Public Heritage, a Desire for a “White” History for America, and Some Impacts of the Kennewick Man/Ancient One Decision

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The most recent opinion in the so-called Kennewick Man or Ancient One (as many American Indians choose to call the skeleton) case by the United States Court of Appeals for the Ninth Circuit unfortunately resurrects some very old and contentious issues in America. Indians mostly view the opinion as one more echo of the same old story of Native American property issues raised in the courts, but they also understand that some implications may be broader. The most direct impact of the opinion is that the Umatilla people will not be allowed to return the Ancient One to the earth, but others could be portents of a larger resurgence of anti-Indian sentiment and scientific colonialism in America. Specifically, though not directly stated as such, the court’s opinion supports a notion that archaeological materials are a public heritage, no matter their culture of origin. In addition, by affirming the plaintiffs' position, the court essentially declared archaeologists and associated scientists to be the primary stewards of that heritage, much to the chagrin of many American Indian people. Along the way, the court reinforced the idea that scientifically generated evidence has greater validity than oral tradition in court, outright denying oral tradition’s validity and undercutting a major intention of the Native American Graves Protection and Repatriation Act (NAGPRA). Worse still, the court reflects—and by its decision supports—an idea that there may be a “white” or European history for the Americas that predates the

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arrival of Indians. The most damaging and long-term impact is that the decision reinforces fundamentally erroneous definitions and stereotypes about Indians as tribes, which has plagued Indian-white relations for generations.

As I explore these ideas here, realize that I write from a perspective largely respectful of Indigenous peoples’ concerns about archaeology. At the same time, my training and interests are those of an archaeologist. I reject, however, that there are only bipolar positions in disputes between Indians and archaeologists. Rather, there is a continuum of opinion among both archaeologists and Indians about Kennewick, just as there is about the entire repatriation issue.

As an archaeologist, I would like to see study done on most human remains, whether from recent deaths studied by autopsy or ancient ones, where osteologists do the primary examinations. There is much to learn from remains about diet, disease, trauma, and even gene flow in a population. At the same time, I learned long ago that the wishes of scientists do not necessarily outweigh those of people who claim such remains as their ancestors. Nor should science have greater authority than the expectation or, at least, the desire most people have when they die, that their remains will be treated respectfully and, if they are buried, that they will be left in the ground.2

What many Indians see as having happened with the Bonnichsen v. United States opinion is yet another violation of that respect, typical of the way remains of their ancestors have been treated. As it happens, many Indians had just begun to have confidence that NAGPRA supported their claims to a heritage that was their own, which, before NAGPRA, had been usurped by non-Indians. Moreover, the opinion is bound to have impacts on other Indigenous people around the world who are watching the case carefully, dealing with their own worries about archaeology.

Fortunately, many Indigenous people and archaeologists gradually have begun to understand that models for doing archaeology based on scientific colonialism—where the center of gravity for information about a people’s pasts resides elsewhere than with the people themselves—need to be replaced. Pushed by the repatriation issue, descendant community members and some archaeologists have been collaborating. Commonly called indigenous archaeology or community archaeology, community concerns drive research agendas, methods, and interpretations. This approach has expanded the epistemological range of both communities and archaeologists, where both recognize that an understanding of pasts can be expanded by cooperation. Because of mutually respectful relationships and trust, the Kennewick opinion will have virtually no impact except, perhaps, to make for interesting conversation. For media that thrive on controversy and those community members or archaeologists new to the issue or who choose to remain intransigent about working with the other, the case will be raised at every opportunity and used to foment distrust. The struggle over Kennewick can also serve as a good role model for how not to do things, as it already has in Canada with Kwaday Dân Sinchí (Long Ago Person Found).4 For those already working together, the Kennewick opinion will not diminish respectful interaction.
DISRESPECT FOR THE ANCIENT ONE AS A HUMAN BEING

The meaning of the concept of respect for many Indian people is difficult for many non-Indians to understand. A major impact of the opinion is that it shows great disrespect for the Ancient One, let alone those trying to see that he is reburied. This is no small matter and is hurtful to many Indian people. Except for Native American expressions of concern, the Ancient One’s wishes about treatment of his own remains have been utterly ignored by all levels in the judicial process. So long as the courts support the plaintiffs’ position, the Ancient One will not continue on the journey his spirit began at his death. For some Indian groups, the dead still live but on a different plane of existence. As matters stand, he will not be put back into the ground as the Umatilla and many other Indian people wish. Many non-Indians or Indians who are not traditionally oriented have a hard time understanding that death does not end existence and that respectful treatment of mortal remains after death is an obligation for the living. Failure to care properly for the remains may even endanger the living. Many non-Indians do understand this, however, as suggested by the intensive and expensive treatment of remains by many Americans and an abundance of laws protecting those remains from disturbance. This apparent double standard puzzles many Indian people.

Non-Indians, particularly scientists, may argue that no one can know Kennewick Man’s wishes about his remains or can assume that he would be at all offended by the study of his remains. Many Indian people (and probably most non-Indians) might argue that whatever contemporary people might think about death, the Ancient One probably believed that upon death he would be buried and that his remains would stay buried until their journey was complete. Although scientists consistently say they treat human remains with respect and that Kennewick Man might even appreciate contemporary scientists telling his story, to many Indians keeping his bones out of the ground or using destructive techniques to study them says otherwise. Though many scholars, non-Indians, and even some Indians might claim that the whole matter is “identity politics,”5 for many Indians, being unable to return the Ancient One to the ground was the most profound impact of the court’s opinion.

Public Heritage?

The entire issue of repatriation of objects of cultural patrimony raises the fundamental question of whether any group has a primary right to what that group defines as its own cultural heritage. In other words, can any group own the past? The archaeological community has long insisted that the past is a public heritage and even teaches that concept in their textbooks.6 Some groups, such as the Society for American Archaeology (SAA), have developed professional stewardship of that past as an ethic.7 As the SAA’s First Principle, for example, states:
It is the responsibility of all archaeologists to work for the long-term conservation and protection of the archaeological record by practicing and promoting stewardship of the archaeological record. Stewards are both caretakers of and advocates for the archaeological record for the benefit of all people; as they investigate and interpret the record, they should use the specialized knowledge they gain to promote public understanding and support for its long-term preservation. [emphasis mine]

That idea conflicts with the position of many Indigenous people who contend that their heritage is their own, as in Article 12 of the Draft Declaration on the Rights of Indigenous Peoples⁸, which states:

Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs;

Article 13 goes on to state:

Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to use and control of ceremonial objects; and the right to repatriation of human remains.

States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected.

Although the SAA goes on to codify accountability to publics, including Native Americans, the only archaeological organization fully to assert the primacy of Indigenous rights to their own heritage is the World Archaeological Congress in its First Code of Ethics, which in its Principle 5 states that members are “to acknowledge that the indigenous cultural heritage rightfully belongs to the indigenous descendants of that heritage.”⁹

Indigenous people have long asked why it is that archaeologists have an interest in studying remains of their ancestors at all and why they apparently believe they have a right to do so. Essentially, they wonder why archaeologists and the courts assume that there is any more right for archaeologists to study the remains than anyone else.¹⁰ Of course, these are not the questions addressed by the court, which looked only at the matter of whether Kennewick Man was Native American and fell under the definitions of NAGPRA. When the court found, however, that Kennewick Man was not Native American based on its interpretation of the intentions of Congress, the court unwittingly came down on the side of those who promote the past as a public heritage. Worse, they stepped into the morass of defining who is or is not Indian, a problem that has plagued Indians from their first
contact with whites. The impact is that the court, by implication, has said that it has the right to define who is Indian and whether cultural heritage can be owned by any one group. The perceived reality for Indians is that white courts almost always favor non-Indians when property issues are involved.

**SCIENCE ÜBER ALLES?**

When the court’s opinion states that the oral traditions presented to them were “not . . . adequate to show the required significant relationship of the Kennewick Man’s remains to the Tribal Claimants,” and supported this comment with other statements about the malleability of oral tradition, they essentially said that scientific information had greater validity. On the surface, this undercuts a major element of NAGPRA, which went to great length to give oral tradition equal footing with scientific and other scholarly information. The law states that remains shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

Tribes have long complained that their traditions weren’t being taken seriously by scientists or by the courts, so Congress essentially gave them equal status in the law. Certainly, the law demands a preponderance of evidence to show affiliation, but many Indian people have complained that the available scientific evidence for Kennewick seems to be no more specific or reliable than the available oral tradition.

These surface implications, however, may not be the most serious matter. As I have argued elsewhere, being told that their oral traditions have little or no relevance or validity—or at least are not as good as scientific evidence—says to Indians that a foundation of their culture and identity is essentially worthless to anyone but them. For them to accept that the scientific stories have greater value or truth would mean that Indians would have to reject their own traditions, and thus, their identity. The court and the scientists would undoubtedly say that this was not their intent, but by implication, it certainly sends that message. The court has declared in no uncertain terms that science, a very Western way of knowing, remains the most powerful way of knowing the past, no matter the feelings of Indians about the matter.

**A WHITE HISTORY FOR THE AMERICAS?**

Accepting the expert opinion of the scientists, the court notes that, “They concluded that Kennewick Man’s remains were unlike those of any known present-day population, American Indian or otherwise.” Again, unlikely as intent, but certainly present by implication, is the court’s acceptance of the presence of groups
in the Americas who were not the ancestors of today’s Native Americans. Although as an archaeologist, I suspect that many groups indeed may have visited the continent in the distant past, the court’s opinion reflects a long-term desire on the part of Euro-Americans to have a white history of the continent.

This desire began almost from the moment European explorers met Indians and couldn’t explain their presence or their origins. By the mid-1800s, Euro-Americans had invented a mythical race—the Moundbuilders—who supposedly built the earthworks seen by explorers in their travels to the interior of the continent. Key beliefs were that the Moundbuilders had to have been white because the Indians could not have been capable of such architectural feats and that they were displaced by ancestors of the Indians. A white presence on the continent before the Indians, and displacement of those people by Indians, became a convenient excuse for moving Indians off the lands the Euro-Americans wanted, a part of the idea of Manifest Destiny, which declared that American dominance of the continent was preordained.15

Nowhere was this desire for a white history more visible than in the media coverage of the Kennewick controversy. The primary evidence for Kennewick Man being other than Indian mostly came from the use and assessment of skull measurements. James Chatters initially described the remains as Caucasoid, a term used by some physical anthropologists to describe a widely dispersed physical type. The issue of determining race from skeletal measurements is controversial at best,16 but the media rapidly shifted Caucasoid to Caucasian as used in the racial sense of white. Robert Clinton and I have opined in this journal17 that the scientists were fully aware of this red flag and even used race to claim that they were being discriminated against as “Caucasian scientists.”

The media used race as a hook, because it resonated with a Euro-American audience. As widely reported, for example, the Asatru Folk Assembly, a California group claiming descendancy from northern European, pre-Christian, Germanic, and Scandinavian tribes, filed a claim for the bones.18 Taken to its extreme, the media mostly weighed in on the side of science. The Oregonian, a newspaper in the Northwest wrote, “The information from ancient Kennewick Man is simply too important to be buried by one people.”19 On CBS Television’s 60 Minutes, correspondent Leslie Stahl surmised in a segment on Kennewick Man that the Indians’ fear of scientific study of the remains resulted from fear that their status as sovereign nations could be challenged, which might mean a loss of treaty rights and even “lucrative casinos.” To report that her comments infuriated many Indian people would be a vast understatement.

The reaction of the media and the Euro-American public is an echo of the desire to document a white history for the continent, but some respected scholars also seem to want it, resurrecting at least one hypothesis that proposed a European connection.20 The court’s opinion, while not specifically stating that there might be a white priority in America, certainly has the effect of supporting those who believe that claim.
THE FLUIDITY OF “INDIAN-NESS”

This history also influenced the court’s assessment of Congress’s intention for NAGPRA (p. 1597–8). In their attempt to define Native American, many Indians believe that the court resorted to technicalities of interpretation rather than struggling to understand the spirit of NAGPRA. NAGPRA was meant to redress what the United States Congress saw as wrongs done to Native Americans and Native Hawaiians and their ancestors. In the United States, the skeletal remains of Native Americans probably have been the subject of more study than the remains of any other group. The history is long and complicated but at least partly revolves around two issues. To reiterate, who Indians are, where they came from, and when and how they got to the Americas are matters that have engaged Euro-Americans since they first arrived on the continent. These questions continue to the present day and lie at the heart of the plaintiff’s case. The other is that Euro-Americans believed Indians were a vanishing race, and that it was up to Euro-Americans to record all they could about Indians before too much information was lost.

What this meant is that the very act of defining Indians was a task that Euro-Americans felt necessary and took upon themselves to do. As scholars and laypeople developed their definitions, they incorporated a wide variety of erroneous assumptions and stereotypes. This process happened to the chagrin of many Indian people who hadn’t disappeared and felt victimized and dehumanized by being defined. At the heart of their distress was the very notion that they were Indians instead of Lenape, Anishinabe, and the hundreds of other names they called their groups. Whether Indian, American Indian, or Native American, the term has submerged their unique group identities into a category that they feel has not recognized their diversity.

In addition, the very notion of tribe is difficult for many to deal with. As non-Indians (and some Indians) see it, tribes have always had distinct boundaries and definitions for membership, but that is not the reality. Evidence is growing that before European contact, ethnogenesis might better be traced through smaller rather than larger groups. Even well after contact, many groups remained very fluid in their notions of who could be a member. Captives from conflicts were often assimilated into a group, people married into a group, and groups coalesced in response to social and natural environmental conditions. Precise tribal identification often was a product of Euro-Americans, particularly when a government needed to identify someone to sign treaties or carried out a policy or law that took away lands. Today, identifying who is or is not Indian—particularly who is or is not a member of a particular tribe—has become a nearly overwhelming problem, with competing definitions generated by self identification, governmental identification, dominant society identification, and tribal identification. All of these are reflected in the Kennewick opinion.

The relevance for the Ancient One is that the whole notion of defining him as Native American is seen as inappropriate by many Indian people. When scientists
say that he looks different from the ancestors of modern Native Americans, Indian people ask, “Why shouldn’t he?” They know that groups were constantly mixing, and many assume that people who looked like the Ancient One were just absorbed into other groups (a possibility that some scientists also allow). Thus, the definition of Kennewick as other than Native American strikes many Native Americans as a ploy to keep the remains. For many Indians, it’s just the same old problem of scientists wanting Indian bones.

**AMERICA’S INDIANS (AS IN “OWNED BY”)**

Americans have had a love-hate relationship with Indians. They appreciate that Indians were the first on the land, were close to it, and believe they cared for it as the first ecologists. They hate Indians because they were the first on the land, because Indians owned the land, and because they didn’t use it the same way Euro-Americans did. They love Indians because group and family were important and could be used as role models for understanding the rights and obligations of kin. They hate Indians because they were savages who killed whole settler families. They love Indians because they are spiritual, but hate them because they are heathens.

Love-hate comparisons could go on, but of course, they are stereotypes. At least two, however, are real. The first is that Americans love Indians because Indians have a history associated with the land, but hate them because they have a history associated with the land. Americans have usurped that history as their own and resist the idea that Indians might want it back. The second is that Americans love Indians because they were here, but hate Indians because they are still here. Thus, to many Indians the Kennewick opinion came as no surprise, seen as just another courtroom battle for their rights that they wish they didn’t have to fight. For all the discussion and debate over the long-term significance of the opinion, however, its greatest impact is that the Ancient One cannot continue his journey, and those who claim him as ancestor cannot fulfill their obligations to him.

**ENDNOTES**

1. In this article I use the terms Indian, American Indian, and Native American interchangeably, fully knowing that there are very emotional arguments associated with each term. All three are commonly used by Indians and non-Indians to refer to the Indigenous people of what Europeans called the Americas. Of course, at one level this very issue is part of the court’s opinion, a fact hardly lost on me.

2. What I write here is not meant to speak for any Indian people as individuals or as a group, but only to suggest what I have learned in 30 years of dealing with repatriation issues.


4. See Beattie et al., “The Kwäday Dän,” for discussion of how the remains of “Long Ago Person Found” were handled in British Columbia. Cooperation between scientists and First Peoples was extraordinary, in part based on what had been observed with the struggle over Kennewick.

5. James Chatters has made a case for this in his book, *Ancient Encounters*. 
6. Renfrew and Bahn, Archaeology, 537.
10. They do recognize that archaeologists are named as qualified investigators in such laws as the National Historic Preservation Act but often see that as a reflection of a colonization of their pasts.
11. Bonnichsen et al. v. United States, 357 F.3d 962 (9th Cir. 2004), 979.
12. 25 USC 3005, Sec. 7, (a) (4) (c).
15. For a more complete discussion, see Willey and Sabloff, A History of American Archaeology, 23–36.
17. See Zimmerman and Clinton, “Kennewick Man and Native American Graves.”
18. Even in the arguments for this case, the court mentions in a note (968, n.8) their use of an amicus brief filed by The Ethnic Minority Society of America, which suggests that the “potential descendants [of Kennewick Man] may not be members of the Joint Tribal Claimants or believe in the expressed ‘Indian’ religious interpretations made by the political leaders of the tribes.” The court perhaps was not aware that the “group” (At least for some time, it apparently was only one man; I haven’t tracked it lately.) was started by a Euro-American who organized the “society” specifically to combat repatriation.
19. Quoted in Thomas, Skull Wars, xxii.
21. Thomas, Skull Wars.
22. Green et al., Effigy Mounds National Monument Cultural Affiliation Report, demonstrate the profound difficulty of using either archaeological taxa or post-contact tribal names for assessing cultural affiliation. Bernardini, “Reconsidering Spatial and Temporal Aspects of Prehistoric Cultural Identity,” shows how ethnographic conceptions of cultural identity have biased archaeological interpretations. He observes that Indigenous perspectives are substantively different and should be incorporated into archaeological research to advance theory and practice regarding identity (see especially 46–50).
23. For me, the worst part of writing this piece is that some might believe that a Euro-American archaeologist is trying to interpret Indian concerns and trying to speak for Indians, which I in no way intend. These observations are my own. A close second is that the structure of this whole case is racist. I am forced to use terms such as “Indian” and “Euro-American” with which I grow increasingly uncomfortable.

BIBLIOGRAPHY


