporations (American Indian tribes in Alaska) to record key historical sites and cemeteries, as well as interviewing native elders in nearby villages. Over the years, Fifield became increasingly involved in consulting with southeast Alaska tribes and the U.S. Forest Service, and whenever artifacts or remains were discovered in or around Klawock, AK or in one of the nearby caves, he treated it as likely belonging to "one of his neighbor's ancestors" (Thomas, 2000, p. 270). Fifield regularly attended local tribal council meetings and made it his personal policy to share the day of discovery all information about archaeological investigations and discoveries he was responsible for (Thomas, 2000).

Fifield arrived on site the day after discovery, and confirmed the presence of human remains. The next day he contacted the presidents of the Klawock Cooperative Association and the Craig Community Association, the two local tribal authorities, and with the help of the Central Council of the Tlingit and Haida Tribes of Alaska, he invited representatives of the Tribal Councils of Klawock, Craig, Kake, and Hydaburg to a meeting to consult with the Forest Service regarding the disposition of the remains.

Next, Fifield put in a call to James Dixon, forensic anthropologist at the Denver Museum of Natural History, who studies ancient southeast Alaska anthropology. Fifield informed Dixon of the discovery and asked if he would be interested in submitting a research plan that Fifield could present to tribes for consideration. Dixon was extremely interested and within a day or two provided Fifield with a study proposal (personal interview, 2013).

When discussions began with tribal leaders, some said the excavations should stop, that the remains should go back where they had been found. Other tribal leaders expressed concerns that increased public interest in the caves due to further excavation would pose a threat to the sacred sites of the Tlingit and Haida nations. Yet others expressed concerns the remains were very recent and directly related to "someone in town" (personal interview, 2013).

After consulting with Fifield, and being presented with two plans, one detailing an immediate reburial and the other being the scientific study plan put forward by James Dixon, tribal leaders and members indicated a curiosity about the remains and questioned the propriety of stopping excavations without further identification. Eventually they agreed that the potential increase in knowledge about their oldest ancestors overcame other concerns (Thomas, 2000). "In the end," says Fifield, "the weight of curiosity...about this person's culture and environment carried the day" (Sealaska Heritage Institute, 2005, n.p.).

On July 11, 1996 a week after the human remains had been discovered, the Klawock Cooperative association (tribal government of Klawock) unanimously approved a resolution supporting further analysis of the artifacts and human remains already

recovered. They also authorized additional excavations, requesting that they be kept informed of new finds. The next day, the Craig Community Association approved a similar resolution with the additional request of reviewing all media releases before they were published (Thomas, 2000).

Samples of the remains were submitted for radiocarbon dating, and the mandible returned a radiocarbon date of 9,730 years, with fragments of the pelvis being dated to 9,880 years ago. The two dates were adjusted for the presence of certain carbon isotopes, and recommend a corrected age of 9,200 years. This date makes the OYKC Project remains the "oldest reliably dated the human remains ever found in Alaska—or all of Canada" (Thomas, 2000, p. 272).

For the next several summers teams of archaeologists and volunteers recovered an extensive record of ancient life in the area. They found the remains belonged to a man in excellent health that died at the age of about 23, and additional isotope analysis of the remains showed that the main portion of his diet came from the sea (Rozell, 2001; Thomas, 2000).

In 2008, after 12 years of study, the remains excavated from On Yours Knees Cave were reburied with a 2-day festival "celebrated by Tlingit, scientists, and bureaucrats" (Lawler, 2010, p. 171).

1.3 Controversy

The Kennewick and OYKC Project events are remarkably similar in many ways: both have comparable stakeholders—government, tribes, and scientists—and both events have similar objects at the center of the conflicts—9,000- and 10,000-year-old human remains. Both occurred concurrently, and in terms of the scientists' agenda, had much

the same results.

However, the two events manifested in dramatically different ways, one taking almost a decade to resolve as well as costing parties millions of dollars, while the conflict surrounding the other event resolved itself within a few weeks, with no apparent cost, financial or otherwise.

Some research suggests a history of fostered collaboration between United States Department of Agriculture (USDA) Forest Service and the local Tribes made the difference,

> The Tongass Forest and Kennewick cases define two pathways along which archaeologists, agency officials, and Indians interact. On Prince of Wales Island, where an infrastructure of cooperation was in place years before the critical find was made, tribal officials endorsed in-depth archaeological explorations only seven days after the first human bones turned up. By vivid contrast, the bones of Kennewick Man were confiscated within six weeks of their discovery and then locked up during years of high-profile legal wrangling. (Thomas, 2000, p. 273).

Other researchers suggest the difference was the more cooperative nature of the Alaskan Tribes versus the Northwestern claimant Tribes, and still others blame the "bungling" use of NAGPRA by the Army Corps of Engineers that enraged the scientist plaintiffs in the Kennewick event, which was lacking in the OYKC project (Riley, 2006). As of this date there has been no research done beyond speculations like the above as to why these similar events produced such striking differences.

Archaeologist Joseph Winter stated about the controversies surrounding repatriation more than 20 years ago, "This confrontation is basically a conflict of values in which the representatives of competing cultures hold radically differing views of resource definition, ownership, significance and use" (1980, p. 124). If Winter's statement is true and both events involved competing cultures holding radically differing

views, then why did one conflict escalate and the other dissolve?

This thesis seeks to understand the role culture might have played in the events, specifically the role and priority of cultural elements that differ between American Indians and mainstream American scientists.

1.4 The American Mainstream and American Indians

American Indian tribes and colonial America have been in conflict for over 400 years. While no longer existing with the level of violence in previous centuries, tribes and government entities feel the relationship still functions to the detriment of both American Indian people and the current Euro-ethnic majority of the United States (Forrest Cuch, Director Utah Division of Indian Affairs, personal interview, 2010). Legally, the United States government recognizes American Indians as members of sovereign nations,[1] but how that definition of sovereignty translates into policy and practice varies greatly in local, state, and federal operations (Wilkins, 1998).

Government to government relationships, the political interaction of the executive, legislative, and judicial branches of the United States government with American Indian tribal governments, is a continuous negotiation of American Indian sovereign power regarding civil rights, cultural legacies, and issues of federal jurisdiction. The effect of cultural differences on decision making processes in government procedure and tribal governmental administration operates on such an unconscious level as to be practically imperceptible to the participants.

In an effort to analyze specific speech codes of both cultures, this work may

[1] 272 F. 2d 131 1959

overgeneralize the cultural communication patterns of American Indians and the American mainstream. The American Indian populations of North America are not homogenous populations, and while this work recognizes the distinct and multiple voices existing in Ameri-Indian cultures and the American mainstream cultures, the analysis presented here, of necessity, combines populations that have cultural characteristics in common, specifically those cultures that have similar methods of measuring existence (time), conflict resolution, relation to self and community, and rhetorical practices.

Further, American Indian culture and the American mainstream culture are not completely separate entities able to be studied alone in isolation. Both cultures are interconnected and influence the functions of the other. However, due to legal, language, and geographic barriers, as well as pervasive cultural thematic differences, American Indian culture and American mainstream culture are different in unique ways.

Culture and society are independent variables. A society is a group of individuals who have adjusted their interests sufficiently to cooperate in meeting their needs. Culture is the set of behavior patterns by which this cooperation is carried out (Eggan, 1954).

Social systems change over time and the acculturation of European colonist culture on American Indian social systems has already been charted in varying forms in other works. The interest of this thesis lies in the cultural structures and corresponding cultural social processes that American Indian societies and the American mainstream society takes today, and the possible effect of such upon meaning and conflict.

The terms American Indian and Native American are neither a fixed nor isolated identity. American Indian is a historically emergent category, one that is a product of contact with European colonists over the past half millennium. This work uses the term

American Indian, not because the indigenous peoples of the United States have more in common culturally with each other than they do with peoples outside the United States,[2] but because the United States has a particular history regarding indigenous peoples, and has developed particular political, legal, and anthropological structures that indigenous peoples have had to accommodate. "The utility of the concept does not lie in classification but in its capacity to underline strategic relationships" (Wolf, 1982, p. 76). It is indigenous commonalities and local specificities in "native resistance, adaptation, and accommodation to the US social formation" that provides significant meaning to the term American Indian (Wolf, 1982, p. 77).

After the travesty of disease and conquest, American Indians became one of many minority communities to European colonists, and the dominant United States cultural construction developed, in part, to make sense of differing ethnicity and immigration patterns of all peoples within its borders. But the essential structure of American mainstream culture evolved out of the negotiation of diverse cultural practices and beliefs of western European colonists.

Historically, the United States was once the location of British, Dutch, and German colonies, with immigrants from most other European countries being counted as part of its citizenry. The United States is the result of blanket immigration, European colonists who brought their culture with them. England, unlike the other colonial powers founded "true" colonies, where settlements were designed to reproduce the society of the parent county. More European migrants went to the United States in the colonial period

[2] Indeed, many American Indian people in the US have more in common culturally – including blood and affinal ties – with Natives in Canada than with some other United States American Indians. (Biolsi, 2004)

than to all other destinations and the population growth after arrival furthered the parent culture (Curtain, 2000).

Alba (2003) describes the American mainstream as a conglomerate of colonist culture, mostly British in origin, that has evolved through incremental inclusion of ethnic and racial groups, most that were formally excluded, but through accretion, assimilation, and intermarriage, interwove parts of their cultures to the British hegemony culture.

For the last century historians have generally referred to Europe and its colonies as Western civilization or the West. Western civilization is a broad term that more recently has come to represent the more industrialized nations of the world. Due to its European colonization, the United States is considered to be part of the "West," and the cultural aspects discussed in this work regarding the American mainstream are shared with Western Europe[3] (Huntington, 1993). This thesis utilizes the label of the West when appropriate, and when unique to the culture of the majority of the United States, uses the label of the American mainstream.

1.5 Literature Review

The following literature review presents theories of Rhetorical Criticism, Communication, Culture, Power, and Conflict Resolution, all contributing to the argument of this thesis. These theories provide context for the suppositions and explanations of stakeholder values and discourse presented in later chapters.

[3] Huntington considered America to be part of the "West," and refers to Western civilization as a grouping of European communities divided into two parts – European and North American. He believes the West is bound by shared cultural characteristics, specifically Western Christianity, and while he argues there is no single Western culture or western identity to look to as a model, Europe and North America share enough culture in common to earn the distinction of civilization (Huntington, 1993).

1.5.1 Rhetorical Criticism

Rhetorical criticism addresses how and why speakers adapt their discourse to particular audiences (Bryant, 1958; Wichelns, 1925). "It is not concerned with permanence, nor yet with beauty. It is concerned with effect" (Wichelns, 1925, p. 209). Rhetorical criticism is a method of interpreting author intent and how that intent is transmitted through a text to an audience (Kennedy, 1984).

Foss (1989) regards rhetorical criticism as a method which asks two questions: What's going on here; and what about it? (1999). The first question indicates texts have meaning beyond literal translation, an underlying rhetorical dynamic. It is answered through an analysis of rhetorical practices within different contexts, in this case, the different events, to discover the similarities of the rhetorical artifacts allowing the critic to choose particular aspects for study.

The second question asks what were the purposes of the rhetor, what influenced the text within a historical context? It is answered with an analysis of message construction, focused on particular realities of the audiences and the rhetor, on their messages and what happens within those messages indicating a particular world view, reality, or perspective (Zarefsky, 2006).

Discourse, the nature and function of symbols used for the purposes of communication, is the object of analysis in rhetorical criticism (Foss, 1999). Measuring the effect of particular rhetorical devises upon subsequent events, noting the escalation and de-escalation of conflict, in particular the rhetoric of the actors in both events, is the aim of this thesis.

Categories of rhetorical theory are tools for listening to discourse in specific

ways, and understanding discourse within its situational and cultural contexts may be the single greatest contribution of rhetorical criticism.

> [Methods of Rhetorical criticism] supply lenses that highlight the pieces and connections of a circulating flow that is otherwise so fast moving, multivarious, and seductive that one cannot but be swept along. They allow one to surf—to choose lines along the complicated flows of social movements— rather than merely be dragged like flotsam in the waves. (Kirtsoglou & Theodossopoulos, 2010, p. 6)

1.5.2 Communication

Ferdinand Saussure (1959) argued that the meaning of an object was not derived from the object itself; instead, meaning was a separate entity, arbitrarily attached. Objects described in language possessed two parts: the actual form, or object, labeled the Signifier; the other part, the concept dwelling in the mind labeling the signifier, Saussure termed the Signified. Together these created a Sign, a sum representing both the object and the concept (1959).

Saussure insisted culture was the only link between the Signifier and Signified; that the Sign was a construction and could only be accurately defined when taken in context of the system in which it belonged. Knowledge of the system was necessary for accurate understanding of a Sign, without which, proper attribution regarding the intent and values of others could not be ascertained (1959).

Saussure's focus on the structural aspects of language, while instrumental in the study of semiotics, was narrow in that it allowed analysis only of a particular language act at a specific moment in time. Saussure's theory of semiotics did not address the change of meaning across time, nor did it elaborate upon the societies involved in creating those systems of meanings.

Stuart Hall (2003) analyzed communication in terms of is function: to construct

meaning and convey that meaning from one person to another. Language was a representational system, where signs and symbols represented the values and beliefs of a society. His definition of language was broader than grammar and vocabulary; he included items such as sounds, gestures, expressions, clothes, and art. Anything that could be representative of meaning should be counted as communication.

Hall believed communication could be properly analyzed only in relation to actual examples, or the "concrete forms which meaning assumes, in the concrete practices of signifying, 'reading' and interpretation" (2003, p. 10). He emphasized there was no one true meaning of any representation, and the context within which a meaning is conveyed, including time and method, were paramount to understanding meanings implications.

The construction of meaning is a participatory process, where the members of a particular society negotiate the meaning of language through a coding and decoding process (Blumer, 1969). Communication is "neither the property of the sender, nor of the receiver of meaning," it is the "shared cultural space in which the production takes place" (Hall, 2003, p. 10). Both the sender and receiver of a communication are considered active participants in the process, thus making communication a negotiation of meaning.

For Hall, this decoding process of understanding text involved a certain loss of meaning, making the full meaning of the text never perfectly understood. This amount of miscommunication he termed a "margin of understanding" (1980, p. 59). When sender and receiver are of different cultures the margin grows larger, and the amount of cultural difference directly relates to the size of the margin.

1.5.3 Communication and Culture

Raymond Williams (1976) concentrated on language and its corresponding meaning as a cultural construct. He argued language was the vehicle whereby culture is acquired, and was "a particular way of life, whether of a people, a period or group...a form of a general social process: the giving and taking of meanings, and the slow development of 'common' meanings" (1976, p. 90). Culture is a signifying system through which social order is "communicated, reproduced, experienced and explored" (1983, p. 13). It is a purely social construct, created through consistent interaction between people, making culture a constantly changing, interactive and fluctuating phenomenon.

Williams believed language held the key to understanding culture and by tracing the changing meanings of words throughout history, social and historical tendencies could be more accurately traced. History should not be described in terms of what happened as fact, but should be described in terms of what events had been taken to mean (1976). Culture is the filter through which that meaning is negotiated from one member of society to another.

1.5.4 Culture

Whole disciplines are committed to the analysis of culture, but there is no unified theory or methodology that governs it. "A veritable rag-bag of ideas, methods and concerns from literary criticism, sociology, history, media studies, etc., are lumped together under the convenient label" (Sparks in Storey, 1996, p. 26).

Cultural studies emerged from the discipline of anthropology, first as broad lists termed 'cultural' material appearing in the late 1800s on a variety of topics, including

food consumption and gathering, clothing, song, and dance. A field manual listing 76 culture topics, including cannibalism and language, soon followed and was then extended by other more exhaustive lists, culminating in the Outline of Cultural Materials in 1937 which contained 79 divisions and 637 subdivisions of culture (Murdock, 2004).

Tylor (1958) defined culture as "that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society" (1958, p. 1). Culture was an experiential process rather than a biological inheritance and categorized was a system of socially patterned human thoughts and behaviors (Williams, 1976). This definition addressed culture as a construct of society, but was mostly descriptive in nature and contained little analysis of language beyond translation (Tylor, 1958).

> Culture is not a practice; nor is it simply the descriptive sum of the 'mores and folkways' of societies…it is threaded through all social practices, and is the sum of their inter-relationship. Culture is those patterns of organization...within or underlying all social practices. (Hall, 2003, p. 2)

In 1947 the Foreign Service Institute was established to provide training to US Foreign Service officials, and in 1951 Edward T. Hall joined the staff to teach languages, a limited study of the country and geography, culture, and American assumptions (Hall & Hall, 1990). Hall's attempts at training operatives became the basis for his work *The Silent Language*, published in 1959, which is hailed as the beginning of Intercultural Communication as a discipline (Leeds-Hurwitz, 1990).

Hall was the first to focus on interactions between societies of different cultures instead of the traditional study of one culture at a time. He also narrowed the focus of study from a macroanalysis of all things cultural, to a microanalysis approach of studying a few elements of culture thoroughly in order to produce concrete useful details.

Hall described culture as a "program for behavior " and enlarged the definition of culture to include the study of communication, notably descriptive linguistics— the idea that communication is patterned, learned, and analyzable (Hall, 1990, p. xiv; Leeds-Hurwitz, 1990, pp. 263-264).

Hall introduced the notion of cultural dimensions, and Hofstede, Trompenaars and others, popularized these fixed sets of polar attributes, such as monochronic time versus polychronic time, or universalism versus particularism, between which all the cultures of the world can be categorized, revealing their relative differences. However, Gundykunst dominated this communication literature, having authored or co-authored more than half of the articles published on intercultural communication. He applied an objectivist approach to a comparative analysis of culture, specifically to the study of dyadic interaction between members of different cultures (Moon, 1996).

Today, intercultural communication emphasizes social scientific and interpretive paradigms from a critical perspective, contributing insights into the boundaries of behavior and speech enactment. These approaches outlined possible boundary markers delineating specific national and ethnic cultures as well as their resulting correlates of communicative behavior.

The assumption is that to be a member of a specific culture, a set of distinct meanings and symbols are invoked in the same way and to the same degree by co-members. "Those who belong to the same culture...generally share greater commonality (and homogeneity) in their overall experiential backgrounds than those from different cultures" (Mendoza, Halualani, & Drzewiecka, 2002, pp. 312-13)

Intercultural communication studies analyzes the shared meanings and values of

societies, and although much of this research focuses on language code, symbolic forms, and the creation of shared interpretations, historical, contextual, and power-laden aspects of culture are also considered relevant.

1.5.5 Culture, Power, and Language

Gramsci (1988) was interested in the political dynamics of power, notably the circumstances needed to bring about a successful change of the state. He separated the power of state from the power of civil society and believed a prevailing hegemony could be accomplished only with the consent of civil society, which consented by affirming the structure of the state with ideology and custom.

Gramsci (1988) believed ideologies battled within a society until a single ideology or a combination of them prevailed and propagated itself, bringing about not only a unison of economic and political aims, but also intellectual and moral unity. "Thus creating the hegemony of a fundamental social group over a series of subordinate groups" (Gramsci, 1988, p. 205).

Michel Foucault (1980) deconstructed power relations by analyzing the production of meaning, what he termed 'knowledge' – the representations that a society takes to be relevant. "What we think we know about crime has a bearing on how we regulate, control, and punish criminals" (1980, p. 99).

Foucault focused his critique upon disciplines that subjectified knowledge and produced discourse, which he termed the system of rules and practices that produce meaningful statements, or knowledge. Discourse about knowledge influenced human behavior by regulating, limiting, and restricting meaning, and therefore behavior.

Foucault rejected the notion that power was enforced from the top down, rather

discourse occurred gradually by individuals using microtechniques and take on more power by becoming global or macro strategies of domination. Micro levels of discourse are the origination of what Foucault termed the "power chain" and as power is exercised at myriad points, resistance must occur point by point. Efforts to change knowledge must address social practices and relations (1980).

1.5.6 Conflict Resolution

Conflict theorists are focused on resolution of conflict, all aspects regarded with an eye toward utility. Conflict occurs over means chosen to achieve satisfaction of the human needs of identity and recognition, and these are a matter of discovery (Burton, 2001).

> Consider the story of two men quarreling in a library. One wants the window open and the other wants it closed. They bicker back and forth about how much to leave it open: a crack, halfway, three quarters of the way. No solution satisfies them both. Enter the librarian. She asks one why he wants the window open: 'To get some fresh air.' She asks the other why he wants it closed: 'To avoid the draft.' After thinking a minute, she opens wide a window in the next room, bringing in fresh air without a draft. (Fisher & Ury, 1991, p. 40)

The librarian could not have resolved the conflict had she not looked to their underlying interests. "Interests motivate people, they are the silent movers behind the hubbub of positions. A position is something a person has decided upon. Interests are what caused one to so decide" (Fisher & Ury, 1991, p. 41).

Culture, as it pertains to conflict theory, is "a perception-shaping lens or a grammar for the production and structuring of meaningful action" (Avruch & Black in Chew, 2001, p. 7). Understanding the behavior of parties in conflict is dependent upon understanding the "grammar" they are using to render that behavior meaningful.

Adair and Brett (2005) use a metaphor of dance to illustrate how conflict is a

universal phenomenon, with the rhythms and movements involved specific to the culture of the stakeholders.

> Consider two pairs of skilled ballroom dancers, one American, the other Cuban. Both pairs enact beautifully synchronized patterns of steps that move their dance through stages until it reaches a dramatic climax; yet the two dances are likely to look very different. Latin ballroom dance is built on rapid, staircase movements, whereas American ballroom dance, like the waltz and foxtrot, is based on smooth gliding movements. Now imagine the pairs switching partners to form intercultural pairs. Each pair has a similar holistic view of its task: They hear the same music and understand the general progression and adjustments their movements must make as the music changes. However, because each dancer is accustomed to distinct steps, the pairs may have difficulty synchronizing heir movements. Although with adjustments they may be able to complete the dance, it is likely to lack the polish of the same culture dancing. (Adair & Brett, 2005, p. 33)

1.6 Scope and Objects of Study

Cultural analyses, particularly with American Indian foci, are numerous. Whole disciplines of collegiate study, aptly named Native American studies, proliferate amongst colleges and universities. Research on repatriation and the conflicts between archeologists and tribes have been documented and analyzed to a great extent, but the focus has been upon science ethics, media framing, anthropological history, and Native American opinion, not cultural difference.

Numerous articles, books, essays, and television segments have analyzed and documented the event that took place in Kennewick. Media studies, American Indian studies, anthropological ethics, framing, cultural rationality, science reporting, and journalistic ethics, just to name a few, have presented opinions (Coleman & Dysart, 2005). Most have looked at the event from a legal perspective, an anthropologic perspective, a scientific perspective, a civil rights issue, and social justice issue (Thomas, 2000).

This thesis focuses specifically on the cultural elements prioritized by the parties of these two events and pinpoints possible interests and results of divergence. Written texts from the federal government stakeholders, the tribes involved, and the scientist plaintiffs are analyzed for cultural element presence, prominence, and priority.

Using rhetorical criticism, cultural communication theory, and conflict theory the texts of the participants were coded revealing that specific cultural resources were employed in the OYKC Project that were absent in the Kennewick case. Also, specific mainstream American cultural elements were present in the Kennewick case which were not found in the OYKC Project, leading to a discussion of subjugation, hegemony, and the consequences of cultural blindness.

1.7 Methodology

Cultural elements are discursive resources in and through which connections between and among people of a particular society are thematized, constituted, and managed (Philipsen, 1992). Philipsen's speech code theory provides principles by which culture is made intelligible, where cultural elements that would otherwise seem inchoate and unconnected are integrated into an observable system (1992).

By analyzing various people discoursing where different codes are deployed, in sites selected because they were likely to yield difference, code sets can be observed for "a kind of internal consistency or logic to them. Wherever there is a distinctive culture, there is to be found a distinctive speech code" (Philipsen, 1992, p. 135).

Cultural elements are observable, interpretable, and predictable. They congregate in patterns, have rhetorical purpose, and invoke a dialogue of rule challenge. Terms, semantic dimensions used to define terms, metaphors, mindsets, and rules are diagnostic

of a particular society, and are considered isolatable instrumental elements of code sets (Philipsen, 1992).

Culture is realized in particular ways contingent upon the time and place within which it is constructed. There are particular sites where the deployment of theses discourse resources can be effectively observed, and by studying the rhetoric of the stakeholders, especially in times of social drama, it will be possible to observe the cultural elements at work in their discourse (Philipsen, 1992).

Cultural knowledge exerts influence when activated or "brought to the fore of the mind" (Briley, 2000, p. 158). Culture is recruited when individuals provide reasons for behaviors or judgments, and cultural differences emerge when decision makers are required to explain their decisions or arguments. "Reasons for choices depend on the cultural norms as to what is acceptable and persuasive" (Briley, 2000, p. 161).

If it is found that a particular person's rhetoric includes a preferenced value, that value by itself is not proof of a culture element. But if many members of a society reference that value, then it is considered a culture element.

This thesis presents the results garnerned from coding texts for cultural elements used by the participants to make decisions and justify behavior. To investigate cultural influence upon the stakeholders, texts displayed by multiple stakeholders indicating reasons for decisions, requests for action, and disagreement with other stakeholder action were examined. Cultural mindsets, terms that invoke rule challenge, and symbols were identified, then indexed for specific cultural distinctiveness.

This not only identified culturally created structural causes of behavior, but also shed light on how American Indian and American mainstream meaning systems and

symbols contributed to the making and enactment of those structures, conflict in one case and easy resolution in another. A focused comparison of the two cases identified various causal patterns that occurred for the events of interest.

The important aspect of case comparison lies in potential cultural differences among the cases, and insofar as the cases differ only on a few variables, the plausibility of particular causal patterns is strengthened. The research presented here found very little variable, indicating high plausibility of causal pattern accuracy.

Chapter 2 provides an accounting of cultural elements within the chosen texts of the Kennewick event and documents that the mindsets, terms, and symbols within the rhetoric of the stakeholders are recognized cultural values within cultural studies literature.

Once cultural elements within the Kennewick event have been identified, trends and/or patterns of divergence with the cultural elements identified in the OYKC Project event will be discussed in Chapter 3, with conclusions regarding the impact of culture on the conflict following in Chapter 4.

CHAPTER 2

KENNEWICK, WASHINGTON EVENT

2.1 The Stakeholders

Four parties were identified as having a stake in disposition of the remains found in Kennewick: James Chatters, forensic anthropologist, who first analyzed the remains, American Indian tribes, federal government agencies, and the group of eight scientists, called here the scientist plaintiffs, who filed suit against the federal government.

James Chatters, the forensic anthropologist who was tasked by the County coroner to determine if the remains recovered from the shore of the Columbia river were from a pioneer burial or an American Indian burial faced a dilemma when he concluded the remains looked Caucasian but found a cascade point spearhead embedded in the pelvic bone. His interpretation of the race and age of the remains contextualized the rest of the conflict.

Upon notification of the discovery, tribal stakeholders filed a joint claim to the Army Corps of Engineers (USACE) requesting repatriation of the remains. Four of the five tribes are federally recognized and had legal standing under the Native American Graves Protection and Repatriation Act (NAGPRA) to request repatriation of the remains: Confederated Tribes of the Colville Reservation, Confederated Tribes of the Umatilla Reservation, Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, and the Nez Perce Tribe of Idaho. The Wanapum Band is not

federally recognized, but wished to also participate in the claim.

Two federal government agencies were involved in the conflict: first, the Army Corps of Engineers (USACE), landowners of the Columbia River Gorge where the remains were recovered; and second the Department of Interior (DOI). As landowners, USACE had responsibility under NAGPRA to determine the appropriate disposition of the remains, but after 2 years of conflict USACE turned responsibility of the matter over to the Department of the Interior. For the following 6 years of the conflict, the DOI handled study of the remains ordered by the court and made a final determination that the remains were Native American and were culturally affiliated with the five tribal claimants, pursuing this determination through the legal battle and appeals process.

Originally contacted by Chatters when his concern over the tribal response to his research prompted him to search for more support in the scientific community, eight scientists who filed suit in reaction to USACE's decision to repatriate the remains, had professional interest in data the remains could produce, as well as concerns regarding appropriate testing and analysis (Chatters, 2001). Eventually the Court ruled in their favor and each scientist was able to perform research upon the remains.

2.2 Coding

Contingent upon the time and place within which they are constructed, deployment of cultural elements can be effectively observed, particularly in sites selected to yield difference, such as areas of social drama and are most often recruited when individuals provide reasons for behaviors or judgments. Cultural differences emerge when individuals are required to explain decisions or arguments. "Reasons for choices depend on the cultural norms as to what is acceptable and persuasive" (Briley, 2000, p.

161).

Parties in conflict provide reasons for their positions and interests, making cultural influences observable at these points in discourse. The discursive force of the cultural elements is revealed in their impact upon the interlocutors and when an individual is forced to provide reasons for judgments and choices, it creates a need to select salient, verbalizable and compelling principles upon which they are based (Briley, 2000, Philipsen, 1997).

At various points in their discourse each stakeholder sought to sway decision-makers with rhetoric, presenting reasons they found most important. The texts of the stakeholders selected for coding were chosen for specific evidence of reasons that justified positions, listed interests, and provided arguments for judgments and behaviors.

Once the texts were selected, a thorough reading identified commonalities within the American mainstream discourse that differed from commonalities discovered within the American Indian discourse. Terms and symbols were observed that matched within discourses, language within the American mainstream texts as science, statute, linage, and language within the American Indian texts such as requests for consultation, time immemorial, and respect were identified.

To support their credibility, research for these elements was conducted within the anthropology and communication disciplines. First, cultural communication research was explored for references to American Indian culture; items such as oral tradition, a desire for harmony in relationships as well as policy, past/present time orientation, and a relationship based society that organizes itself around consensus models were verified.

American mainstream cultural elements were coded in like manner with elements

such as an inverse universal mindset, linear time orientation, objectification, and a law-based system of conflict resolution substantiated within the American mainstream texts.

Once the cultural elements were verified in anthropological and cultural communication research, correlating elements were also researched to see if there were parallels within societies – cultural elements such as American mainstream lineage compared with the American Indian concept of ancestor, and the American Indian cultural element of a vertical consensus conflict resolution process compared to the American mainstream conflict process of the law. This type of comparison was done to ensure the cultural elements were isolatable to the specific society.

If parallels were discovered across societies, the cultural elements were then coded for priority within the texts. The cultural element of science was observed in almost all texts, including American Indian texts, but research indicated the American mainstream prioritized this element far more than American Indian societies, and this was borne out in the texts (Coleman & Dysart, 2005).

Within this thesis the elements observed have been labeled as mindsets, terms, and symbols when appropriate. Mindsets are sets of assumptions, methods, or notations held by a society so established it creates a powerful incentive to adopt or accept behaviors. Terms are distinctive expressions of social meaning whose invocation has social consequences. Symbols are representations of cultural values held in priority over other elements (Philipsen, 1992).

The coding successfully isolated cultural elements specific to each society, and further revealed a pattern of element use by the stakeholders that was as disparate as the results of each conflict.

2.3 James Chatters

As first decision-maker in the Kennewick event, Chatters played an important role. His actions in analyzing the remains, protesting when USACE halted testing at tribal request, and his determination of Caucasoid morphology shaped the resulting controversy.

Chatters' discourse chosen for analysis comes from his memoir titled *Ancient Encounters: Kennewick man and the first Americans.* The memoir describes his experience, research, and interest in the remains, providing a detailed account of the decision-making process from his perspective. Sections of text from the memoir were identified that highlight his reasons for determining the race of the remains and his reasons for doing scientific testing despite his belief of tribal opposition.

The cultural elements and mindsets coded in Chatters' discourse are objectification, linear time, race, and lineage, all American mainstream cultural values (Hall, 1983; Schelbert, 2003).

These values correspond with those found within the texts of the scientist plaintiffs making them cultural elements rather than isolatable individually preferred values. They are discussed here as they were more prominent in Chatters' discourse than the scientist plaintiffs', and because Chatters' role as a decision-maker shaped the initial conflict.

2.3.1 Objectification

During the 13th Century, within the span of approximately 50 years (1275 a.d.-1325 a.d.) the output of written correspondence in the West increased literally a hundredfold, and more significantly, standards regarding alphabet construction and

grammar were established. This change created a new way of interpreting the surrounding environment through measuring reality and then creating a representation in visual form (Schelbert, 2003). Objectification occurs when an object is isolated, observed, described, and classified.

The greatest advantage objectification offers is the ability to represent previously non-quantifiable occurrences as objects, and as a quantitative representation, occurrences can then be manipulated and experimented upon. Objects are viewed as instruments "often as a possessions, even as collections of events" (Sanborn, 1967, p. 39). Represented in terms of what the object has in common with other things, the object becomes indexed as data (Sanborn, 1967).

Found throughout Chatters' discourse, objectification was the first filter through which he observed the remains.

> Old or recent, intact or deteriorated nearly beyond recognition, bones always have a story to tell. They chronicle early growth, life experience, death, and even what has happened to the body after death. Muscle ridges, wear and tear—arthritis, bone growth along ligaments and tendons, and fractures—record patterns of physical activity. Diseases and injury leave their mark in patterns of bone dissolution, atrophy, regrowth, and overgrowth. Cuts and bullet holes offer mute testimony to the manner of death. Then there are the all-important clues to identity—height, sex, age, and facial structure. (2001, p. 19)

Here Chatters measures identity with physical characteristics such as height, sex, age, etc., illustrating how objectification constructs existence in a way that is observable, measurable, and can be numerically weighted with reliable exactitude (Schelbert, 2003).

Chatters continues in the following text where he describes his first impression of the skull.

> Opening the drawstring, I looked down at the first piece, the braincase, viewing it from the top. Removing it from the bag, I was immediately struck by its long, narrow shape and the marked constriction of the forehead behind a well-

> developed brow ridge. The bridge of the nose was very high and prominent. My first thought was that this skull belonged to someone of European descent. The bone was in excellent condition, having the tan, almost golden color of bone that has lain in the ground for some years but not long enough to deteriorate. All the breads were fresh-looking, which told me that the skull had been complete until it was disturbed. A second fragment in the bottom of the bucket caught my eye, and I picked it up. It was the upper jaw. Thin walls of bone projected forward along the sides of the nasal opening, and an immense bony spine extended beneath it. Clearly the nose had been huge. (2001, pp. 19-23)

This description led to Chatters analysis of the morphology of the skull, where his observations and measurements allowed him to classify the remains, specifically a classification of race.

2.3.2 Race

In the following quote Chatters describes the skull in terms of its race, or morphology.

> The tooth row also appeared to project slightly, and there were distinct deep depressions behind the ridges formed by prominent canine teeth. Called a canine fossa, this is an archaic characteristic common to many European skulls. So far, the characteristics were consistent with my initial sense that this was a white person, a Caucasian. I turned the bone to inspect the underside, and what I saw seemed at first to be at odds with the rest of the picture. The teeth were worn flat, and worn severely. This is a characteristic of American Indian skeletons, especially in the interior Pacific Northwest, where the people ate stone-ground fish, roots, and berries and lived almost constantly with blowing sand.
> "So, what do you think?" asked Floyd. "Is it an old Indian or what?" (Chatters, 2001, pp. 19-23)

Chatters felt his responsibility, as a forensic anthropologist consultant, was to: 1) determine the age of the remains, ruling out the possibility of a current crime scene, and 2) determine if the remains were Native American making them subject to the Native American Graves Protection and Repatriation Act (2001).

In a request for an ARPA permit that would allow him to search for more remaining fragments of the skeleton, Chatters described his responsibility, as an "order to

resolve issues of age and racial affiliation" (2001, p. 36).

As an American mainstream cultural element, race, as used in science discourse, is established in biology and classifies human variation into a number of definite categories each containing similar material features with "the idea that human beings could be placed in groups based on physical characteristics, or more deeply, their genetic make-up" (Curtoni & Politis, 2006, p. 94; Grillo, 2003, p. 162).

> My mind jumped to something I'd seen when I was fourteen years old, working at an ancient site on the Snake River in Washington called Marmes Rockshelter. I saw the narrow-headed skull of a person who had died between 5,000 and 7,000 years ago being preserved in plaster for transport to the Washington State University laboratory. It stared at me from that long-ago memory through empty eye sockets. "Paleo-Indian?" came the involuntary thought. "Paleo-Indian" is the label given to the very earliest American immigrants, traditionally presumed to be early versions of today's Native Americans.
>
> No, I thought, that can't be. The inhabitants of the Americas had had broad faces, round heads, and presumably brown skin and straight black hair. They had come over from Siberia no more than 13,000 years ago across the Bering Land Bridge and therefore resembled their modern-day Siberian relatives. This was no Paleo-Indian—was it?
>
> "This looks like a white person," I told Floyd, "but it also could be very old." And I explained to him what I was noticing." (Chatters, 2001, p. 20)

Chatters' observations and subsequent racial classification were important for USACE's decision making. If the remains were Native American, USACE was obligated to consult and decide disposition, making racial determination critical to USACE future behavior. Hesitant to classify the remains without more data, Chatters offered this response to Ray Tracy, archeologist for USACE, who was monitoring Chatters' progress.

> I don't know what to think yet; it's a little ambiguous. The skull does have a lot of European characteristics and was found associated with domestic trash from early this century or late last, so we might just have someone buried in the family plot behind a homestead. But I haven't finished my investigation yet, and I'm not ready to make an identification. We're missing some key pieces of the skull that we need for identification…. (2001, p. 31)

More remains were retrieved from the Columbia River Gorge, as well as pioneer detritus, allowing Chatters to confirm the race of the individual was Caucasian. But the discovery of a cascade point embedded in the pelvic bone threw that determination into question.

> The point itself was no real help in solving the puzzle. Stylistically it could be from almost any time, or any place for that matter…The bone had been healed for at least many months, probably many years before death, easily enough time for the man to have traveled around the world…If we could identify the source of the stone, we could narrow down the geography but still would not be able to place the skeleton in time. (Chatters, 2001, p. 41)

The cascade point threw doubt on a Caucasian classification, as its existence indicated a far more ancient origin.

2.3.3 Linear Time

Temporal perception, the way motion is measured before and after an event, organizes societies in particular ways (Johnson in Sherover, 2003). "It is the Western propensity to isolate time as an absolute, one-dimensional vector," and this meant viewing time as an object (TenHouten, 2005, p. 32).

The objectification of time made it possible to manage, control, spend , save, or waste it (Crosby, 1997). Because time has a numerial value attached, "being late" has a quantifiable tangible quality (Hall, 1983, p. 36).

The American mainstream time considers time a continuous succession of moments occurring in a linear fashion (Rossum, 1996). It "ticks on even if nothing occurs; its emancipation from events is ensured by its own subjugation of an ongoing numbered measure" (TenHouten, 2005, p. 36). Time is measured from a continuous line fixed upon the event of Jesus Christ's birth, with a future oriented, directional conception

of history (TenHouten, 2005). Time perceived in this manner provides a temporal matrix for "a way of ordering and assigning priorities to a large portion of modern [American mainstream] society's shared meanings, values, and purposes..." (Marx & Mazlish, 1996, p. 206).

Science has a precise definition of time, termed Absolute Time, viewed to move in a linear motion that exists independently of human consciousness lending "itself to rational calculation and precise counting" (Ferrarotti, 1990, p. 87; TenHouten, 2005, p. 64).

Once time is perceived as linear, events can be ordered as points on a continuum. Chronological sequence along that continuum becomes vitally important because perception shifts from the event itself to its place within other events on the continuum. The event then has related antecedents and consequences, creating causal or telic relationships between events (Lee, 1949).

The human remains found in Kennewick present a fixed point in time that Chatters found to provide concrete data regarding the life style of humans present thousands of years ago. After conferring with other scientists in regard to the race of the remains, Chatters determined radio-carbon dating was the best solution to answering the question of whether the remains were Native American.

> My colleagues had told me what I had know all along to be the best scientific course of action, but I was still hesitant. The evidence was pointing almost equally in opposite directions. If I went by the physical features, supported by Katie MacMillian's assessment, the steel knife, and what looked I this context to have been saber-sever ribs, the skeleton would become Kennewick's earliest pioneer—a trapper or explorer of whom there had been no written record, or perhaps a sailor who had come inland to settle on the wide Columbia River. He would be honored, become a local hero of sorts. If I went on the spear point alone, plus Tom Green's brief description of Paleo-Indian males, this could be one of the earliest examples of interpersonal conflict yet found in the Americas,

> but the remains would immediately be claimed by local tribes without further study. By running the radiocarbon date, I would solve the age question, but if the bone dated to before European contact but was not truly ancient, I would be berated by tribal officials for having destroyed some of the bones. I did not relish the prospect. (Chatters, 2001, pp. 43-44)

Linear time is a mindset emphasized throughout this event in all but the American Indian texts. The meaning of the remains for the American mainstream stakeholders was shaped by their placement within a linear time context. In this event the value of the remains was directly proportional to their age.

Chatters had the remains radiocarbon dated despite perceived tribal opposition. The reason for his decision lay in the American mainstream cultural element of lineage.

2.3.4 Lineage

The following quote illustrates the cultural element of lineage present in Chatters' discourse.

> As I sat pondering what to do, staring all the while at the skeleton laid out on my exam table in its protective plastic bags, Jenny walked into the lab.
>
> "So how's Kennewick Man?" she asked brightly, using that term for the first time.
>
> "As well as can be expected, but I'm having an awful time," I complained. I described my dilemma in all its convoluted detail.
>
> At length she put a hand on my shoulder, gave me an earnest look, and declared, "If it's an ancient Indian, that makes him my ancestor, and I want to know how old he is." Jenny's great-great-grandmother was a Haida Indian from southeaster Alaska; one of her great-grandfathers was a Chippewa from northern Minnesota. Her maternal grandmother described her heritage as Heinz 57, although her Tennessee origin and high cheekbones bespoke a Cherokee ancestry.
>
> Jenny's words brought the issue home: our family had a stake in this that went far beyond resolving a scientific dilemma. If I were incredibly luck and this did turn out to be a very ancient American, and if he had contributed his genes to modern Indians, then he was an ancestor of Jenny's and of our daughter and all her descendants. I no longer saw a downside to radiocarbon dating the skeleton, and resolved to see it done. (Chatters, 2001, pp. 43-44)

Lineage is a product of American mainstream social traditions, constructed "in

accordance with certain socio-cognitive conventions that affect the way we trace our ancestors, identify our relatives, and delineate the genealogical communities to which we then believe we actually belong" (Zerubeval, 2012, p. 9). Ancestors and their corresponding descendants form lineage, a term indicating biological succession, that despite its many members is conceived as a "single entity with a single identity" (Zerubeval, 2012, p. 19).

Used in conjunction with such visual metaphors as "a river, a thread, a rope," like time, lineage is a succession of points in space and is perceived as a line (Zerubeval, 2012, p. 19).

Certain ancestors are considered more important than others in the way kinship and ethnicity are determined making American mainstream kinshipless a biological device and more a social construct (Zerubeval, 2012).

Seen throughout the Kennewick event, Chatters found this cultural element to be persuasive. Within a few days after the remains were found, Chatters was called out to the river shore again. This time five sets of human remains were recovered along the banks of the Columbia River Gorge. Chatters recounts the following conversation with Jeff Vanpelt, head of the Cultural Resources Office of the Confederated Tribes of the Umatilla Indian Reservation.

> "Why were five tribal members collected on Saturday and nobody was informed?" he shouted. "Haven't you heard of ARPA? Haven't you heard of NAGPRA?"
>
> "I was called in by the coroner, Jeff…They were eroded out, just like the first one a month ago. We just picked them up from the surface and secondary mud. The coroner tried to call John Leier…"
>
> "And you collected the bones of an eighty-four-hundred-year-old tribal member!" Obviously he'd already heard from the Corps.
>
> "I had a permit," I replied.

> I wanted to question his use of "tribal member" but thought better of it. There was no need to inflame the situation.
>
> "You had a permit to collect the remains of one tribal member? Why weren't we consulted? I'll see to it that you're charged for violating ARPA and NAGPRA, Jimmy. And I'll have the coroner and the guys that found it arrested too!" (Chatters, 2001, p. 57).

Chatters' selective definition of the remains descendant lineage to include his wife, and his exclusion of possible genealogy that would include a "tribal member" in his discussion with Van Pelt, clearly shows Chatters' bias and "tells us as much about the present as it does about the past" (Zerubeval, 2012, p. 10).

> By selectively highlighting certain ancestors (and therefore also our ties to other individuals or groups presumably descending from them, while ignoring, downplaying, or even outright suppressing others, for example, we tactically expand and collapse genealogies to accommodate personal as well as collective strategic agendas of inclusion and exclusion. (Zerubeval, 2012, p. 10)

Despite his vehement protests and requests for further study, within a week of his meeting with USACE and the tribal members, USACE removed the remains from Chatters' possession. Not finding Chatters' reasons for study to be persuasive, within a month USACE had announced their decision to repatriate the remains to the five tribes who had filed a joint claim for the remains.

2.4 Tribal Claimants

The tribal claimants were made up of four federally recognized tribes and one tribe given standing by the Department of the Interior, but not recognized by the federal government. Each of the claimant tribes have an organized tribal government, with a tribal council, a tribal chairperson, and other various governmental tribal employees. Three of the tribes have cultural protection officers who serve as a point of contact when dealing with NAGPRA.

The texts chosen for coding analysis of American Indian cultural elements and mindsets come from two sources. The first comes from two press releases produced by the confederated Tribes of the Umatilla Indian Reservation from Chairman Arnold Minthorn. His statement was made in response to Chatters determination of Paleo-Indian, after the remains were discovered and directly before the remains were removed from Chatters possession. The second press release of Minthorn's was presented in 2001 after final arguments were heard in the District Court hearings.

The second source of tribal textual discourse comes from the book titled *Kennewick Man: Perspectives on the Ancient One,* edited by Heather Burke, Smith, Lippert, Watkins, and Zimmerman. The editors assembled interviews, articles, and statements made by stakeholders in the event, some after the fact, others written while the conflict was occurring. The writings included in the Burke book, from members of the tribal coalition claiming the remains, "have been reprinted here exactly as the Elders first wrote or spoke them, with little or no change, since they wish emphatically to be heard in their own words, and without "interpretation" (2008, p. 24). The texts selected for analysis are those of tribal council members or cultural protection officers of the tribes that claimed the remains.

The American Indian cultural elements and mindsets discussed are time, relationship-based society, sacred, respect, and consultation.

2.4.1 Time

The way a society perceives time has the ability to mediate identities in profound ways and "produce complex figures of difference and identity, past and present, inside and outside, inclusion and exclusion" (Bhabha, 2007, p. 398). A survey of the texts

produced by the American Indian tribal stakeholders mentioned time as a quantifiable amount, an American mainstream cultural element, only once,

> In the summer of 1996 a human burial, believed to be about 9,000 years old, was discovered…If this individual is truly over 9,000 years old, that only substantiates our belief that he is Native American. (Minthorn, 1996, n.p.)

American Indians measure the movement and record of change as time rather than marking duration in a line as the American mainstream does. Within this frame of reference the mind's orientation is on the ebb and flow of movement surrounding the individual, where "the sensed world is not static but rather filled with change and activity" (Heine, 1985, p.153; TenHouten, 2005, pp. 84-85). "White people believe we all move through time from one place to the next. We believe it is time that moves around us. Spring, Summer, Fall, Winter, they all come back to us" (Gover, personal interview, 2009).

The American Indian mindset of time is perceived as a "continuously moving picture" that has no beginning and no end (TenHouten, 2005, p. 84). Evidence of the time mindset was coded throughout the tribal texts and found in such examples as:

> Since time immemorial, aboriginal Native American Indians' inherent spiritual ties to the land for food gathering (fishing, hunting, root gathering) have been perpetual. (Aripa in Burke, 2005, p. 147)

> Our elders have taught us that once a body goes into the ground, it is meant to stay there until the end of time….From our oral histories, we know that our people have been part of this land since the beginning of time. (Minthorn, 1996)

American Indian existence is described in terms of how it varied or continued along a spectrum of intensities, strengths, and rate-of-change, and is seen as always in a state of continuous movement, not by becoming later and later, as in American mainstream time, but by growing, diffusing, and vanishing. It is a process of

metamorphoses—growth, decline, stability, cyclicity, and creativeness (Whorf, 1956; Hall, 1983).

Time perceived as a multidimensional vector creates a perception of 'all in the now.' The past, present, and future, everything that has occurred and could be is experienced, is present in the current moment, creating a perception of temporal compression of past and future events (TenHouten, 2005).

> Looking at contemporary society on the Colville Indian Reservation, it has challenges and social ills that stem from past abuses. These past abuses need to be healed for a more healthy community to arise. With the Ancient One still above ground, the hearts of the Colveille Tribes will always feel the hurt inflicted on this person and all other ancestors who were forcibly moved from their resting places to make room for foreign actions. (Sirois in Burke, 2005, p. 100)

History is both disconnected and connected to the present with ordinary life being seen as "a pale reflection of the more real world of the 'ancestors' " (Levi-Strauss, 1966, p. 236). Ancestors are believed to be of a different nature from contemporary peoples, but are still connected to them because all things influence the same cyclical patterns that have existed since the appearance of the ancestors (Levi-Strauss, 1966).

"He was laid to rest thousands of years ago in an area Native people are identified with and have cared for since time immemorial" (Johnston in Burke, 2005, p. 225). The cultural element of American Indian time lends itself to feelings of obligation tribes have toward the ancestors within the cultural mindset of a relation-based society.

2.4.2 Relationship Based Society

A relationship-based culture relies upon other individuals, older family members, teachers, bosses, and community members to regulate behavior, and relationship-based cultures prioritize obligations to people and relationships as the means of organizing

processes. As demonstrated in the following texts, the tribal stakeholders addressed the conflict in terms of the damage it caused to relationships.

> Over the years we have built relationships with museum and university scientists in the pursuit of protecting our own heritage and developing an accurate scientific portrayal of who we are. This lawsuit seeks to destroy those relationships by giving complete control over Native American ancestral human remains to those scientists. (Minthorn, 2001, n.p.)

> The scientists' motivation is pure selfishness. They do not even care about their fellow scientists. The relationship between the tribes and the general ideas of cultural resources management has been damaged. Did they care? No. (Fredin in Burke, 2005, p. 151)

In a relationship-based society the relationship is a binding object, with implied obligations that tie members together in networks of commitments and constraints. The people involved in such societies have unique importance to one another and special obligations are formed based upon their relationships. The closer the relationship the more powerful the obligation (Trompenaars & Turner-Hampden, 1998).

> The sacredness of burials—of respecting the dignity of those who have gone before us—is a teaching and belief very basic and essential to who I am…Indians believe we were placed in specific areas for specific reasons. We have a cultural affiliation or relationship with Kennewick Man because he existed and died in the land where we were placed as caretakers by the Creator. (Aripa in Burke, 2005, p. 147)

Many American Indians frequently treat everything about relationships as relevant, including the character and feelings of the parties. The emphasis of a relationship oriented process rather than the American mainstream universal truth process discussed in the following scientist plaintiffs section, places American Indian culture on the far side of the particularistic spectrum. There is no recognition of a universal set of answers to disputes. Rather, each dispute is resolved based upon the unique needs and responses of the parties (Hooker, 2003).

> Native American and scientific knowledge can work in a productive relationship, but it depends on the archaeological project and the tribal historic preservation officer. In the end, human rights trump scientific rights. Rather than giving the opportunity to science to decide humans' destiny, science needs to be watched (Fredin in Burke, 2005, p. 150).

The above quote shows a clear priority of relationship, termed as human rights, over science. Not surprisingly, relationship oriented cultures focus resources on building and maintaining relationships and the tribal claimants were no exception.

2.4.3 Consultation

The primary goal of American Indian conflict resolution practices and policies is to repair the relationship between disputants and achieve harmony (O'Brien, 1991). Dispute resolution in tribal societies aims to repair relationships, and adjudicators of disputes typically examine the character of the parties and the history of their interaction, not just the particular event in the complaint (Cooter, 1998).

Compared to United States courts, tribal courts attend to the relationships of the parties far more than legal precedent and rules, as well as acknowledging things beyond the immediate dispute (Cooter, 1998). In order for a dispute to be solved within a relationship-based cultural mindset, conflict resolution processes must allow all who have a stake in the result to voice their concerns. Repairing relationships is best accomplished, not by a court, but by a consensus process (Cooter, 1998).

A consensus is reached when everyone sufficiently agrees with a proposal so that no one objects in public. Rule by consensus requires the group to continue its discussions until everyone remaining in it accepts the decision (Cooter, 1998). If someone persists in public dissent, preserving a consensus requires either abandoning the proposal or having the dissenter withdraw from the group. Consensus comes from the community in an

upward flow to the leaders, as any member of the tribe is afforded the right to provide input.

"There was a lot of controversy concerning the remains. Several tribes were claiming ownership. Eventually, five tribes came to a cooperative agreement" (Aripa in Burke, 2005 p. 146). Relationship-based societies become suspicious when time is not invested to build and solidify the relationship. Native American societies organize events focused on involvement of people and relationships, and completion of transactions, with as many members of the in-group participating, rather than adherence to schedules, as the goal.

Family and friends are placed before schedules as obligations to people are more important than obligations to schedule (Hall, 1983). These types of societies find meeting face to face, rather than communicating through letters or email, to be of far greater value and it is estimated that twice as much time as a rule-based culture, such as the American mainstream, would spend on an issue is needed (Trompenaars, & Hampden-Turner, 1998).

The American Indian cultural element that represents the relationship-based mindset and consensus processes is the term consultation. Within consultation, members discuss issues within in a semipublic setting moving from issue to issue, conferring in turn with each member who wishes to contribute. Consultation takes less time than meeting with a single person at a time, gives others the feeling of importance, and offers each person a chance to confer with others (Holm, 1982).

Consultation was observed in almost every American Indian text produced by the tribal stakeholders, as illustrated in the few following examples.

> Anthropology and the scientific fields need to interact with the local community to understand their perspectives and their culture. Within the Kennewick case, there is a lack of respect for the American Indian community and a feeling of domination or power within the scientific community. There should be a mending of differences, as we all need to be ethically just. The scientific community needs to show consideration for all American Indian communities and let their voices be heard. (Lee in Burke, 2005, p. 98)

> Without consultation, science has no right to study Native American human remains. Had the scientists treated the tribes as if they have sovereign rights to make up their own legal agreements regarding scientific research, this would not have gone to court….They did not care if they affected the relationship between Indian country and science…If they had sat down and consulted with the tribes it would have been different. We have always said that we could have come out with a win-win situation. (Fredin in Burke, 2005, pp. 149-150)

> Studying our ancestry is not going to do the scientists (European descendants) any good. If they want answers about our (American Indians') past, present, or future, they need to come and talk to us. (Moses, Jr. in Burke, 2005, p. 102)

> It is time for the plaintiff scientists to move into the 21st Century and work with tribes rather than to continue believing they can disturb our ancestors without our permission. (Minthorn, 2001, n.p.)

Found most prominently within the tribal texts, requests for consultation and complaints regarding its lack, unexpectedly, were more prominent than the more expected American Indian elements of sacred and respect.

2.4.4 Sacred

Contrary to the American mainstream common meaning, the American Indian cultural element of Sacred does not denote 'divine,' with its implied American mainstream ascendant good. Rather, for American Indians, Sacred represents the processes of maintaining equilibrium between interdependent variables that affect life experiences.

> Sacredness [is] … an ongoing 'cosmic give-and-take' among beings large and small, creative and destructive, visible, invisible, or dimly perceived, beneficent

> and dangerous, all interacting on a spectral scale of mutuality rather than in a dualistic opposition (Schelbert, 2003, p. 68).

Sacred eschews the universal duality mindset of the American mainstream and instead applies a balancing set of assumptions to the elements of existence.

Balance is considered necessary to keep life processes operating harmoniously, and was present in many tribal texts (O'Brien, 1991).

> To me, the balance on this Earth is so delicate and intricate that it was never meant for human control and manipulation. The Kennewick Man represents the basic dignity and respect due to a human being—to be allowed to rest in peace. He was lad to rest thousands of years go in an area Native people are identified with and have cared for since time immemorial. (Johnston in Burke, 2005, p. 224)

> To survive, we must all adapt to our environment to balance the system in which we live and are intertwined. (Sirios in Burke, 2005, p. 101)

> According to custom, any disturbance needs immediate remediation to restore the person and site to a restful state. Without the remediation/restoration of order, chaos and social unrest will occur and affect the entire community. (Sirois in Burke, 2005, p. 99)

Disturbance of the Sacred disrupts life processes, creating imbalance which is believed to manifest as illness, conflict, and tragedy. Only by respecting the sacred can balance be achieved and harmony re-established (O'Brien, 1991, p. 1461).

> The grounds where our ancestors are buried are considered sacred. The possible molestation of these areas or gravesites is forbidden and audacious. According to custom, any disturbance needs immediate remediation to restore the person and site to a restful state. Without the remediation/restoration of order, chaos and social unrest will occur and affect the entire community…While scientists and courts debate the ties of this Ancient One to one ethnic groups or another, social unrest and chaos will wreck havoc on our communities. (Sirois in Burke, 2005, p. 99)

> ...and there is a lack of understanding as scientists cannot grasp the concept of 'sacredness.'" (Lee in Burke, 2005, p. 97)

Both sacred, and its companion element of respect, operate as a mindset and influence American Indian processes of decision making.

2.4.5 Respect

Respect is "the constant awareness of the danger of disjuncture and thus of the effort needed to safe-guard and promote the interdependent harmony of all that is" (Schelbert, 2003, p. 68). Respect is a requirement of operating successfully within the network of "cosmic give and take" and is imperative to the maintenance of the sacred (Champagne, 2007, p. 13).

Respect acknowledges sacred aspects of the surrounding environment and through respectful actions, tribal societies negotiate conflict.

> We are not trying to be troublemakers, we are doing what our elders have taught us—to respect people, while they're with us and after they've become part of the earth. (Minthorn, 1996, n.p.)

> We take earnest care in respecting their remains so as not to disturb their spirit or their resting place. Elders, grandparents, and ones who have passed on receive the utmost in respect and care according to our traditional values…it is a matter of respect and honor that these individuals receive the greatest care and attention on their final journey. (Sirois in Burke, 2005, p. 99)

> Everything had spirit and if you respected everything....it would serve us, but we had to show respect first. So this is what all generations were taught and the people spoke of this in their everyday life, as they worked, as they ate, as they communicated with one another. This was the philosophy the people lived by. (Colomeda, 1999, p. 146 quoting Vi Hilbert, Upper Skagit tribal elder)

> Communication, empathy, respect, and common sense need to be applied to improve how we 'discover' things, how we begin to understand our surroundings, and how we are connected to that reality. (Sirios in Burke, 200, p. 101)

Sacred and respect function as cautionary rules intended to bind behavior that might be harmful, i.e., disturbance of human remains. American Indian and American mainstream cultures differ markedly on these elements, not only because of the different meanings assigned per culture, but also with the priority placed upon these elements.

2.5 Scientist Plaintiffs

In 1999, as an addendum to their suit, the eight scientist plaintiffs each contributed an affidavit where they put forth their individual reasons for seeking an injunction, stipulated the harm that would be caused if such injunction was not so ordered, and described what they consider critical to the study of the remains.

These affidavits were the texts selected for culture coding as they present the scientist plaintiffs' reasons expected to provide the most compelling rhetoric for their argument. An examination the affidavits produced a definitive pattern of common cultural elements, some of which are scientifically distinctive, all of which are shared by James Chatters. Also, all cultural elements identified are associated with cultural values of the American mainstream, though some are distinctive within societies defined by the sciences.

Of the affidavits produced by the plaintiffs, three mindsets were prominent throughout the discourse. First, and found throughout every paragraph of text with every plaintiff, was the mindset of science. Secondly, the mindset of inverse universals, most often recognized as versions of accurate/inaccurate. And last, part of the mindset of linear time, a cultural frame that emphasizes the demarcation of past/present, origination, and progress.

2.5.1 Science

The following quote illustrates the American mainstream cultural mindset of linear time.

> A way of examining, explaining, reflecting on, and predicting natural phenomena that employs systematic observation, experiment, and logical inference to formulate and test hypotheses with the aims of establishing, enlarging, and

> confirming knowledge and the laws of nature. Science advances through conjecture or intuition, hypothesis, refutation of deductions from previous and imperfect hypotheses, and ultimately verification of hypothesis by induction. Occasionally, science undergoes a paradigm shift as long-established principles and laws are overturned by new discoveries. (Last, 2007, n.p.)

Science is an American mainstream mindset imbued with a set of assumptions, methods, and notations, that holds a "celebrated status in American society…lauded as the path to human deliverance" in which the problems of the world are best solved by the "systemic application of reason" (Coleman & Dysart, 2005, p. 3).

Attributed to ancient Greece and considered the first systematic attempt at formalizing human reasoning, Greek philosophers provided rules of logical deduction intended to create a set of assumptions which all "reasonable men and women would accept, and from which the resolution of all conflicts would flow" (Davies, 1992, p. 19).

Science filters representations of the material world into an objectified, knowable, body of objects that can be understood, controlled, improved, and used (Marx & Mazlish, 1996). Science is not just a representation of nature or the creation of new technology, it is the explanation of such objects and events.

Within the texts of the scientist plaintiffs, multiple references to science were made, not just of the symbol itself, but also referencing the plaintiffs' identities as scientists and teachers of science (Gill, 1999; Jantz, 2002; Steele, 1999). Also included were the proper methods of scientific inquiry and purposes of scientific research in explaining natural phenomenon. (Brace, 1999; Gill, 1999 Hunt, 1999)

> Science does not progress without examination and re-examination. The scientific method is based upon the understanding that theories are to be tested and retested by multiple independent investigators to verify the degree of accuracy and consistency of the theory. (Steele, 1999, p. 3)

> Scientific research is more than just data collection and analyses. It is also a process of generating new questions to be investigated and developing new methods for testing possible solutions. (Gill, 1999, p. 2)

> Such feedback can help to improve interpretations, uncover potential flaws in methods or conclusions, and the point the way to new questions to be investigated. The longer this feedback process is delayed the greater the impact on a scientist's ability to take his or her research to new levels of investigation and explanation. (Brace, 1999, pp. 3-4)

> Many scientists have had the opportunity to reconstruct early hominid fossils from east and South Africa and the early human fossils of Asia and Europe. Through this process of multiple reconstructions, consensus is often reached confirming the accuracy of the initial morphological composition. In other instances, new reconstructions have let to new interpretations in the morphology which have resulted in a re-evaluation of the specimen's relationship to other specimens. Only open debate, re-interpretation and use of new or varied technologies will permit us to achieve a greater and more accurate understanding of human evolution. (Hunt, 1999, p. 4)

Each of the eight scientist plaintiffs and Chatters formed their rhetoric within the context of science, focusing on the remains as an objectified, knowable set of data points that could further understanding of life in the past. But, the data gained have their own culturally determined set of measurements: the truth.

2.5.2 Inverse Universals

As a remnant of Judeo-Christian dualistic monotheism, the juxtaposition of 'pure divine' with 'unadulterated evil,' the American mainstream speech code contains a mindset of dualism which "claims an all pervasive polarity of what is: the duality of positive and negative, of human and divine, of humans and nature, of right and wrong, of virtue and sin, of salvation and damnation" (Schelbert, 2003, p. 63).

The American mainstream places all aspects of existence in metaphorical boxes representing inverse values. This cultural premise of dueling opposites structures bureaucratic policy, religious activism, and international strategy. Various terms,

metaphors, and symbols represent inverse universals, but the aspect of this cultural mindset most often used by the scientist plaintiffs was the cultural element of true-false.

True and False are absolutes, and universally filter elements of existence into societal beliefs through representation of 'fact.' True-false, fact-fiction, accurate-inaccurate, real-imaginary are all terms used by American mainstream society when prioritizing social interactions, specifically in conflict resolution processes.

The search for truth and the elimination of false manage resolution approaches, and those parties that claim truth or point to the opposite party's falsity are granted priority by those with decision making power (Blackburn, 2005).

True-false is utilized in a specific manner by the scientists in their discourse—framing the truth as fact within a context of reason and science. Reason "seeks the reconciliation of opposites and the removal of ambiguity (O'Malley, 2004, p. 13).

> Unless the skeleton is reexamined, the discussions that are conducted about it are in danger of taking place in an environment of *inaccurate and incomplete* information. For example, some of the cranial measurements…reported by the government's investigators may be *incorrect*. In several instances that I am aware of (and there may be others), the possible *inaccuracies* are large enough to affect conclusions...as a result, information about the skeleton is *incomplete* and the resulting unknowns could distort conclusions. (Jantz, 2002, p. 2)

> Until it has been determined, we cannot distinguish one population from another, separate *the usual from the unusual*, or determine the likely lines of development of different suites of characteristics. By comparing Kennewick Man to Wizard's Beach, Spirit Cave and other early specimens, I will be better able to determine the range of variation that occurred in early New World populations. (Gill, 1999, p. 2)

> My skeletal analyses also include the observation and recording of a battery of nonmetric traits. These are characteristics that are not determined metrically (i.e., in terms of precise length or width). Instead, they are scored on the basis of *presence or absence* and the degree of development…We and our colleagues can add a wider range of perspectives, and would bring to the task a much more comprehensive base of comparative data. (Gill, 1999, pp. 3-4)

> The objective of reconstruction is to restore in a reliable manner a skeleton (or a portion thereof) to a condition that is as close as possible to the original morphology of the living person. An *accurate* reconstruction is not necessarily a "perfect fit" of bones or bone fragments….Failure to allow for such influences will result in an *inaccurate* view of what the person was truly like. (Steele, 1999, p. 3)

> Each new specimen has the potential to reveal new patterns (or new variations) in the fossil record, thereby affecting how we view the *similarities or dissimilarities* between early human populations. (Brace, 1999, p. 3)

Inverse universals were coded throughout the scientist plaintiffs' texts, and while present, there was no indication beyond that to show impact of this mindset upon decision-making. Instead, the American mainstream mindset of time, emphasizing the Past/Present/Future played a much more prominent role.

2.5.3 Time: Past/Present/Future

Within the American mainstream time is represented three ways: the past, described as memories; the present, the direct perception; and the future, expectation. The present is seen as a transition from the past to the future with the present as the 'here' and the future as 'elsewhere' (James, 2001). The future "offers freedom from the now in linear time for it never repeats, it always brings something new...thus the past always appears as a possibility of the future and what takes place is always in expectation of its 'afterwards' as a real possibility" (Pattaro, 1976, p. 172).

Some cultures see no connection between past, present, and future, though they often prioritize one over the other, such as future over present, and both future and present over past. Others see past, present, and future as overlapping and influencing each other, such as present influencing future, but there is no prioritization of one time dimension over another. The matter of interrelatedness between time dimensions

corresponds directly to task management and attached meanings to events.[4] If a culture prioritizes the future as most important, it develops processes most likely to influence the future, including conflict and economic processes. Similar focusing of processes would occur depending upon the dimension valued (Trompenaars, & Hampden-Turner, 1998).

The American mainstream is a future oriented culture and references to the cultural element were observed throughout scientist plaintiffs' affidavits as illustrated in the following texts.

> This work was based upon personally examining the skeletal material of these oldest known representatives of early American populations...They indicated that ancient and recent New World populations may not resemble one another. When more complete skeletons from Nevada were found to be of similar antiquity, these individuals were examined and included in my database. (Steele, 1999, p. 4)

> The refusal of the government to allow me access to study these remains has curtailed my research on this topic. I will be 59 years old next February, and my health is not as good as I would wish…I have already lost almost three years of irreplaceable research time…I cannot afford additional delays. (Steele, 1999, p. 4)

> Because of its age, completeness, geographic origin and apparent morphology, the Kennewick skeleton could be a critical component to such an analysis. The Kennewick skeleton also could be important for what it might tell us about the relationships between and among the other early skeletons that are already in my database. (Brace, 1999, p. 2)

> Discussions of the skeleton and its implications for the evolution of New World native people have begun to appear in the scientific literature. (Jantz, 2002, p. 2)

Time and science also played roles in the discourse of the federal government, but were less prominent than in the scientists' texts. Instead, the most prominent cultural element identified in their texts was evidence.

[4] In 1989 the Chinese Prime Minister was once asked whether the French Revolution was a success. He replied he didn't know yet. (Trompenaars, & Hampden-Turner, 1998)

2.6 Department of the Interior

Government involvement heavily influenced the Kennewick event. Conflict resolution process was organized around the requirements the federal government used to manage federal lands and as such, the government agencies and their employees had protocols and rules they felt constrained to use when solving these issues.

After 2 years of trying to resolve the case, USACE signed a memorandum of understanding with the Department of the Interior (DOI), turning all decision-making authority over to them (National Park Service, 2000).

Delegated to make a "final determination and resolution" for the remains, the DOI spent 2 years gathering "an extensive array of information to reach the decision regarding the disposition of the Kennewick human remains" (Babbitt, 2000, n.p.).

There were two determinations related to the remains the DOI felt it was responsible for: 1) whether the remains met the definition for "Native American" within the meaning of the Native American Graves Protection and Repatriation Act (NAGPRA); and, if so, 2) the appropriate disposition of the remains under the terms of the statute and its implementing regulations at 43 C.F.R. Part 10 (Babbitt, 2000, n.p.).

On September 21, 2000, Bruce Babbitt, Secretary of the Interior, informed Louis Caldera, the Secretary of the Army, that the Department of the Interior considered the remains to be Native American under the statute and further, found the remains to be culturally affiliated with the claimant tribes (Babbitt, 2000, n.p.).

2.6.1 The Law

As an American mainstream cultural element, the law encompasses not only attitudes, values, and opinions held with regard to the law, but also appropriate methods

to resolve disputes (Hamilton & Sanders, 1988). The United States legal system is formal, procedural, and based upon a series of complex universals.

> Universalism tends to imply equality in the sense that all persons falling under the rule should be treated the same…rule-based conduct has a tendency to resist exceptions that might weaken that rule. There is a fear that once you start to make exceptions for illegal conduct the system will collapse. (Trompenaars & Hampden-Turner, 1998, p. 31)

The American mainstream is characterized by having a rule-based universalistic mindset, which feels an obligation to adhere to standards that are universally agreed to by society. Conflicts are resolved by applying principles of justice or efficiency and the legitimacy of principle is the priority of a rule-based culture (Trompenaars, & Hampden-Turner, 1998).

Rule-based universalistic cultures generally use court proceedings and have large legal systems dedicated to finding and preserving the 'truth.' Commercial agreements are ratified by densely written contracts, and disputes are settled by appeal to volumes of regulations, case law, and statutory law (Hooker, 2003). Rule-based cultures appeal to the rules to settle disputes and don't prioritize manners or politeness, values of relationship based cultures, when resolving conflict.

The law presupposes universal legal rules and derives these universals from authoritative sources. Because of its universalistic preference for truth, jurisprudence uses a method of discovery focused on reasoning out the truth and applying that truth to determining matters of individual conscience. This method of dispute resolution presumes the absolute authority of law, which is seen as containing an integrated and complete body of doctrine.

Legal rulings and decisions are considered authorities to be accepted as

embodiments of the community's determination of justice upon all who reside within its jurisdiction (Berman, 1983). "In America, the Law is King" (Mayali, 1995, p. 70).

Examples of the DOI referencing authoritative sources, such as the statutes and rules which govern them highly prominent throughout the texts. The following examples are just a few.

> The disposition of Native American human remains is directed by Section 3 of NAGPRA and its implementing regulations. Section 3 establishes that the Federal government does not have the right of possession or ownership of Native American human remains and other cultural items…To that end, the statute establishes the following priority for such remains…[first], in the lineal descendants of the Native American…[second] in any case in which such lineal descendants cannot be ascertained…in the Indian tribe…on whose tribal land such objects or remains were discovered; [third] in the Indian tribe…which has the closest cultural affiliation. (Babbitt, 2000, n.p.)

When determining the issue of cultural affiliation for the "very ancient set of Native American human remains" the DOI considered:

> …the purpose of the statute, the general emphasis of NAGPRA's Section 3 on returning Native American remains and cultural items to Indian tribes, and the guidance set forth in the regulations at 43 CFR 10.14. While some gaps regarding continuity are present, DOI finds that, in this specific case, the geographic and oral tradition evidence establishes a reasonable link between these remains and the present-day Indian tribe claimants. (Babbitt, 2000, n.p.)
>
> While many sources of evidence may be considered, the statute and regulations do not specifically answer whether cultural affiliation with a single identifiable tribe is required, or whether such affiliation may be established with a group of modern-day Indian tribes filing a joint claim. Section 30002(a)(2)(B) speaks of an Indian tribe with the "closest cultural affiliation," which suggests a congressional recognition that more than one, and perhaps, many, tribes may have a cultural affiliation with remains discovered on federal land. (Babbit, 2000, n.p.)

The law is believed to be objective, separate from an individual's subjective recourse, and supported by fact. The authentication of facts requires evidence that is measured upon a scale of probabilities of truthfulness (Berman, 1983).

2.6.2 Evidence

Reason is the method of discovery, a "relentless questioning for explanation, the 'why' of an occurrence," that science uses when seeking explanations (O'Malley, 2004, p. 12). "Reason glories in close examination of particulars that lead to precise distinctions formulated in sharply defined concepts" (O'Malley, 2004, p. 12). These 'particulars' form the basis for further questioning, which in turn lead to the construction of systems and processes.

Science is represented as a construction of general principles that are consistent with evidence and the use of those principles to explain and extrapolate from it. Empirical tests are used to determine the validity of the general principles, thus establishing fact (Berman, 1983). Evidence is the result of such testing.

As a result of reasoned extrapolation, the term evidence is a vehicle for presenting truth and creates justification for decision-making. Composed of aspects of both inverse universal and of science, evidence is an essential element of American mainstream rhetoric and conflict resolution.

When considering possible cultural affiliation connections, the DOI reviewed "geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, and other relevant information and expert opinion" (Babbitt, 2000, n.p.). The DOI made a specific effort to state that "all lines of evidence were deemed equally important and all were accorded equivalent weight" (Babbitt, 2000, n.p.).

The DOI also made a point of stating that the standard of proof used was "the preponderance of evidence" as dictated by NAGPRA.

> This is a threshold that many scholars hesitate to use for interpretations based upon archeological, anthropological, and historical evidence. The determination

> to be made here is informed by, but not controlled by, the evidence as a scholar would weigh it. Instead, the determination is for the Secretary of the Interior to make as the one that, on the evidence, would best carry out the purpose of NAGPRA as enacted by Congress. (Babbitt, 2000, n.p.).
>
> After considering and weighing the totality of the circumstances and evidence, DOI has determined that the evidence of cultural continuity is sufficient to show by a preponderance of the evidence that the Kennewick remains are culturally affiliated with the present-day Indian tribe claimants. (Babbitt, 2000, n.p.)
>
> The available information provides evidence of both cultural continuities and cultural discontinuities between the modern day claimant tribes and the cultural group that existed during the lifetime of the Kennewick Man. The cultural discontinuities are due, in part, to a lack of available data from the earlier time periods. Notable, none of the cultural discontinuities suggested by the evidence are inconsistent with a cultural group continuously existing in the region. (Babbitt, 2000, n.p.)
>
> We now have sufficient information to determine that these skeletal remains should be considered "Native American" as defined by NAGPRA. (McManamon, 2000, n.p.)

The DOI collected oral tradition evidence as it "suggested a continuity between the cultural group represented by the Kennewick human remains and the modern-day claimant Indian tribes" (Babbitt, 2000, n.p.).

> The oral tradition evidence reveals that the claimant Indian tribes possess similar traditional histories that relate to the Columbia Plateau's past landscape. The oral tradition evidence also lacks any reference to a migration of people into or out of the Columbia Plateau. (Babbitt, 2000, n.p.)

The emphasis of oral tradition as evidence escalated the conflict as the scientist plaintiffs and then the Court did not prioritize this element as they did science or race. The DOI's reliance upon oral tradition for its cultural affiliation determination was soundly rejected by the scientist plaintiffs as well as the court.

2.7 Summary

The cultural elements coded in the Kennewick event were mostly found as expected, with the American mainstream parties having American mainstream cultural elements prominent and the American Indian parties prioritizing American Indian elements.

What was surprising was the different priorities the various American mainstream parties had. The scientist plaintiffs' priority of time versus the DOI priority of evidence, and even Chatters priority of race and lineage to support scientific testing.

These differences within the American mainstream parties were also discovered when coding the OYKC Project event.

Chapter 3 will explore the cultural elements and mindsets represented in the texts produced by the stakeholders in the OYKC Project, and will discuss the differences between the stakeholders priorities.

CHAPTER 3

ON YOUR KNEES CAVE PROJECT AND DIFFERENCES IN CULTURAL RHETORIC

3.1 Introduction

In the previous chapter, cultural elements present in the Kennewick conflict were analyzed by notating their prominence and priority within stakeholder texts that presented reasons for choices and positions.

Chapter 3 will take these coded elements identified in the Kennewick event and analyze their presence, prominence, and any given priority within the OYKC Project event. Once detailed, Chapter 3 will then juxtapose specific element use as described in the OYKC Project event with their use in the Kennewick event.

Table 3.1 displays the cultural elements coded from the Kennewick, WA stakeholder texts. Most of the elements in Table 1 are also present within the OYKC Project event, however, those that are not present within the OYKC Project, and only present within the Kennewick conflict, are presented and discussed with regard to their possible impact upon the conflict.

Following the discussion of cultural element presence is a summary of all the cultural elements in both events. They are compared and contrasted for relevance, priority, and affect upon the escalation and de-escalation of conflict.

Table 1 Cultural Elements

CHATTERS	TRIBES	SCIENTISTS	INTERIOR
Objectification Linear Time Race Lineage	Event Marked Time Relationship-based Sacred Respect Consultation	Science Inverse Universals Time:	Law Evidence

The conflict involving the discovery of human remains found during the OYKC project was resolved within 2 weeks. Scientific analysis occurred over a period of months and years after the initial discovery and subsequent resolution of the event, but throughout that period of time not one of the stakeholders lodged any type of official complaint or objected to any of the conducted research (Fifield, 2012, personal interview).

3.2 Stakeholders

The stakeholders in the OYKC project were Terry Fifield, archeologist for the Forest Service, assigned with first care of the remains; the tribal councils involved in consultation conducted when the remains were discovered; and James Dixon, forensic anthropologist contracted by the Forest Service to perform scientific study of the remains.

Terry Fifield, archeologist for the Forest Service, was called to determine if the remains were human and then, as the designated NAGPRA liaison, was tasked with deciding appropriate disposition. Just as James Chatters shaped the context of the Kennewick event through his decision-making, so too, did Terry Fifield shape the OYKC Project event with the processes he chose to facilitate.

Four tribal organizations, the Central Council of the Tlingit and Haida tribes of

Alaska, the Klawock Cooperative Association, Craig Community Association, and the Organized Village of Kake were involved in the consultation process regarding care of the remains.

The Klawock Cooperative Association passed a resolution permitting the shipment, curation, and physical anthropological analysis, radiocarbon dating, and DNA testing of the remains contingent upon the provision that additional consultation would occur if the area turned out to be a burial site.

The Craig Community Association passed a similar resolution with the addition of a provision that they wished to review any media statements before they were released. The Organized Village of Kake decided to defer to Klawock Cooperative Association in the consultation process (NAGPRA Review Committee, 2000).

James Dixon was the curator of archaeology at the Denver Museum of Natural History where the bones and artifacts were studied and analyzed. For the past 20 years he had been searching the caves of southeast Alaska for evidence indicating that humans first settled the Americas with the use of boats along the northwest coast of North America. The museum supported Dixon's research in southeast Alaska while this discovery developed. Dixon believed this, and other discoveries, are critical to understanding when humans first came to the Americas.

3.3 Methodology and Texts

The texts of the OYKC Project were analyzed after prominent cultural elements were identified in the Kennewick event, thereby isolating those elements for comparison. Variances in presence, prominence, and priority were marked and analyzed, first by identification, then followed by marking how often the elements were utilized, and then

documenting if one element was prioritized over another.

Once common elements were recognized and analyzed, elements that were not present in the OYKC Project event, but were present in the Kennewick, were identified and documented.

The texts available for research fro the OYKC Project were far fewer than texts available for the Kennewick event, due in most part to the lack of conflict, and therefore lack of discourse. However, the texts accessible were more than adequate for a comparison case study.

The texts coded for analysis in this chapter are: firsthand interviews of all stakeholders as recorded on the DVD titled *Kuwóot yas.Éin: His spirit is looking out from the cave*; the Native American Remains Review Committee minutes from the Alaska meeting in 2000; and answers to personal interviews conducted with Terry Fifield in 2012 and 2013.

The DVD describes the stakeholders' opinions of the initial notification and consultation processes of the conflict and explores the relationships that developed among the American Indian stakeholders, government agencies, and scientists. The minutes recount Terry Fifield's explanation of the events surrounding the discovery.

3.4 The Role of Consultation

> Consultation involves asking the potentially affected tribes how they think we should proceed with this situation. Should we allow study, should we stop now and rebury the remains? What would they like to see done? At that point the Forest Service is required to consult, they're not necessarily required to do what the tribes want them to do. But they are required to consult and weigh that information in the decision that they make. (Sealaska Heritage Institute, 2005, n.p.)

So describes Terry Fifield, Forrest Service archeologist, in the documentary

Kuwóot yas.Éin: His spirit is looking out from the cave (Sealaska Heritage Institute, 2005). The documentary describes "a unique partnership" formed between the employees of the Tongass National Forest, scientists, and Alaska Native tribes "brought together by the mandate of the Native American Graves Protection and Repatriation Act" (Sealaska Heritage Institute, 2005).

The video was produced to document the answer to this question: "In an era when the interests of scientists often conflict with those of indigenous peoples, why did this partnership work?" (Sealaska Heritage Institute, 2005). The documentary focuses on the collaborative relationships of the stakeholders, and details the consultation process involved in the 12 years scientists studied these remains.

> The success of the consultation in the case can be attributed to both the Forest Service and the Tlingit people themselves. The Forest Service acted immediately after they had discovered the human remains in terms of starting the consultation process (Sealaska Heritage Institute, 2005, n.p.).

On July 4, 1996 Tim Heaton, a paleontologist exploring On Your Knees Cave discovered human remains while excavating. Upon identifying the remains as human, Fifield recovered them and brought them back to his office in Craig, Alaska. "The following morning I contacted the presidents of the Klawock and Craig tribes and notified them of the discovery, then set up meetings during the next week" (Sealaska Heritage Istitute, 2005, n.p.).

Fifield then worked with Cheryl Eldemar, representative of the Central Council of the Tlingit and Haida Tribes of Alaska, a coalition of local tribes, to facilitate consultation meetings (NAGPRA Review Committee, 2000).

> I think the stereotype is that archeologists come in, dig things up and take them home with them. And nobody ever knows what happened or what was found.

> And that's an especially sensitive situation for Native Americans, who's ancestors are being excavated (Sealaska Heritage Institute, 2005, n.p.).

The Klawock Cooperative Association sponsored two consultation meetings 5 days after the discovery.

> One thing about the debate at the tribal council meeting, when we first talked about what to do there certainly wasn't a unanimous decision that we should study the bones. There were two or three people that stood up and said 'No, no, we should bring them right back and return them to the ground.' But more people stood up and said we need to know something about this person, we need to know who he was, we need to know where he might have come from and how he lived and something about him, about how he is related to us, either in lifestyle or in ancestry. (Sealaska Heritage Institute, 2005, n.p.)

Rosita Worl, Tlingit anthropologist and tribal council member at the time, stated the tribes prioritized setting up a comprehensive consultation process that would serve all parties interests for the entire length of the NAGPRA process.

> And actually we were trying to figure out how were we going to develop this process, we wanted to formalize it, Memorandum of Agreement or Understanding as to how we are going to work together or what we are going to do when new archeological sites are discovered. (Sealaska Heritage Institute, 2005, n.p.)

In addition to the initial consultation process of meetings with governent officials, tribal leaders were also flown to the Denver Museum of Natural History to meet with the scientists and personally observe the lab. James Dixon describes:

> One of the things that we've tried to do as scientists working at this site is to share the information we have been able to obtain with the local people. And I think this is a very important aspect of the partnership and the trust that's been developed over the years. Specifically the tribal governments have requested that we share scientific discoveries, information, radiocarbon dates and the results of our work with them prior to sharing it with the world. Some colleagues have suggested this is censorship or unnecessary restriction on our research. I don't believe it is. I believe this is a clear case of cooperation and respect, and just good behavior between peoples. In other words sharing the data locally before you share it nationally. (Sealaska Heritage Institute, 2005, n.p.)

Concerned the archeological site might be "be a burial ground, the Klowok tribal

council stipulated that the archeologists cease work and return to the tribe for further consultation." (Sealaska Heritage Institute, 2005) Interestingly, the Tlingit tribal coalition did not request a halt to excavation if further burials were discovered, just that more consultation be held if this was the case.

Per the consultation arranged by the Forest Service, the tribes supported scientists' efforts to study the remains and to conduct further excavations at On Your Knees Cave.

Compared to the amount of consultation with tribes utilized by the stakeholders in the OYKC project event, tribal consultation was only minimally used by most of the stakeholders in the Kennewick event.

Chatters' approach to tribal consultation was of an adversarial nature. He felt the tribes had "increasingly gained power over access to archaeological sites, even sites that were off reservations and (in some states) on private land. If an archaeologist these days wanted to continue working, he had to stay in the tribes good graces" (Chatters, 2001, p. 90). Chatters gives the following depiction of his reaction to a consultation meeting set up by USACE in the beginning of the conflict when he still had possession of the remains.

> In any case, my thoughts of a collaborator were derailed by another call from Ray Tracy, who was arranging a meeting between Corps, the coroner's office, and the Indians the next day at Columbia Park. Could I be there, he asked, to talk about the most recent skeleton find? I was reluctant, as such meetings had become increasingly uncomfortable over the years. This one promised to be even less amicable than most, but I hoped that by being accommodating I could buy some time, so I agreed…
>
> At the park we found five Indian men standing in the shade by their car. All but one were short and stocky with broad faces, black hair, and bronze complexions. Most wore braids. (Chatters, 2001, p. 67)

Chatters goes on to describe the tribal members as attempting to intimidate and threaten him. Because of their demands he stop testing and the federal government's accommodation to these demands, Chatters determined he must do everything in his power to "fight for Science" (2001, p. 69).

Chatters documented one other instance of tribal contact while in possession of the remains. The mayor of Kennewick, excited by the rarity of a skeleton being found near his city, called a press conference to announce the results. Concerned because "nobody likes to be blindsided with important news if they feel they have a stake in it," Chatters contacted USACE archeologist, Ray Tracy, to make sure the tribes had been informed of the announcement before the mayor held the press conference (Chatters, 2001).

> The Yakamas and Nez Perces had been informed, he said, as well as the Umatillas.
>
> "What about the Colvilles?" I wanted to know…
>
> I had been working with the Colvilles for more than a dozen years, most recently having been asked by them to relocate, recover, and analyze more than forty skeletons that had been excavated from several recent cemeteries of the Colville Confederation's member tribes. It had been a good relationship. They liked my work and had usually requested state-of-the-art analyses on the skeletons. An announcement made without their advance knowledge would not only ignore a legitimately interested party but would jeopardize that working relationship.
>
> "John isn't going to contact them," Ray answered. "He considers this to be outside their area of interest."
>
> I tried to reach Adeline Fredin with the news, but she was not in, and I could do no more than leave a message. (2001, p. 59)

The press conference was held with city officials, the Coroner, and James Chatters. No tribal members were present (Chatters, 2001).

There is one documented attempt by the scientist plaintiffs to initiate tribal consultation. In an article published in *Anthropology Newsletter* in 1998, 2 years after

the discovery of the remains, Richard Jantz and Doug Owsley stated,

> Communication with Native Americans is important, but assumes that they are open to communication. Before the suit was filed, Owsley contacted the Umatilla (the principal group that has claimed the skeleton) through intermediaries and directly in writing to request permission to examine the skeleton. No response was received. (Jantz, 1998, p. 56)

The Department of the Interior on the other hand, consulted far more often with the tribal claimants. During the 2 years assembling the "data and observations supplied by DOI-sponsored investigations," the DOI also consulted,

> …in accordance with the requirements of the Act (NAGPRA) and its implementing regulations, with representatives and religious leaders of the Confederated Tribes of the Colville Reservation, Confederated Tribes of the Umatilla Reservation, Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, the Nez Perce Tribe of Idaho, and the Wanapum Band, a non Federally recognized Indian group. (Babbitt, 2000, n.p.)

In addition to the scientifically focused reports, the DOI considered "reports submitted by the claimant Indian tribes and other relevant sources" (Babbitt, 2000). The information collected was "used to determine the disposition status of these remains" (Babbitt, 2000).

The DOI consulted so regularly in fact, the Court reprimanded them for biased and unfair behavior.

> I am concerned by the largely undisputed evidence that agency decision makers: 1) secretly furnished the Tribal Claimants with advance copies of documents…2) secretly met with the Tribal Claimants at a critical time in the decision-making process to discuss the mental impressions of the decision makers…and gave the Claimants an ex parte opportunity to influence the decision makers…3) secretly sent letters to the Tribal Claimants…4) secretly notified the Tribal Claimants that the aboriginal lands issue was under consideration so they could supplement the record before it closed; and 5) refused to allow Plaintiffs to see any of the expert reports or other materials…A fair reading of the record before the court leads to the conclusion that, since the time the Corps took possession of the remains of the Kennewick Man, Defendants have not acted as the fair and neutral decision makers required by the APA. (Bonnichsen v. US 217 F. Supp. 2d 1116-2002, 22 & 23 Opinion and Order)

USACE and then the DOI considered themselves to be bound by NAGPRA to consult with tribes, but did not feel obligated to consult to the same degree (if at all) with the scientific stakeholders. In the beginning of the event, like their counterpart, the Forest Service in the OYKC Project, USACE attempted to facilitate consultation between the tribes and the original scientist on the case, Chatters.

However, circumstances became so adversarial between the government and scientist plaintiffs that, after a series of mediation attempts failed to resolve some of the conflict, little or no communication between the parties occurred (Chatters, 2001).

Comparatively, the consultation sought by the scientist plaintiffs in the Kennewick event, and the consultation conducted by the Forest Service and James Dixon with the Denver Museum of Natural History, diverges greatly in terms of quantity, duration, and even in definition.

Consultation in the OYKC Project event was seen as possessing two parts: First, as the face to face meetings between the Forest Service and the tribes during the 2-week time period right after the discovery. And secondly, the communication that occurred on a regular basis between the scientists and tribes for the life of the project, well over a decade of consultation investment.

Fifield believes the lack of conflict during the 2-week period after the discovery of the remains was possible only due to the years of relationship building he, as well as the other scientists involved, had invested in the tribal community before the discovery (2013, personal interview). Further, the consultation process did not end after gaining favorable tribal support for studying.

> So what they wanted to do was make sure that didn't happen. They wanted to know what was going on throughout the life of the project and be involved in the decisions and information sharing that was part of the project too. (Sealaska Heritage Institute, 2005, n.p.)

The consistent consultation before, during, and after the event, culminated in years of investment on the part of the government and tribal stakeholders and Fifield believes, should be considered the basis for the success of the OYKC project.

3.5 Respect

There are two utilizations of the cultural element respect in the texts of the OYKC event. The first is Ms. Worl's use in context of the treatment the Forest Service and scientists had toward tribes during and after the event. She felt they "proceeded in a very respectful manner rather than in the adversarial relationships…" that characterized other processes (Sealaska Heritage Institute, 2005, n.p.).

The second use of the element respect comes from Council member Stevens opinion regarding proper treatment of the dead.

> Our first feeling is 'No.' You know, cause we're taught you respect, you don't dig up graves…Because of the respect for someone that has passed on, as a rule, that wouldn't be, the gravesite, wouldn't be touched. (Sealaska Heritage Institute, 2005, n.p.)

In comparison to the use of respect by the tribal stakeholders in the Kennewick event, this element is not prominent in the OYKC Project event, nor is respect prioritized to the same degree by the Alaska tribes as it was by those involved in the Kennewick event.

The tribal stakeholders in the Kennewick case protested the behavior of Chatters and the scientist plaintiffs, describing their behavior as lacking in respect towards not only the remains, but also towards the tribal stakeholders. Ms. Worl, of the OYKC

Project, uses respect to describe the actions of the Forest Service and scientist stakeholders, pertaining to their efforts at initiating and supporting consultation, which were prominent in the OYKC Project event.

This dissimilarity between the prominent usage of respect within the OYKC Project versus its use in the Kennewick event suggests a correlation between tribal attribution of respect to a conflicting party's actions, and that party's utilization of consultation. It may be that use of consultation by a stakeholder indicates use of respect for tribes as 'sovereign entities' within the tribal worldview.

Further evidence of this comes from Chatters' recounting of what he terms 'respect' and his rejection by the tribal members he was interacting with on the single meeting he attended facilitated by USACE a few weeks after the initial discovery of the remains.

> I knew both men had strong feelings about human remains, so after an exchange of pleasantries, I spoke gravely.
>
> "I know we have different ideas of what respect is, but I want to assure you that to the best of my ability, within my understanding of the word, these remains are being treated with respect."
>
> Some nodded, but others gave no response. (Chatters, 2001, p. 68)

3.6 Sacred

Like respect, the American Indian cultural element of sacred was not noticeably prominent in the OYKC Project. Documented twice within the texts, both instances were used in relation to the disturbance of sites and burials, referring to the sacred nature therein.

> However, I should note that in no way will Native people allow for the disturbance of their spiritual and sacred sites. And those are primarily those that are associated with shaman graves and shaman burials. Those sites we absolutely

> do not want to have disturbed nor do we want to have any archeological or scientific investigations of those sites. (Sealaska Heritage Institue, 2005, n.p.)

The above section of text draws a hard line regarding the disturbance of shaman burial sites and as mentioned earlier, when consulted regarding what the tribal councils would like the Forest Service to do if more burials were discovered, the tribal councils did not demand a halt to further excavation. Rather, the tribal councils requested that upon such a circumstance, the Forest Service return and consult again regarding the new discoveries.

The lower priority placed up the element of sacred as compared to consultation, is demonstrated in the following account of Ms.Vaara, a Tlingit teacher, regarding her decision to support the excavation project.

> Through an agreement with the Indian tribes, six Native students and one Native teacher have worked on this project including Ms. Vaara. Ms. Vaara explained her initial misgivings about disturbing the human remains of this ancient man, due to their sacred nature. Ms. Vaara consulted with local elders, who for the most part supported the project after learning about the project and its goals, including education to corroborate the oral history that the Tlingit people have lived in southeast Alaska since time immemorial. The results of the scientific study showing that the individual's primary subsistence was marine resources was very important to Ms. Vaara because the Tlingit still utilize that way of life. (NAGPRA Review Committee, 2000, n.p.)

In Ms. Vaara's case, she followed the local elders' counsel, prioritizing the possible discovery of evidence that would corroborate Tlingit oral history, over potential desecration and lack of respect (NAGPRA Review Committee, 2000).

3.7 Oral Tradition and Time

The American Indian event marked time mindset, where movement and record of change represents existence, is markedly present within the cultural element of oral tradition. Oral Tradition is far more prominent in the OYKC event than in the

Kennewick conflict both in the tribal discourse as well as the American mainstream texts.

Event marked time orients the mind on the ebb and flow of movement surrounding the individual, where "the sensed world is not static but rather filled with change and activity" (Heine, 1985, 153; TenHouten, pp. 84-85). Examples include this recounting by Clarence Jackson, Tlingit Clan leader, in his description of his family history.

> After the last Ice Age, my family, according to our history ended up in Canada and stayed down there maybe for hundreds of years. And one day the people decided they needed to move back home and so they started their migration north from Canada and they ended up at Treepoint. And I don't know how long they stayed there South of Ketecham, a place called Cape Fox and from there they ended up again on an island. Then they moved forward again and then they moved to Union Bay all through Clarence Straights and ended up on the North end of Prince Wales Island. And they stayed in Red Bay for the longest time. They always kept the story alive of where we came from in Keku Straits on the West side of Kuiu Island. (Sealaska Heritage Institute, 2005, n.p.)

Oral tradition played a role, not only in the tribal discourse, but also in the scientific research conducted on the remains. Dixon included oral tradition as a valid method of research, valuable for its substantiation of other evidence.

> Much can be gained by combining oral history with archeology. They can enhance each other…The fact that oral histories preserve this information in such vivid detail strongly suggests there is a direct link between the people living here today and the people who lived here thousands of year ago. (Sealaska Heritage Institute, 2005, n.p.)

Unlike the OYKC Project where oral tradition was considered a valid part of the discourse, oral tradition in the Kennewick conflict was a matter of discord. Presented as evidence of a cultural affiliation connection by the DOI, American Indian oral tradition provided by tribal claimants was a large link justifying repatriation.

The DOI searched for a connection that would span a distance of approximately 5000 years, the difference between archeological evidence of modern day tribes cultural

presence (listed as 2000-3000 years ago) and the age of the remains placing it at 8500-9500 years ago.

> The oral tradition evidence reveals that the claimant Indian tribes possess similar traditional histories that relate to the Columbia Plateau's past landscape. The oral tradition evidence also lacks any reference to a migration of people into or out of the Columbia Plateau. (Babbitt, 2000, n.p.)

The court disregarded oral tradition as valid evidence of a connection because of the time span it would have had to accurately cover. American mainstream linear time, the length of accurate duration, was prioritized over the American Indian value of oral tradition.

The use of linear time is most strongly evident in James Dixon's texts where it is a contributing factor in assigning value to the remains per their unique age. "It's significance rests in the fact that it has the oldest human remains ever discovered in Alaska and Canada" (Sealaska Heritage Institute, 2005) Beyond this reference, the age of the remains goes unremarked. Interestingly enough, there are far more references to duration and linear time with tribal stakeholder texts. "My main interest in the whole thing is for historical reasons and to find out how long humans have lived here" (Sealaska Heritage Institute, 2005, n.p.).

Various instances of linear time symbols, such as stating specific durations of years, 10,000 years ago, and discussing time periods were all present in tribal texts.

However, most of these comments were made in response to a perceived need by tribal stakeholders to defend an American Indian historical presence to archeologists.

> I guess most of the archeological work done in the early literature talks about Tlingit people being here for just a couple thousand years. And this find…certainly confirmed that Native people were here much longer than that, 9000-1000 years ago and that they were also adapted to the coastal life. (Sealaska Heritage Institue, 2005, n.p.)

The OYKC Project tribal stakeholders recognized the American mainstream cultural bias of linear time, science, and truth, and by choosing to support scientific research they prioritized an opportunity to gather scientific evidence that would 'prove,' according to mainstream culture, the tribes 'were here.'

> We're in the world where our existence 10,000 years ago on this land is always in question. Somebody always stands up and says I don't believe you folks. And yet I find that these archeological explorations that are taking place, and the Forest Service is helping us greatly in this area, it's dating our peoples existence properly in this country. And we need these kinds of information from our ancestors even though they aren't physically speaking, they really are giving us a message: that they were here. (Sealaska Heritage Institute, 2005, n.p.)

The proof, as evidence—a cultural element contextualized by the mindset of science displayed within the texts of the DOI in the Kennewick event—was also found within the OYKC Project.

3.8 Science

Following consultation, representation of a science mindset was the second most prominent cultural element of the OYKC Project event. Utilized by the Forest Service, the tribal stakeholders, and the scientists, scientific inquiry was first an object of discord, and then became perceived as a means whereby American Indian interests in identity and presence could be sustained.

Upon discovery of the remains, Terry Fifield made calls to the tribal councils he knew would have an interest, and then placed a call to James Dixon. Dixon had worked on the question of early human habitation in South East Alaska, and was very interested in the discovery. Upon Fifield's request he put together a research plan that could be presented to the tribes when Fifield met with them (Sealaska Heritage Institute, 2005).

Further, Dr. Dixon offered the facilities of the Denver Museum of Natural History to curate, analyze, and protect the materials at the museum's cost and to develop the plan for future excavations in collaboration with the tribes (NAGPRA Review Committee 2000; Sealaska Heritage Institute, 2005).

The research plan was presented to tribal councils during the first set of consultation meetings and had a mixed reaction amongst tribal members. Some were hesitant about scientific testing of the remains and thought they should be put right back in the ground.

Fifield said this about the tribal decision making process,

> More people stood up and said we need to know something about this person, we need to know who he was, we need to know where he might have come from and how he lived and something about him, about how he is related to us, either in lifestyle or in ancestry. And so they were not at all convinced that they knew who this person was. They wanted to know more about it. And I think it's that curiosity from the traditional point of view, linked with the curiosity of the scientific point of view that really drives this project and links the agencies, the scientists, and the tribal interests together. (Sealaska Heritage Institute, 2005, n.p.)

Rosita Worl, Tlingit archeologist, participated in meetings held by the tribal councils where the issue was further discussed and stated,

> I have to say there were some folks who were not happy with the archeological work, the scientific investigation. But, by and large, most of our people, at least as I heard at this clan leaders historical sites workshop, they were very happy that the work was going forward. (Sealaska Heritage Institute, 2005, n.p.)

Once the tribal councils agreed to the research plan, Dixon and his research team moved forward with excavation and testing of the site and remains. Testing revealed the remains were approximately 9,200 years old, surprising Dixon and Fifield with their subsequent scientific value.

> This is one of the more important archeological sites found in North America in recent years. It's significance rests in the fact that it has the oldest human remains

> ever discovered in Alaska and Canada. The human remains are not a deliberate burial but rather they are the scattered bones of an individual and many of the bones have puncture marks in them which suggest they have been modified by carnivores…but the few bones that remain are very important and tell us a lot scientifically. (Sealaska Heritage Institute, 2005, n.p.)

In contrast to Chatters reaction, the rare age of the remains did not deter Dixon from continuing his consultation with interested tribes. The Denver Museum flew tribal council members from Alaska to Colorado to visit the lab, to see for themselves the methods and instruments used in testing. And Dixon's team created an internship program for American Indian high school students to help with the excavation of the burial site.

A Tlingit high school teacher said this about the program,

> I think that the internship program is fantastic. Number one, because we have Alaska Natives or Alaskan people that are actually going in and digging and being involved in the process and hopefully they're gonna wanna continue their education in archeology. (Sealaska Heritage Institute, 2005, n.p.)

Of the stakeholders in the OYKC Project, Dixon had the most prominent use of science. But surprisingly, the tribal stakeholders were second. Rosita Worl commented,

> The Tlingits have supported scientific research and in doing this they are unlike many other Native Americans who don't support scientific research of human remains. And I would say that the basis of this support comes from the Tlingit world view associated with Hashaku. Under this belief the Tlingits believe that they have very strong bonds with their ancestors and also with future generations. And so, when a discovery is made their assumption is that their going to support scientific research because they believe that their ancestors are going to be providing them with additional knowledge. (Sealaska Heritage Institute, 2005, n.p.)

The tribal stakeholders of the Kennewick conflict did not place as much priority upon scientific testing as the tribes involved in the OYKC Project did, which appears to confirm Ms. Worl's statement.

However, the texts of the tribal stakeholders in in the Kennewick conflict address

science in a positive manner as illustrated in the following quote from a tribal leader of one of the claimant tribes in the Kennewick event.

> We want the public and scientists to understand that we do not reject science. In fact, we have anthropologists and other scientists on staff and we use science every day to help in protecting our people and the land. However, we do reject the notion that science is the answer to everything and therefore it should take precedence over the religious rights and beliefs of American citizens. (Sampson in Burke, 1997, n.p.)

A year later, another group involved in the process stated something similar. Marla Big Boy, an attorney for the Colville Tribe, told reporters at a press conference in Santa Fe in December 1998: "The Colville Tribe is not against science. We are against the use of science to discriminate and disenfranchise Native American tribes" (Coleman, 1998, n.p.).

Also, as discussed earlier, Chatters had a longstanding relationship with the Colville tribe, the only tribe of the five claimant tribes to agree to testing of the Kennewick remains.

> I had been working with the Colvilles for more than a dozen years, most recently having been asked by them to relocate, recover, and analyze more than forty skeletons that had been excavated from several recent cemeteries of the Colville Confederation's member tribes. It had been a good relationship. They liked my work and had usually requested state-of-the-art analyses on the skeletons. An announcement made without their advance knowledge would not only ignore a legitimately interested party but would jeopardize that working relationship. (2001, p. 59)

The above statement suggests Ms.Worl's premise that the Tlingit tribes are more pro-science than other existing tribes is not accurate, also suggesting a tribal cultural bias against science might not be behind their resistance to the scientist plaintiffs' requests.

3.9 Relationship-based Culture

Relationship-based cultures prioritize obligations to people and the closer the relationship, the more powerful the obligation (Trompenaars & Turner-Hampden, 1998). James Dixon stated:

> I think this is a very important aspect of the partnership and the trust that's been developed over the years. Specifically the tribal governments have requested that we share scientific discoveries, information, radio-carbon dates and the results of our work with them prior to sharing it with the world. Some colleagues have suggested this is censorship or unnecessary restrictions on our research. I don't believe it is. I believe this is a clear case of cooperation and respect, and just good behavior between peoples. (Sealaska Heritage Institute, 2005, n.p.)

From the beginning of the OYKC discovery, Fifield understood the dynamics of a relationship-based culture and proceeded accordingly:

> Given this setting here, in this small community where I was going to go and talk to people that I already knew in some ways, that I knew we would be friendly and professional about how we dealt with it. (Sealaska Heritage Institute, 2005, n.p.)

Fifield had an established relationship with the tribal stakeholders before the discovery in Alaska, and prioritized that relationship despite a possible loss of valuable scientific data or an acrimonious relationship if the tribes did not cooperate with a research plan.

Likewise, James Chatter stated about his relationship with the Colville tribe,

> The relationship had generally been a good one. On one occasion, a white paper I drafted led to reclamation of a sacred mountain; on another I helped relocated rubbings of rock art that now lies beneath a reservoir near the Wanapums' village and was invited to join them in a group photograph during an occasion that commemorate the event. We also had worked together on the repatriation and reburial of several skeletons. (2001, p. 67)

However, Chatters viewed the necessity of the relationship differently than Fifield.

> During the 1990's, tribes had increasingly gained power over access to archaeological sites, even sites that were off reservations and (in some states) on private land. If an archaeologist these days wants to continue working, he has to stay in the tribes' good graces. It's a difficult task. (2001, p. 90)

Both Chatters and Fifield recognized particular dynamics of the American Indian relationship-based culture, but responded differently when pressured. Chatters prioritized the possible scientific information that could be gained from the remains, setting off a legal conflict that remained unresolved for years, where Fifield prioritized the relationship and the conflict resolved in little over a week.

Differences in cultural competency were not the only significant dissimilarities in the cases. Sometimes, conflict is not so much about what is there, as much as conflict is about what is not there.

3.10 Lineage

References to lineage are prominent throughout the OYKC incident by all stakeholders, the tribal members no exception.

> …I would say the basis of this support comes from the Tlingit world view associated with Nashaku. Under this belief the Tlingits believe that they have very strong bonds with their ancestors and also with future generations. And so when a discover is made their assumption is that their going to support scientific research because they believe that their ancestors are going to be providing them with additional knowledge. (Sealaska Heritage Institute, 2005, n.p.)

> I'm looking at it as my uncle still teaching me… (Yarrow, Native American intern excavating On Your Knees Cave, Sealaska Heritage Institute, 2005).

But, perhaps the most important aspect of lineage is not its acknowledgement in this case, but that lineage of the person whose remains were uncovered was never questioned by Fifield or Dixon (Fifield, personal interview, 2012).

In fact, when Fifield approached the tribes with the discovery, the frame of

inquiry to the tribes was "what did they wish to know about this person?" presupposing a relationship between the remains and the tribal stakeholders (Sealaska Heritage Institute, 2005). The lack of disagreement regarding American Indian lineage with the remains is in direct contrast to the Kennewick conflict.

Chatters framed the lineage of the remains not only as a possible ancestor to American Indians, but also as the ancestor of everyone:

> "What happened to his people?" asked someone from the gallery. "Did they die out?
>
> "We don't know. Possibly. But given the thousands of years ago that he lived, and assuming he had any children of this own, he probably could be considered ancestral to all modern American Indians."
>
> Then to drive the point home, I asked, "How many of you have Indian ancestors—that you know of?"
>
> About one third of those present raised their hands…"Well," I continued, addressing the raised hands, "he's probably an ancestor of all of you. In fact, given the four hundred fifty or so generations since he died, he is probably an ancestor of everyone." (2001, p. 65)

This frame was continued by the scientist plaintiffs in their arguments to the court.

> Now that we have established that most of the earliest New World remains differ from more recent populations, we can no longer presume that every newly discovered ancient skeleton represents an individual who was the direct ancestor of all (or even some) living Native Americans…It appears from our research to date that the human landscape in North America during these early times was more genetically diverse than previously realized. Because of this greater genetic diversity, any attempt to establish ancestor/descendent relationships between specific early American populations to living American populations will be ore difficult, and more equivocal, than previously thought. (Steele, 1999, n.p.)

> If Kennewick Man does not display generalized racial characteristics, he may be representative of the ancestral population (or one of the populations) from which modern east Asian, Native American and possibly Caucasoid races developed. (Gill, 1999, n.p.)

A lineage connection became especially important in the Kennewick case, as such a link would overcome the racial inconsistency of the skeleton and grant tribes

dispensation to rebury the remains.

3.11 Race

Whereas lineage was part of the discourse of the OYKC Project but not disputed, a discussion of race was left out all together (Fifield, personal interview, 2012). From the moment of discovery the remains found in On Your Knees Cave were always designated as Native American. No one ever questioned the race of the remains, which might be partially due to the lack of skeletal remains of the skull, as only the lower mandible was ever recovered from that part of the skeleton making the most racially identifying skeletal markers unable to be analyzed (Fifield, personal interview, 2012).

As discussed earlier, race framed the Kennewick conflict and was a divisive issue. Found, not only in Chatters texts, but also throughout the scientist plaintiffs' discourse, the presence of race and its use by the scientist stakeholders to deny a Native American connection was the main point of conflict and one the courts used to make their decision.

> It is reasonable to infer that Congress intended the term "Native America" to require some relationship between remains or other cultural items and an existing tribe, people, or culture that is indigenous. NAGPRA allows tribes and individuals to protect and claim remains, graves, and cultural objects to which they have some relationship, but not allowing them to take custody of remains and cultural objects of persons and people to whom they are wholly unrelated. Courts do not assume that Congress intends to create odd or absurd results. The potential for such results under the Defendants' (DOI) definition of "Native American" further supports the conclusion that their definition is incorrect. Under that definition, all pre-Columbian remains and objects would be treated as Native American, "irrespective of when" a group arrived and regardless of whether the individuals are related in any way to present-day American Indians. Application of this definition could yield some odd results. The origin of the earliest Americans is an unresolved question. (Bonnichsen v. US 217 F. Supp. 2d 1116-2002, 22 & 23 Opinion and Order)

There was also another attempt by the scientist stakeholders to further remove the link between the claimant tribes and ancient remains: the use of the word Paleo-

American.

3.12 Paleo-Indian

Chatters first mentions in his memoir the attempt to reinterpret the designation of Paleo-Indian—referring to the humans living on the North American Continent between 47,000 and 14,000 years ago—into the more inclusive term of Paleo-American.

> The evidence is mounting that the earliest North Americans were a distinct people, or perhaps several distinct peoples, who cannot easily be linked to modern American Indians. In this sense, the old label "Paleo-Indian" that has been used for these people, after the name given by Frank H.H. Roberts in 1922 to a stone tool technology found at Folsom, New Mexico, may be misleading. A less presumptuous term, one that neither assumes nor denies a direct linkage between the earliest Americans and their historic successors, would be "Paleo-Ameican." (2001, p. 215)

Found throughout the scientist plaintiff texts as well, the use of Paleo-American was an attempt to deny the disputed Native American connection thereby creating a 'relation to all' link that might more easily support their position.

> I have examined and made reconstructions on the following paleo-period individuals… (Hunt, 1999, p. 3)

> This work was based upon personally examining the skeletal material of these oldest known representatives of early American populations. (Steele, 1999, p. 4)

> For many years, it was generally assumed that the original inhabitants of the new World (the "paleoamericans") were all one and the same people. My research indicates that this was not the case. Rather than one homogenous population, Paleoamericans constituted at least three different groups that had their origins in different Asian populations. My research also indicates that these different Paleoamerican population components are clearly separated by geographic region. (Brace, 1999, p. 2)

Changing the word was an attempt to change the meaning, and in this case, such change breaks a link between tribes alive today and their relationship with ancient remains discoveries. The Kennewick event, at its heart, is a negotiation of what its means

to be Native American, and discourse of this sort was deployed in an attempt to gain power, not just over a set of human remains, but also trying to control what they mean.

3.13 Summary

Consultation, asking a potentially affected stakeholder how to proceed with the situation, was the reason those involved in the OYKC Project event believed there was little conflict. And not only was there consultation by all stakeholders involved, but there was a priority placed upon consultation such that the tribes were consulted immediately. Also, years of previous consultation, as well as consultation during the life of the project, was prioritized. In comparison to the Kennewick event, consultation in the OYKC Project event was highly prioritized.

Very little consultation between the scientists and tribes took place in the Kennewick event, and the consultation that did occur was of an adversarial nature. Chatters, as centrally located to the Kennewick event as Fifield was to the AK event, reluctantly met with tribes when asked by USACE, and tribal response to Chatters requests to study was noticeably different than the response Terry Fifield received.

Also different from the OYKC project was the scientists' consultation attempts. In comparison to the single letter sent by two of the scientists plaintiffs, the multiple contacts to tribal stakeholders by James Dixon and the other scientists studying the remains, points to a different level of priority for consultation.

The DOI on the other hand consulted so much with tribal claimants, the court reprimanded them citing bias (Bonnichsen v. US 217 F. Supp. 2d 1116-2002, 22 & 23 Opinion and Order).

Respect was used two different ways in the OYKC Project event. First, as a

reference by tribal stakeholders regarding the behavior of the Forest Service representatives and scientists toward the tribes involved in the event, and secondly, Respect is used in brief reference to represent appropriate behavior toward unearthed remains.

Sacred, like Respect, was used briefly in the OYKC Project and far less prominently as compared to the heavy use found in the Kennewick event, and its use made reference to a process of inquiry and counsel with tribal elders undergone to weigh the impact of disturbance of remains against the possible scientific evidence that might be gathered that would support Tlingit oral tradition.

Oral tradition was also far more present and prioritized within the OYKC Project. Used in conjunction with the American Indian cultural mindset of event marked time, oral tradition was highly visible in every reason presented by tribal stakeholders in the American Indian texts. Oral tradition was also present in James Dixon's texts, and was part of the research program.

Instead of being common ground, as it was in the OYKC Project, oral tradition was a point of disagreement in the Kennewick event. The DOI used oral tradition as evidence of a cultural link supporting their repatriation and the scientist plaintiffs objected, stating any similarities within the tribal oral histories was suspect per the length of time involved between the date of the remains and the present time. The court agreed with the plaintiffs, prioritizing the cultural elements of truth and linear time over oral tradition.

The OYKC Project had far more use of linear time within tribal texts than the Kennewick event, although most references were made when tribal stakeholders

defended their belief that their ancestors and tribes had been present since "time immemorial" as their oral tradition suggests.

The tribal stakeholders in the OYKC Project supported the scientific research proposed because the results might provide evidence that archeologists would respect.

Science was the second most prominent cultural element present, following consultation. Utilized by the Forest Service, the tribal stakeholders, and the scientists themselves, scientific inquiry was first a reason of conflict, and then became perceived as a means whereby American Indian interests in identity and presence could be sustained.

The tribes in the OYKC Project were so supportive of science that Ms. Worl, Tlingit archeologist believed the Tlingit were unique amongst tribes in United States. However, all references to science (not the scientists) by the tribes in the Kennewick event were positive, and Chatters, as well as other scientists, were employed by the tribal stakeholders to deal with other issues involving tribal human remains.

If the Tlingit were not unique in their support of science then it follows that a cultural bias against science might not be behind the Kennewick tribal stakeholders' rejection of scientific research.

Fifield contends that consultation was the reason for tribal support in the OYKC Project event, which sustains the cultural theory of tribes being a relationship-based society. Chatters also had a relationship with many of the tribal stakeholders in the Kennewick event, but prioritized the possible scientific gains of study of the remains over his tribal relationships, believing he was 'standing up' for science.

Lineage was mentioned often in the OYKC Project, but was never disputed as it was in the Kennewick event. Having no scientific evidence to the contrary, Fifield and

Dixon did not contest such a connection, and this issue was part of the research conducted on the remains.

Conversely, with no scientific evidence to the contrary, both Chatters and the scientist plaintiffs dismissed a possible lineage connection with present day tribes and disregarded tribal beliefs to the contrary, furthering the conflict.

While lineage was a part of both events but not disputed in the OYKC Project, the cultural element of race was not present in the texts, and was never discussed by the stakeholders (Fifield, 2012). The remains found in On Your Knees Cave were always assumed to be Native American. This assumption was in direct contrast to the Chatters framing of the Kennewick remains as Caucasian. Chatters evaluated the remains originally as Caucasian based upon skeletal markers of ethnicity, lending to his dismissal of a possible lineage connection to present day tribal members. The scientist plaintiffs' also referenced race, similarly to Chatters, and utilized it when denying the tribal connection to the remains.

The cultural mindset of objectification was present in a similar fashion by scientists across both events, when describing and analyzing the remains. However, there was one notable difference in the Kennewick event. Chatters and the scientist plaintiffs sought to change the descriptive word used to represent the peoples living in the American Continent at the time of 10,000 BP from Paleo-Indian to Paleo-American. This was done in an attempt to remove the implied connection of present day tribes, termed American Indians, to remains that date to this time period.

There were definite similarities and differences in the cultural element use of the two events. Consultation being the most consciously applied, and science being the most

prominent. Some elements were present in both events, and some were not.

Chapter 4 will discuss conclusions regarding the possible impact these elements might have had upon the conflict and how this type of analysis can provide insights into other conflict studies.

CHAPTER 4

CONCLUSION

In 1996, two sets of ancient remains were discovered, one eroding out of the banks of the Columbia River, in Kennewick, and one discovered during a cave exploration on Prince Wales island, Alaska. The remains discovered in Kennewick became the focus of an almost decade long battle between a group of eight scientists and the landowners, the Army Corp of Engineers (USACE), which had denied the scientists access to study the remains. USACE, representing tribal interests, wished to repatriate the remains to five tribes who had submitted a claim of ownership. After years of disputes, the federal district court held that the remains were not Native American and therefore fell under the Archaeological Resource Protection Act (ARPA) making them a culture resource, and granted the scientist plaintiffs the right to study the remains. The 9th Circuit court of Appeals upheld the District Court's opinion.

In contrast, the process of study and repatriation for the remains discovered at On Your Knees Cave in Alaska during the Tongass Cave project, faced a 2-week discussion of government officials and interested scientists and Alaska tribes who all agreed on a plan of scientific study and excavation of the site. Twelve years later, after all study had been completed, the tribes filed a claim of ownership, and in 2008 the remains were repatriated to a coalition of tribes for reburial.

The research question of this thesis was simple: What role did culture play in these two events, and, if it played a significant part, how did culture affect the resulting escalation and de-escalation of conflict?

4.1 Methods

The analysis began with an in-depth reading of texts produced by the stakeholders throughout the events. The texts were read with the purpose of identifying language commonalities amongst stakeholders, and both within the discourse of the tribes in Alaska and the tribal claimants of the Kennewick event commonalities were discovered, as were similarities between the scientists, and federal government officials involved in each case.

The first task upon beginning research was to narrow down the texts without losing viable cultural data, as the amount of texts were copious. So texts were read to identify discourse that contained reasons put forth by the stakeholders explaining their positions, requests, and decisions. It was here, within the context of reasons, that the most abundant representations of cultural elements were discovered.

Of all the methodology, the most successful was this search for cultural elements among the reasons present in stakeholder discourse. This focused research revealed clear patterns of cultural discourse amongst the parties, patterns that were society specific, and patterns that, once identified, were easy to observe throughout all the texts.

These patterns of discourse were substantiated within anthropology and cultural communication disciplines, either through research that was an exact match, or through comparable identification, and then categorized by society: American mainstream or American Indian. Little or no crossover was found, thus confirming culture specific

elements to the societies involved in the disputes.

The comparison between the two events involved a simple recognition of cultural element presence, identification of prominence within the discourse per concentration, and distinguishing priority of element use when utilization emphasized one element more than another.

The fourteen elements observed were: objectification, linear time, race, lineage, event marked time, relationship-based social structure, sacred, respect, consultation, science, inverse universals, time as past, present and future, law, and evidence. Objectification, linear time, race, lineage, science, inverse universals, time as past/present/future, law, and evidence were identified as American mainstream cultural elements. Event marked time, relationship based social structure, sacred, respect, and consultation were American Indian cultural elements.

Two cultural elements emerged with significant disparity in the comparison of the cases: consultation and race.

4.2 Consultation

Established within the cultural studies discipline as an American Indian cultural element and put forward as the foremost reason of success by the stakeholders of the OYKC Project, consultation was analyzed here with a high degree of scrutiny (Cooter, 1998). Consultation, a consensus based discursive process by vertically powered stakeholders, was present in both cases, but had noticeable differences in utilization.

Both events had consultation between the government agency landowner and tribes, as both federal agencies felt bound by NAGPRA to consult on any decisions regarding the remains. Both events had little to no conflict between the government and

tribes regarding the disposition of the remains. The difference was in the consultation between the forensic anthropologists hired by the government agencies and the tribes involved.

In the Kennewick case, the forensic anthropologist, James Chatters, made concerted efforts to distance himself and his research from the tribal stakeholders, fearing a lack of support. He did not consult the tribal stakeholders regarding the types of testing he wished to do, nor did he wish to meet with them when asked to by the Army Corps of Engineers (ACOE) to update interested tribal members of his progress. Chatters met with tribal stakeholders a total of three times before being removed from the case (Chatters, 2001).

The consultation between the scientist plaintiffs and the tribes was limited to the single letter sent by two of the scientist plaintiffs, and two mediation sessions provided by the Department of the Interior regarding the disputed care of the Kennewick remains when in government possession.

In contrast, Terry Fifield, Forest Service archeologist, and James Dixon, Paleo-Indian archeologist hired by the Forest Service to examine and analyze the remains found in On Your Knees Cave, consulted with tribal stakeholders numerous times during their decade of research. At one point, James Dixon and his staff flew tribal elders and interested tribal members to their lab, showing them the types of testing they wished to do and exactly how that testing would occur (Fifield, personal interview, 2013).

It should be noted that one reason for the difference in quantity and type of consultation that occurred in the OYKC Project event can be explained by the requirements of the Principles for the Conduct of Research in the Arctic policy of the

Office of Polar Programs, National Science Foundation Grants Program. Prepared by the Interagency Social Science Task Force in response to a recommendation by the Polar Research Board of the National Academy of Sciences and at the direction of the Interagency Arctic Research Policy Committee, the policy requires "all researchers working in the North have an ethical responsibility toward the people of the North, their cultures, and the environment" (*Principles for the Conduct of Research in the Arctic*, 2013). The policy promotes "mutual respect and communication" between scientists and northern residents, citing cooperation as a needed element in all stages of research planning and implementation. The policy argues that such cooperation will "contribute to a better understanding of the potential benefits of Arctic research for northern residents and will contribute to the development of northern science through traditional knowledge and experience" (*Principles for the Conduct of Research in the Arctic*, 2013).

The National Science Foundation provided the bulk of the funding for the research that occurred in the OYKC Project and, as a specific requirement of the grant, the Principles for the Conduct of Research in the Arctic provided another reason for the scientist stakeholders of this event to consult with stakeholder tribes. Further, this policy requirement has existed for over 20 years and has become a standard part of scientist and tribal interaction (Swanberg, Director, Arctic System Science Program, 2013, personal correspondence).

The dichotomy in the use and quantity of consultation by the scientists throughout the two events, suggests consultation impacted the successful process in the OYKC Project and took part in creating the high cost of time and money in the Kennewick event. No other cultural element was so disparate in its utilization as consultation.

4.3 Race

Race is a divisive social issue in the United States and has been covered numerous times and numerous ways in other research. What makes its use somewhat unique in this study was the role it played as evidence of lineage and its connection to the linear timeline of colonization of the Americas, cultural constructs of the American Mainstream.

Present as an issue only in the Kennewick event, race is remarkable because of its absence in the OYKC Project case. The race of the remains found in On Your Knees Cave was never questioned to be other than Native American, with tribes consulted by federal government stakeholders and scientists, assuming a relationship (Fifield, personal interview, 2013).

In the Kennewick event, race was introduced by James Chatters, archeologist, when he originally determined the remains to be Caucasoid based upon a lack of Native American identifying skeletal markers, and association with pioneer detritus upon excavation (Chatters, 2001). Chatters findings were subsequently called into question when a cascade point was revealed by X-ray to be embedded in the pelvis, marking the remains age at over 8500 BP (Chatters, 2001).

The juxtaposition of the morphology of the remains not clearly matching current tribal morphology and the age of the remains placing their existence before colonization framed the entirety of the coming conflict.

The scientist plaintiffs' central argument before the courts was based upon the contention that the DOI had insufficient evidence to determine a link between the remains and the tribal claimants therefore placing the remains outside the scope of

NAGPRA. Both parties then spent the bulk of their time arguing over what it means to be Native American.

The court eventually sided with the scientist plaintiffs, determining there must be proof of a significant link beyond time and burial place to be considered Native American under NAGPRA.

4.4 Implications

Although this study is limited to an analysis of the cultural elements of some of the Northwest American Indian tribes and the government agencies that work with them, this research has implications for all American Indian societies as well as other tribal cultures that interact with American mainstream government agencies and professional scientists.

American mainstream and American Indian societies have different cultural element priorities and these elements can be identified within discourse for presence and preference. The preference and priority can also be used to identify dominance and subjugation.

4.4.1 Power

Grossberg (1996) has stated that cultural studies scholars should address questions about "the actual ways in which cultural practices are deployed in relations of power and how they themselves deploy power (1996, p.142).

The articulations of culture that have been explored within this thesis were analyzed in terms of their deployment within a negotiation event. However, they also have application toward analysis of power and hegemony within a dominant/subdominant

societal context.

The District court and the Ninth Circuit court of appeals, which denied the Federal government's assertion that the remains found in Kennewick were Native American under NAGPRA, were not analyzed here for cultural element impact. As the courts had little to no interaction with tribal members, as well as having no parallel stakeholder in the OYKC Project, analyzing the courts' use of cultural elements was deemed unproductive.

However, a brief comment regarding the courts' prioritized cultural elements is appropriate, as the results comment on power, cultural hegemony, and subjugation in the United States justice system, topics that affect American Indian interests.

The District court found there was no relationship between the remains discovered in Kennewick and the tribal claimants. Dismissing the DOI's assertion that any remains found to be older than 510 years, must be Native American, the court stated:

> Courts do not assume that Congress intends to create odd or absurd results…Under the Defendants' interpretation, possibly long-extinct immigrant peoples who may have differed significantly—genetically and culturally—from any surviving groups, would all be uniformly classified as "Native American" based solely upon the age of their remains. (Bonnichsen v. US 217 F. Supp. 2d 1116-2002, 22 & 23 Opinion and Order)

The court goes on to say there must be a 'significant' relationship, either genetic or cultural, to meet the standard of Native American and activate NAGPRA.

Much of the DOI's link of cultural affiliation rested upon the evidence of oral tradition. The court stated oral tradition was not sufficient to prove a connection.

> Reliance upon oral narratives is highly problematic. If the Tribal Claimants' narratives are as old as the claimants contend, they would have been orally conveyed through hundreds of intermediaries over thousands of years…The opportunity for error increases when information is relayed through multiple persons over time. Other considerations affecting reliability of the narratives

> include the expertise of the source of the narrative…Other narratives may have been influenced by political considerations or biases…their adaptability and political utility suggest that narratives are of limited reliability in attempting to determine truly ancient events. (Bonnichsen v. US 217 F. Supp. 2d 1116-2002, 22 & 23 Opinion and Order)

The courts' privilege of American mainstream culture elements of science and scientific evidence, with their foundation of truth, over the American Indian cultural element of oral tradition is a clear act of hegemonic subjugation. By limiting the meaning of Native American to a genetic or cultural (archeological) link the court renders invalid the American Indian culture in favor of the American mainstream culture.

> I have some idea of the judges' attitudes about the privileging of science because my education is similar to theirs, and I note that one of the appellate judges in Bonnichsen literally wrote the contemporary book on legal thinking.[5] Imperial scientific discourse is privileged in describing the bones at issue in Bonnichsen …Indians must justify themselves; science is self-justifying. (Russell, 2007, p. 221)

The decision of the courts placed the burden of proof upon tribes to show, with either genetic or archeological evidence, that remains they seek to claim are connected to them. If this cannot be proven, then human remains discovered in the United States are considered a cultural resource, outside the scope of American Indian interests, despite their beliefs in a legitimate link.

> The Kennewick Man case has brought more strife to the American Indian community because now the Indians have to fight for their identity and prove they are the descendants of the first peoples who occupied North America. (Lee in Burke, 2005, p. 96)

[5] Ruggero J. Aldisert, Logic for Lawyers: A Guide to Clear Legal Thinking (New York: Clark Boardman, 1989)

4.5 Personal Experience

In 2005 I became an employee of the Utah Division of Indian Affairs, tasked with the responsibility of staffing Utah's Native American Remains Review Committee and upholding the Division's responsibilities regarding the state's Native American Graves Protection and Repatriation Act. Throughout my 6-year tenure with the state, I mediated numerous repatriation cases and helped add to the existing law, as well as having the responsibility of rewriting the Rules pertaining to Utah's NAGPRA.

I became aware of the controversial "Kennewick Man" case as Federal regulations were being published for review that tried to resolve the tensions created by the court decision. At that time, I read the case law and proposed regulations, as well as consulted with the archeologists and anthropologists on the state Native American Remains Review Committee and other organizations I came into contact with, regarding the event. My first response to the case in Kennewick was to note the extreme lack of consultation undertaken by Chatters and the scientist plaintiffs with the tribal claimants.

I became aware of the tribal priority on consultation the first month I worked for the state. In every meeting I attended, the tribal representatives asked for more consultation by government officials. And the tribal leaders were very specific about whom they met with and how willing the representative was to meet and consult.

On the government agency side, I heard a strangely similar request. It seems that letters sent to tribes went unanswered. It was called the "black hole" in certain circles of scientists and agency workers.

I did not understand the conflicting requests, because it seemed to me each side was communicating with the other, but obviously not in a way each understood. Finally,

a couple of years after I began my work with Division, when I was asking one of the tribal members of the Native American Remains Review Committee about a letter she should have received from one of the agencies interested in repatriating some remains to her tribe, I had this conversation.

"Yes, I received it," she said. "But it didn't matter."

"It didn't matter?" I asked. "Why not?"

She looked surprised I'd asked the question. "Because if they really cared about it, they'd come and meet with me."

"Meet with you? Face to face?" I asked.

"Yes," she said. "If someone takes the time to see you and talk to you, then they mean it. Otherwise it's just spam."

I finally understood exactly what consultation meant to the tribes I worked with. And could then see exactly why the Kennewick event had occurred.

In my experience, what tribes mean by consultation is a face to face meeting, usually lasting at minimum 2 to 3 hours, whereby the parties discuss all pertinent aspects of the issue. Everyone gets a chance to ask questions and offer their opinion.[6] If this type of consultation does not occur, tribes resist supporting the proposal. However, once consultation has occurred, negotiations can begin.

In the fall of 2009, I attended a lecture by David Hurst Thomas, the curator of the Department of Anthropology at the American Museum of Natural History and an Adjunct Professor at Columbia University and the City University of New York. He spoke of the remains found in Alaska and described it as an example of how tribes and scientists can

[6] Just as an example, the quarterly tribal leaders' meeting is scheduled for 2 days every other month and each tribe hosts once a year (there are six functioning tribes in Utah).

work together rather than against each other to accomplish mutual goals.

His illustration of people working together to solve problems sounded like a cliché, as did his example, but I knew the tribal priority on consultation was very high, far higher than the American mainstream propensity. So I investigated the OYKC Project and found that those involved in the case believed the reason for their success was the amount of tribal consultation the scientist and government stakeholders utilized. And based upon my own personal experience, found I agreed consultation had enormous impact upon tribal conflict resolution.

4.6 Further Research

Most conflict theory and analysis is focused upon process, such as needs analysis or negotiation practices, and usually assumes these theories are applicable to all societies. Such assumptions blinds theorists into providing mechanisms with inapplicable utilization to the societies they seek to help. Without the cultural knowledge of the specific societies involved, suggestions for conflict resolution will be nebulous at best, and potentially escalating at worse.

Cultural constructivism critique provides a better understanding of cultural conflict, particularly as Ury and Fisher (1991) pointed out over 30 years ago, resolving conflict should focus on the interests of the parties involved, and reconstructing a party's rhetoric without an identification of the cultural elements at work, leaves areas of potential resolution undiscovered.

Identifying cultural elements at play within an event will shed light upon a party's interests, if not in fact revealing such interests, as in the results of the analysis of tribal discourse in the Kennewick event, which displayed the tribes' priority of consultation

over all other issues, including their desire to keep remains undisturbed in the ground. Grossberg (2006) states: "Without an understanding of what is going on, cultural studies cannot contribute to envisioning other scenarios and outcomes, and the strategies that might take us down alternative pathways." (2006, p. 8)

On a narrow scale, further research into the types of cultural elements that exist, particularly among societies that evidence conflict on copious scale, would reveal priorities and preferences that might be manipulated or addressed. To a broader extent, research that explores the production and history of cultural elements might provide insight into the creation of conflict, with potential implications of prevention.

4.7 In the End

Two hundred members of various Tlingit tribes in Alaska submitted to DNA testing for possible matches to the remains found in On Your Knees Cave from recovered DNA. No match was found, but the DNA patterns of the young man who perished over 10,000 years ago showed a strong affinity to the Chumash of Southern California and to a lesser extent, some other native populations located along the west coasts of South America (Kemp et al., 2007; Lawler, 2010).

After the DNA results were returned, the tribal coalition requested reburial of the remains. "Ten years had passed since discovery. The Tribes felt it was time to pursue transfer of custody. There were no additional analyses being proposed. So, we proceeded to the transfer of custody process" (Fifield, personal interview, 2012).

In 2008 the National Forest Service transferred the remains into the possession of the tribal coalition for burial. And, in conjunction with tribal members and scientists, during a 2 day ceremony and celebration honoring Shuká Kaa ("Man Ahead of Us"), the

knowledge his study had provided, and the partnerships developed as the result of the 12-year project, the remains were reburied (Fifield, personal interview, 2012).

No recoverable DNA evidence has yet been produced from the remains found along the Columbia River Gorge and in 2009, in an article titled *Kennewick Man's Secret Still Mostly Secret*, it was revealed that no studies conducted by the scientist plaintiffs had been published (Stang, 2009). However, in October of 2012, Douglas Owsley, Smithsonian physical anthropologist, met with the tribal claimants of the Kennewick event, where he described his findings to the tribal stakeholders. The consultation lasted hours and tribal members were able to ask questions and participate in the discussion (Mapes, 2012).

Asked directly by tribal members if the remains were Native American, Owsley stated: "There is not any clear genetic relationship to Native American peoples. I do not look at him as Native American ... I can't see any kind of continuity. He is a representative of a very different people" (Mapes, 2012). Owsley said the skull was most similar to an Asian Coastal people whose characteristics are shared with people of Polynesian descent.

Today, the remains found in Kenniwick are stored in numerous curation boxes in the basement of the Burke National History and Culture Museum. Other requests for study and access to the remains have been put forth to the Army Corp of Engineers, legal owners of the remains. All have been denied as USACE will only consider granting access to the remains if the request covers new research not currently undertaken by the scientist plaintiffs. USACE is paying over $30,000 a year to the Burke Museum to house the remains and does not expect this to change in the foreseeable future (Stang, 2009).

The tribal claimants would like the remains returned for reburial, but Owsley has stated there is still much more to learn from the skeleton (Mapes, 2012).

At the end of the consultation, Arnold Minthorn presented Owsley with a Pendleton blanket, a gesture of respect, on behalf of the claimant tribes. As he did so, "he extended his hand — and asked for help in returning the skeleton of the Ancient One" (Mapes, 2012, n.p.).

Mapes, journalist for the *Seattle Times* present during the consultation, stated: "While they don't know where they are yet headed together, those gathered ended the day with something they did not have before: the start of a relationship" (2012, n.p.).

In his closing prayer of the meeting, Rex Buck said, "We have listened to this man, and he has listened to us. And it was good" (Mapes, 2012, n.p.).

For all the stakeholders' attempts to frame the remains and the meaning of Native American in one way or another, these two events are ultimately about more than the disposition of human remains. They are about culture, and efforts to assign meaning and rights within United States society. They are about the power—actual or perceived—of science and American Indian tribes to influence that culture, and in turn, to influence actions through the use of meaning.

REFERENCES

Adair, W., & Brett, J. M. (2005). The negotiation dance: Time, culture, and behavioral sequences in negotiation. *Organization Science, 16*(1)*,* 33-51.

Alba, R. & Nee, V. (2003). *Remaking the American mainstream: Assimilation and contemporary immigration*. Cambridge, MA: Harvard University Press.

Ames, K. (2000). Review of the Archaeological Data. *Cultural Affiliation Report.* Retrieved April, 2013, from www.nps.gov/archeology/kennewick/#non-destr

Babbitt, B. (2000). Letter to the Honorable Louis Caldera, Secretary of the Army. Retreived July 20, 2009 from http://www.nps.gov/archeology/kennewick_man.html

Berman, H. J. (1983). *Law and revolution: The formation of the Western legal tradition*. Cambridge, MA: Harvard University Press.

Bhabha, H. (1994). *The location of culture*. New York & London: Routledge.

Biolsi, T. (Ed.). (2004). *A companion to the anthropology of American Indians*. Malden, MA: Blackwell Publishings Ltd.

Blackburn, S. (2005). *Truth: a guide*. Oxford, NY: Oxford University Press.

Blumer, H. (1969). *Symbolic interactionism: Perspective and method*. Englewood Cliffs, NJ: Prentice-Hall Inc.

Boxberger, D. L. (2000). Review of traditional historical and ethnographic information. *Cultural Affiliation Report.* Retrieved April, 2013, from www.nps.gov/archeology/kennewick/#non-destr

Brace, C. L. (1999). Memorandum in support of plaintiffs' request for immediate response re study request.

Briley, D. A., Morris, M. W., & Simonson, I. (2000). Reasons as carriers of culture: Dynamic versus dispositional models of cultural influence on decision making. *Journal of Consumer Research. 27*, 157-178.

Bryant, D. C. (1958). *The Rhetorical idiom: Essays in rhetoric, oratory, language, and drama, presented to Herbert August Wichelns, with a reprinting of his literary criticism of oratory (1925)*. Ithaca, NY: Cornell University Press.

Burke, H. (Ed.). (2008). *Kennewick Man: Perspectives on the Ancient One.* Walnut Creek, CA: Left Coast Press.

Burton, J. (2001). Peace begins at home. *The International Journal of Peace Studies*. *6*(1), n.p.

Burton, J. (2001). Conflict prevention as a political system. *The International Journal of Peace Studies*. *6*(1), n.p.

Champagne, D. (2007). *Social change and cultural continuity among native nations.* New York:Altamira Press.

Chatters, J. C. (2001). *Ancient encounters : Kennewick Man and the first Americans*. New York:Simon & Schuster.

Chew, P. K. (Eds.). (2001). *The conflict and culture reader*. New York and London: New York University Press.

Coleman, C., & Dysart, E. V. (2005). Framing of Kennewick Man against the backdrop of a scientific and cultural controversy. *Science Communication*. *27*(1), 3-26.

Coleman, M. (1998, December 11). Tribes want remains reburied. *Albuquerque Journal*.

Colomeda, L., & Lambert, A. (1999). *Keepers of the central fire: Issues in ecology for indigenous peoples.* Boston:Jones and Bartlett.

Cooter, R., & Fikentscher, W. (1998). Indian common law: The role of custom in American Indian tribal courts (Part I). *The American Journal of Comparative Law. 476*(2), 287-337.

Cooter, R., & Fikentscher, W. (1998). Indian Common Law: The role of custom in American Indian tribal courts (Part II). *The American Journal of Comparative Law. 476*(2), 509-580.

Curtin, P. D. (2000). *The World and the West the European challenge and the overseas response in the Age of Empire.* Cambridge, NY: Cambridge University Press.

Curtoni, R., & G. P. (2006). Race and racism in the archaeology of South America. *World Archaeology*. *38*, 93-108.

Davies, P. C. W. (1992). *The mind of God : the scientific basis for a rational world*. New York:Simon & Schuster

Dongoske, K. E. (1996). The Native American Graves Protection and Repatriation Act: A new beginning, not the end, for osteological analysis-A Hopi perspective. *American Indian Quarterly 20*(2), 287-307.

Eggan, F. (1950). *Social organization of the Western Pueblos.* Chicago: University of Chicago Press.

Fagan, J. L. (1999). Analysis of lithic artifact embedded in the Columbia Park remains. *Report on the Non-Destructive Examination, Description, and Analysis of the Human Remains from Columbia Park, Kennewick, Washington*. Retreived on September 19, 2012 from www.nps.gov/archeology/kennewick/#non-destr

Ferrarotti, F. (1990). *Time, memory, and society.* New York:Greenwood Press.

Fisher, R., & Ury, W. (1991). *Getting to yes: Negotiating agreement without giving in* (2nd ed.). New York: Penguin Books.

Foss, S. K. (1996). *Rhetorical criticism: Exploration and practice*. (2nd ed.) Prospect Heights, IL: Waveland.

Foucault, M. (1980). *Power/Knowledge: Selected interviews & other writings 1972-1977*. New York: Pantheon Press.

Gill, G. W. (1999). Memorandum in Support of Plaintiffs' Request for Immediate Response Re Study Request.

Gramsci, A. (1988). *An Antonio Gramsci reader: Selected writings, 1916-1935.* New York: Schocken Books.

Grossberg, L. (2006). Does cultural studies have futures? Should it? (Or what's the matter with New York?). *Culture, politics, race, and diaspora: The thought of Stuart Hall.* Kingston, Jamaica: Ian Randle.

Gudykunst, W. B., Ting-Toomey, S., & Chua, E. (1988). *Intercultural communication.* London: SAGE Publications.

Gundykunst, W. B., Ting-Toomey, S., & Nishida, T. (Eds.). (1996). *Communication in personal relationships across cultures*. London: SAGE Publications.

Gudykunst, W. B., & Mody, B. (Eds.). (2002). *Handbook ofiInternational and intercultural communication* (2nd ed.). London: SAGE Publications.

Gudykunst, W.B. (Ed.). (2003). *Cross-Cultural and intercultural communication.* London: SAGE Publications.

Gudykunst, W. B. (2004). *Bridging differences: Effective intergroup communication* (4th ed.). London: SAGE publications.

Hackenberger, S. (2000). Cultural Affiliation Study of the Kennewick Human Remains: Review of Bio-Archaeological Information. *Cultural Affiliation Report.* Retreived on Sept 20, 2012 from www.nps.gov/archeology/kennewick/#non-destr

Hall, E. T. (1983). *The dance of life.* New York: Anchor Books.

Hall, E. T. (1990). *The silent language* (4th ed.). New York: Anchor Books.

Hall, E. T., & Hall, M. R. (1990). *Understanding cultural differences*. Yarmouth, ME: Intercultural Press.

Hall, S. (Ed.). (2003). *Representation: Cultural representations and signifying practices* (8th ed.). London: SAGE publications.

Hamilton, V. L., & Sanders, J. (1988). Punishment and the Individual in the United States and Japan. *Law and Society*. *22*(2), 301-328.

Heine, S. (1985). *Existential and Ontological Dimensions of Time in Heidegger and Dogen.* Albany, NY: State University of New York Press.

Hofestede, G. (1994). *Uncommon sense about organizations : cases, studies, and field observations.* Thousand Oaks, CA.: Sage Publications.

Hooker, J. (2003). *Working across cultures.* Stanford, CA: Stanford Business Books.

Huckleberry, G., & Stein, J. (1999). Analysis of Sediments Associated with Human Remains Found at Columbia Park, Kennewick, WA. *Report on the Non-*

Destructive Examination, Description, and Analysis of the Human Remains from Columbia Park, Kennewick, Washington. Retreived on Sept 20, 2012 from www.nps.gov/archeology/kennewick/#non-destr

Hunn, E. S. (2000). Review of linguistic information. *Cultural Affiliation Report.* Retreived on Sept 20, 2012 from www.nps.gov/archeology/kennewick/#non-destr

Hunt, D. R. (1999). Memorandum in Support of Plaintiffs' Request for Immediate Response Re Study Request.

Huntington, S. (1993). The Clash of Civilizations? *Foreign Affairs. 72*(3), 22-49.

James, K. (2001). *Science and Native American communities : legacies of pain, visions of promise.* Lincoln, NE: University of Nebraska Press.

Jantz, R. L., & Owsley, D. W. (1998, March). Polemicizing Kennewick Man. *Anthropology Newsletter. 39*(3), 56-57.

Jantz, R. L. (2002). Affidavits Attached to Plaintiffs Memorandum in Opposition to Intervenors Request for Stay Pending Appeal.

Kaestle, F. A. (2000). Report on DNA Analysis of the remains of "Kennewick Man" from Columbia Park, Washington. *Report on the DNA Testing Results of the Kennewick Human Remains from Columbia Park, Kennewick, Washington*. Retreived on Sept 18, 2012 from www.nps.gov/archeology/kennewick/#non-destr

Kemp, B. M., Malhi, R. S., McDonough, J., Bolnick, D. A., Eshleman, J. A., Rickards, O., . . . Smith, D. G. (2007). Genetic analysis of early Holocene skeletal remains from Alaska and its implications for the settlement of the Americas. *American Journal of Physical Anthropology. 132*, 605-621.

Kennedy, G. A. (1984) *New Testament interpretation through rhetorical criticism.* Chapel Hill, NC: The University of North Carolina Press.

Kirtsoglou, E., & Theodossopoulos, D. (2010). Rhetoric and the workings of power. *Social Analysis. 54*(1), 1-14.

Last, J. M. (2007). *A Dictionary of public health*. Oxford University Press. *Oxford Reference Online*. Oxford University Press. University of Utah. Retreived on March 31, 2012 from www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t235.e4042>

Lawler, A. (2010). A tale of two skeletons. *Science*. *330*(6001), 171-172.

Lee, D. (1949). Being and values in a primitive culture. *The Journal of Philosophy. 46*, 401-15.

Leeds-Hurwitz, W. (1990). *Notes on the history of intercultural communication: The foreign service institute and the mandate for intercultural training.* Quarterly Journal of Speech. *76*, 262-249.

Levi-Strauss, C. (1966). *The Savage Mind*. Chicago:University of Chicago Press.

Mapes, L. (2012, October 9). Kennewick Man bones not from Columbia Valley, scientist tells tribes. *Seattle Times.*

Marx, L., & Mazlish, B. (1996). *Progress: Fact or illusion?* Ann Arbor, MI: The University of Michigan Press.

Mayali, L. (1995). Social Practices, legal Narrative, and the development of the legal tradition. *Chicago-Kent Law Review*. *70*(1469), n.p.

McManamon, F. P., & Nordby, L. V. (1992). Implementing the Native American Graves Protection and Repatriation Act. *Arizona State Law Journal. 24*, 217-245.

McManamon, F. P. (2000). Memorandum to Robert G. Stanton, Assistant Secretary, Fish and Wildlife and Parks. Retreived on September 12, 2012 from http://www.nps.gov/archeology/kennewick/c14memo.htm

McManamon, F. P., Roberts, J. C., & Blades, B. S. (2000(a)(b)). Examination of the Kennewick Remains—taphonomy, micro-sampling, and DNA Analysis. *Report on the DNA testing results of the Kennewick human remains from Columbia Park, Kennewick, Washington*. Retreived on March 15, 2012 from www.nps.gov/archeology/kennewick/#non-destr

Merriwether, D. A., & Cabana, G. S. (2000). Kennewick Man ancient DNA Analysis: Final report submitted to the Department of the Interior, National Park Service. *Report on the DNA testing results of the Kennewick human remains from Columbia Park, Kennewick, Washington*. Retreived on March 4, 2012 from www.nps.gov/archeology/kennewick/#non-destr

Mendoza, S. L., Halualani, R. T., & Drzewiecka, J. A. (2002). Moving the discourse on identities in intercultural communication: Structure, culture, and resignifications. *Communication Quarterly*. *50* (3/4), 312-327.

Minthorn, A. (1996). Human remains should be reburied. *Confederated Tribes of the Umatilla Indian Reservation.* Retreived on September 20, 2011 from http://www.umatilla.nsn.us/kman1.html

Minthron, A. (2001) Press Statement regarding June 19-20, 2001 Court Hearing. *Confederated Tribes of the Umatilla Indian Reservation.* Retreived on September 20, 2011 from http://www.umatilla.nsn.us/kman7.html

Moon, D. G. (1996). Concepts of `culture': implications for intercultural communication research. *Communication Quarterly. 44* (1), 70-84.

Murdock, G. P. (2004). *Outline of Cultural Materials* (5th eds.). New Haven, CT: HRAF Human Relations Area Files, INC at Yale University.

National Park Service (2000). Retreived on October 13, 2012 from http://www.nps.gov/history/archeology/kennewick/

NAGPRA Review Committee (2000, April 2-4). Minutes. Juneau, Alaska.

O'Brien, S. (1989). *American Indian tribal governments.* Norman, OK: University of Oklahoma Press.

O'Brien, S. (1991). Tribes and Indians: With whom does the United States maintain a relationship? *Notre Dame L. Rev*. *66* (1461), 1461-62.

O'Malley, J. W. (2004). *Four cultures of the West*. Cambridge, MA: Harvard University Press.

Pattaro, G. (1976). The Christian conception of time. *Cultures and time*. Paris:Unesco Press.

Philipsen, G. (1992). *Speaking culturally: Explanations in social communication*. Albany, NY:State University of New York Press.

Powell, J. F., & Rose, J. C. (1999). Report on the osteological assessment of the "Kennewick Man" skeleton. (CENWW.97.Kennewick). *Report on the Non-Destructive Examination, Description, and Analysis of the Human Remains from Columbia Park, Kennewick, Washington.* Retreived on March 13, 2013 from www.nps.gov/archeology/kennewick/#non-destr

Riley, K. (2006, August 28). Who owns the past. *Seattle Times*. Retrieved from Seattletimes.com

Rossum, G. D. (1996). *History of the hour: Clocks and modern temporal orders*. Chicago:University of Chicago Press.

Rozell, N. (2001, July 16) The sudden disappearance of Mount Katmai. *Alaska Science Forum. 1551*, n.p.

Russell, S. (2007). Law and Bones: Religion, Science, and the Discourse of Empire. *Radical History Review. 99*, Fall, 214-226.

Sanborn, P. (1967). Objectification and Self-Knowledge: A Critical Examination, *Philosophy and Phenomenological Research*. *28*(1), 39-47.

Saussure, F. (1959). *Course in general linguistics*. New York:Philosophical Library.

Schelbert, L. (2003). Pathways of human understanding: An inquiry into Western and North American Indian worldview structures. *American Indian Culture and Research Journal*. *27*(1), 61-75.

Sealaska Heritage Institute (Producer). (2005). *Kuwóot yas.Éin: His Spirit is Looking Out From the Cave* [DVD]. Juneau, AK: Sealaska Heritage Institute.

Sherover, C. M. (2003). *Are we in time? And other essays on time and temporality.* Evanston, IL.: Northwestern University Press.

Smith, D. G. (2000). A Review of Documents and Evidence Pertaining to the Suitability of the Skeletal Remains from Kennewick, Washington, for DNA Studies. *Report on the DNA Testing Results of the Kennewick Human Remains from Columbia Park, Kennewick, Washington*. Retreived on March 13, 2013 from www.nps.gov/archeology/kennewick/#non-destr

Smith, D. G., Malhi, R. S., Eshleman, J. A., & Kaestle, F. A. (2000). Report on DNA Analysis of the Remains of "Kennewick Man" from Columbia Park, Washington. *Report on the DNA Testing Results of the Kennewick Human Remains from Columbia Park, Kennewick, Washington*. Retreived on March 13, 2013 from www.nps.gov/archeology/kennewick/#non-destr

Stang, J. (1996, July 29). Skull Found on Shore of Columbia. *Tri-City Herald.*

Stang, J. (2009, July 12). Kennewick Man's secrets still mostly secret: Publication date unknown for scientific studies. *Seattle Post-Intelligencer.*

Steele, D. G. (1999). Memorandum in Support of Plaintiffs' Request for Immediate Response Re Study Request.

Storey, J. (Ed.). (1996). *What is cultural studies: A reader*. London: Arnold Publishing.

Taylor, R. E. (2000). Amino acid composition and stable carbon isotope values on Kennewick skeleton bone. *Report on the DNA Testing Results of the Kennewick Human Remains from Columbia Park, Kennewick, Washington*. Retreived on March 13, 2012 from www.nps.gov/archeology/kennewick/#non-destr

TenHouten, W. D. (2005). *Time and society*. Albany, NY.: State University of New York Press.

Thomas, D. H. (2000). *Skull wars: Kennewick man, archaeology, and the battle for Native American identity*. New York:Basic Books.

Trompenaars, F., & Hampden-Turner, C. (1998). *Riding the waves of culture: Understanding cultural diversity in global business* (2nd ed.). New York: McGraw-Hill.

Trompenaars, F., & Hampden-Turner, C. (2000). *Building cross-cultural competence: How to create wealth from conflicting values*. London: Yale University Press.

Tylor, E. B., (1958). *Origins of culture*. New York, NY.: Harper & Brothers.

Walker, P. L., Larsen, C. S., & Powell, J. F. (2000). Final Report on the Physical Examination and Taphonomic Assessment of the Kennewick Human Remains (CENWW.97.Kennewick) to Assist with DNA Sample Selection. *Report on the DNA Testing Results of the Kennewick Human Remains from Columbia Park, Kennewick, Washington*. Retreived on March 13, 2013 from www.nps.gov/archeology/kennewick/#non-destr

Whorf, B. L. (1956). *Language, thought, and reality : selected writings of Benjamin Lee Whorf*. Cambridge, MA.: Technology Press of Massachusetts Institute of Technology.

Wilchens, H. (1925). *Studies in rhetoric and public speaking in honor of James Albert Winans*. New York:The Century Co.

Wilkens, D. E. (1998). Tribal state affairs: American States as 'disclaiming' sovereigns. *Journal of Federalism*. *28*(4), 55-81.

Williams, R. (1976). *Communications* (3rd ed.). London: Penguin Books Ltd.

Williams, R. (1976). *Keywords: A vocabulary of culture and society.* London: Fontana/Croom Helm.

Williams, R. (1983). *Culture and society: 1780-1950* (2nd ed.). New York: Columbia University Press.

Winter, J. C. (1980). Indian heritage preservation and archaeologists. *American Antiquity*. *45*(1), 121-131.

Wolf, E. (1982). *Europe and the people without history.* Berkeley, CA.: University of California Press.

Zarefsky, D. (2006). Sympoium interdisciplinary perspectives on rhetorical criticism. *Rhetoric Review. 25*(4), 357-387.

Zerubavel, E. (2012). *Ancestors and relatives: Genealogy, identity, and community.* New York: Oxford University Press.