## 1AC – FW – TOC

#### We begin our 1AC with an examination of the practices of modern archaeology and the case of the Ancient One, more commonly known as Kennewick Man

Fish 6 (Adam, PhD in sociology from Lancaster University, “Indigenous Bodies in Colonial Courts: Anthropological Science and the (Physical) Laws of the Remaining Human”, Wicazo Sa Review, Volume 21, Number 1, Spring 2006) [modified for ableist language]

I N T R O D U C T I O N American archaeology on the Columbia Plateau is a science of the past. The data is material remains: arrowheads, rocks broken by hand, human and animal bones, faint storage and house pits, the rare pictograph. For over a century, the fi eld methods of this science of the past have been to excavate and analyze these traces. According to their calculations and hypothesis tests, the cultured past gradually evolved in reaction to climatic and ecological changes. In any positivists’ endeavor, much deemed subjective, or “soft knowledge,” is excluded. Such elements as oral traditions, historical linguistics, local knowledge, and reflexive and subjective experience are barred. The most egregious exclusion is the contemporary public (which includes the tribes), whom science swore to inform. Scientists do not pursue cognitive, social, embodied, and phenomenological information, only information that can correlate behavior to ecology, represent the past as rational to Anglo - American sensibilities, and render the chaos of the past manageable for federal land agencies. The best of the science’s knowledge of the shape of projectile points, the presence of pithouses, and the shape of Indian bones were legally and strategically deployed to keep the Ancient One at the Burke Museum in Seattle, Washington. An absence of creativity, ignorance of twenty years of qualitative archaeological theory and practice, a lack of responsibility to inform the 78 public, and a disengagement with the politics of archaeological praxis are but a few valid critiques of most late - twentieth - century Columbia Plateau archaeologists. Their most infamous omission is the avoidance of presently living Native Americans and a callous appropriation and possession of their material cultural history. On the Columbia Plateau, archaeologists have produced little in the way of socially relevant or publicly interesting knowledge. The results of the fi rst sixty years of modern research produced not one popular text or archaeological synthesis that was useful to more than one hundred people, including graduate students. During this period, living Columbia Plateau peoples continued to live on isolated reservations with second - rate health care, education, housing, and infrastructure. Where the judges in Bonnichsen v. U.S. marginalized oral traditions, this article is an attempt to deconstruct the core of their argument, which is based on anthropological science. I describe how archaeologists’ field and representation practices perpetuate a false sense of scientifi c accuracy resulting in profound consequences for Native Americans. T H E A N C I E N T O N E B E C O M E S T H E “ K E N N EWI C K M A N ” As a response to centuries of looting of Native American graves and outrage that the Smithsonian Institution had the remains of more than 18,500 individuals, Native Americans and their supporters rallied for a law that become the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). The act enables Native Americans, both American Indians and Native Hawaiians, to reclaim and repatriate human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony in museums and federal agencies. The law requires that the appropriate Native American tribe be promptly notifi ed when any human remains or cultural objects are accidentally found on federal or tribal lands. NAGPRA provides a process for museums and federal agencies to return certain Native American cultural items to lineal descendants, culturally affi liated Indian tribes, and Native Hawaiian organizations.1 On July 28, 1996, speedboaters found the Ancient One, a nearly complete human skeleton, in the Columbia River. On September 2, control of the Ancient One was transferred to the U.S. Army Corps of Engineers (COE). On September 9, the Confederated Tribes of the Colville Reservation, Nez Perce Tribe of Idaho, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes and Bands of the Yakama Nation, and Wanapum Band claimed the Ancient One under NAGPRA. After accepting the claim, the COE followed the law by publishing an intent to repatriate on September 17. Bonnichsen v. U.S. was born the following month when eight scientists, arguing that the Ancient One was so old that the remains could not be affi liated with contemporary tribes, fi led suit against the COE to stop it from repatriating the Ancient One and for the right to study the remains. On September 25, 2000, the Department of the Interior (DOI) ruled that the Ancient One belonged to the fi ve tribes. On August 30, Judge Jelderks ruled against repatriation and in favor of scientists studying the Ancient One.2 On February 4, 2004, the Ninth Circuit Court of Appeals affi rmed that decision.3 On September 23, 2004, Colorado Senator Ben Nighthorse Campbell (R) introduced to the Senate S. 2843, or the Native American Technical Corrections Act of 2004. The proposed amendment to NAGPRA was designed to effectively overturn the Court of Appeals’s decision by redefi ning NAGPRA to clearly state that the law pertained to any remains of, or relating to, a tribe, people, or culture that is or was indigenous to the United States. The measure died, however, before it became law. The Ancient One is the remains of a person signifi cant to Native Americans, American anthropologists, and peoples worldwide. The Ancient One or Techaminsh Oytpamanatityt (Yakima for “from the land, the fi rst native”) is considered by all Columbia Plateau tribes to be an early, and therefore a signifi cant and important, ancestor. The Ancient One has received an immense amount of publicity. On September 30, 1996, Timothy Egan wrote an article in the New York Times documenting the Ancient One soon after he was discovered. All major national and international television networks and newspapers have presented lengthy programs and articles on the Ancient One. Books on the Ancient One have been published by national presses.4 The Ancient One is the most signifi cant person in popular culture associated with American archaeology. The importance of the Ancient One will likely increase as the ramifi cations of the court proceedings are known. Human remains and artifacts from the Ancient One site exhibit rare examples in Columbia Plateau prehistory of burial/funerary practices and lifeways, based on analysis of cultural affi liation, context, lithic technology, and osteological remains. This individual yields new information on prehistoric lifeways through osteological examination,5 lithic analysis,6 C - 14 dating,7 and DNA analysis. The studies suggest that the Ancient One predates the Cascade Phase (8,000–4,500 BP).8 Relatively complete skeletons from the Cascade Phase, especially those with a Cascade dart stuck in their ilium, are extraordinary. The Ancient One may extend the Cascade Phase back 1,300 years. Future research on the Ancient One site will likely yield additional information concerning the lifeways, language, traditional history, and human biological conditions of Columbia Plateau peoples around 9,300 years ago. Traditional knowledge recognizes two mytho - temporal periods. In the fi rst period, all animals were “people.” The First People occupied 80 the Columbia Plateau, prepared the world for the arrival of the Native Americans, and were “shape shifters, shimmering between humans, species, space and time.”9 The second period is characterized by a radical transformation. A transformer, usually Coyote, made changes in preparation for the human people. According to the Palus peoples, whose ancestors currently reside on the reservations of all appellant tribes, they and their ancestors have always been in and around the Kennewick area. The Palus made this claim as part of court testimony. Traditional places and people are inexplicably linked. The landscape is linked to the people via oral traditions. On the plateau, stories are observable in the landscape. The Palus histories are “written in the rocks and earth. This knowledge comes from thousands of years of occupation within the same territory. All stories and legends contain history, resource utilization and religious lessons.”10 In the distant past, the present landscapes were under a period of transformation; glaciers and rivers cut through the region, buffalo existed on the plateau, and the First People were preparing the way for the Palus.11 For the Palus, oral traditions are literal histories. Through recitation and visitation, the current life is linked to the mythic life. There is a story that tells of the creation of the Standing Rock, from which the Palus get their name. The story involves the First People in a phase of transformation, creating the world for the Palus. Events in How Beaver Made the Palouse Falls “can be related to the glacial and post - glacial period, 10,000–16,000 years” ago.12 O N T H E T E N A C I T Y O F A R C H A E O L O G I C A L “ FA C T ” That archaeological evidence can be trusted to supply fact is questionable. Most archaeologists will, without mincing their words, confess that the data pool with which they randomly sample is exceptionally limited and subject to internal chaos of unpredictable origin. Out of the fi eld, like all cultural productions, their work is subject to the limitations of representation, text, and audience. These factors, and many others, place burdensome constraints on what archaeologists can possibly approximate from the past. Columbia Plateau archaeologists neither question the legitimacy or the rationality of their conclusions. To the ignorance of Columbia Plateau archaeologists, the notion that science produces ultimate facts has received [destructive] appraisals.13 Two decades of postmodernism has gnawed at the foundation of absolutes, universals, facticity, and predictability to reveal the political, historical, and social contexts of truth and law. I will describe how the various elements of the archaeological project make objectivity and hypothesis verifi cation impossible. In describing the contingencies and situations of archaeological fi eldwork and its social products, I will exhibit the potencies and potentials of historical writing guided by material culture and landscape fi eldwork. The conclusions of scientifi c archaeologists are tenuous for fi ve primary reasons. One problem exists in the irreversible effects of soil and time on material culture; material culture deteriorates at an unpredictable rate. A second is the subjective foundation of any phenomenological experience, including scientifi c experimentation. A third is that all scientific practices are situated within particular histories and are infl uenced by contemporary political contexts. These processes infl uence “objectivity.” The fourth and fi fth problems relate to the interpretive and refl exive nature of communication (language) and documentation (text). I hope this critique results in an impression that archaeology is more a technique to recover data for the writing of history than a technology for discovering laws governing humankind. Archaeology is a method of research and writing history that could improve its usefulness. Archaeology could learn something from indigenous phenomenologies of the past and thereby avoid costly court cases such as Bonnichsen v. U.S., a product of the “colonialist refusal to reflexively interrogate the political qualities of scientific claims on Indian dead.”14

#### Specifically, laws are bent and shaped by scientists using the language of technocracy – tradition and culture are subjugated and replaced with findings presented as objective fact – this results in the destruction of indigenous culture and the creation of a singular Anglo-American culture

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L A N G U A G E Every modern war is waged in combat semiotics. The first major task of colonialism is the imposition of linguistic/semantic order. Since the Sapir - Whorf hypothesis21 of 1929, anthropologists have accepted that different languages produce different cultures. Hypothesis formulation, data acquisition, “ground truthing,” theory building, and theory testing all exist in a lingua - cognitive environment. All thought, rational or irrational, is individualistic. An epistemology that claims either absolute or even relative truth is biased and subjective. Science claims that truth can be held in common. In this view, all must agree on a particular history drafted by Anglo - American scientists. The only specifi cation is that only these scientists are the authors of this narrative. The rest of us are conditioned to believe — with thousands of university freshmen — the authorities. Archaeologists are often forced to create names for cultures they “discover” whose original names are forgotten. Archaeologists make up monikers for vast artifact patterns that were taken by the courts as actual cultural patterns. These invented “cultures” are relative only to the Anglo - American culture who wrote them. They are virtually meaningless and often the butt of jokes on Indian reservations. However, the Gould court decided that the names for the time periods used by archaeologists were verifi able, discreet, and extant. The courts ruled that the DOI acted arbitrarily and capriciously in fi nding the Ancient One affi liated with the tribal coalition. This ruling was based on an interpretation of “is” in semantic relationship to “indigenous,” and other nuanced interpretations of the intent of NAGPRA. This does not change the fact that the DOI, based on the findings of national experts, determined the remains to be Native American and culturally affi liated to the claimant Tribes. Regardless of the ruling by untrained nonprofessionals and non - Native Americans, Native Americans recognize the Ancient One as an ancestor. Apparently “Native American,” as used in NAGPRA, is not a social category capable of withstanding phonemic or genetic analysis. Native Americans know who they are, their identity and social authority is shored up in place names and language, is resistant and adaptive. Colonists resettled the West and did so while renaming places already named by Native Americans. Just as botanists make careers by naming new fl oral species, archaeologists further their profession lives by recognizing and naming new temporal phases. In Bonnichsen v. U.S., the scientists used the ambiguity and powers inherent in a name game to restructure the politics around Native American identity. Now, Native Americans are Native Americans only with scientific approval. This taxonomy of people returns anthropology to the days when tribal people were seen as a deviation of nature, destined for extinction (or genocide), and whose artifacts were exhibited in natural history museums alongside stuffed wildebeests and geological dioramas. More excavations do not increase the representation of cultural plurality in the archaeological reports, because “pigeonholing of project data into established cultural sequences has become the norm.”22 Researchers have contributed to synthetic generalities by simply “imposing new phase names,” but this is merely cosmetic diversifi cation, as major renaming projects, for the most part, only recapitulated previous culture history syntheses. In the end, the collaboration of cultural resource management (CRM) corporations and federal agencies in standardizing archaeological reports, and the forty - year legacy of the broad horizontal cultural area and general vertical cultural history, have “frozen many of the goals of archaeological research to the descriptive character of culture - historical research of the 1950s–1970s.”23 Much contemporary archaeological work is conceived as salvage archaeology with extinct peoples. Out of step with current social theory and social consciousness, Columbia Plateau archaeology has languished behind CRM reports written for federal land managers. With no impetus from agencies to write general publications interpreting cultural resources for the public, archaeological reporting has not been challenged to experiment with writing and presentation strategies that appeal to the public, do not offend tribal peoples, and more aptly present the data. T E X T S Like language, texts are media for communication. Language, spoken, recorded and heard, or intuited and thought, is translated and interpreted, obeyed or ignored, by the listening or reading audience. There are several weak points in the relationship between speaker and audience where trustworthy communication breaks down. Communication in the audible sentence is a fl uid practice contingent upon context, the interlocutor, and the interiorities of speaker and audience, writer and reader. Scientific archaeology texts assume an objective voice and thereby hopelessly strive to ameliorate the weak points in communication. This is an impossible goal. The texts, without subjective experiences, are inaccurate descriptions of the archaeological project. This practice leaves the reader with little information with which to reconstruct the life of the ancient culture or of the archaeological project. In addition, some archaeologists question whether texts, encoded in alphabets and shared either in words or print, are the most sophisticated mode for communicating information about the past.24 The beginning of a Columbia Plateau scientifi c archaeological text consist of a basic contextual and narrative history of the project area, recycled untold times from previous reports. Often the cited reports are more than forty years old. Project supervisors praise the writers of these texts if the report is “technical.” With this “readerly” part about the ”culture” complete, the remainder of the report consists of graphs, lists, photographs, and tables. So much of this writing depends on the seduction of mathematics, filler to justify paid hours and pay checks. Working against the aims of technical writing, both text and table serve as metaphoric models, a woeful poetics of the past and an uneventful archaeological experience. But unlike metaphors, which exploit anomalies and employ ironies within analogy, the technical model strives toward a Never - Never Land of objectivity. The material culture of the print - based text creates chronological histories resulting in a linear experience for readers, something that is undermined by postprocessual archaeologists,25 New Western historians,26 and indigenous archaeologies.27 Tribal historiography is “grounded in two interrelated systems of communication that predate the written word: drawing and speaking.”28 Gerald Vizenor agrees, “tribal narratives are heard and remembered in pictofi ctions and pictomyths without closure.”29 Traditional modes of communication were never textual. They were performative and oratory. Symbolic and iconographic drawing, painting, and etching were authoritative means of communication. The Ancient One is embroiled in a battle over identity. Tribal identity, like all social being, is in flux, making it a phenomenon difficult to quantify with static archaeological chronologies ill adapted to rationalize either mind or agency. Vizenor explains, “tribal consciousness would be a minimal existence without active choices, the choices that are heard in stories and mediated in names; otherwise, tribal identities might be read as mere simulations of remembrance.”30 Between orations and communities, tribal identity adapts to the present. Stories form the vehicle for the embodiment and historiography of tribal identity, as it is and as it changes. Fieldwork, the dynamics of language/cognition, and textuality all pollute the scientific archaeological report with subjectivity, bias, and politics. Indigenous forms of history are not used or even considered legitimate. Thus, the court misses the tribal identity of the Ancient One. I will now explore how archaeological science is written from a study in the colonial library. C O L O N I A L L I B R A R Y / L A B O R AT O R Y The ascension of indigenous archaeologies, which place importance on the concerns of living indigenous people, and the popularity of qualitative anthropology in the academic and publishing worlds, signal a decline in the preconception that quantitative archaeological science produces absolute knowledge. For fi ve decades, archaeological projects on the Columbia Plateau have been conducted with little input from tribes and little output to society. Historic, tribal, and archaeological preservation is a concern of both Anglo and Native Americans. The public has recognized that responsibility for the control of cultural resources is great and requires a savvy balance between the concerns of numerous shareholders. History is a construction, fabricated from residual material and immaterial traces, with a legacy of less - than - objective deployments, and it is situated in a contemporary political environment. With the pliability of history at play and the potency of history at stake, the public opined that one type of archaeological property, Native American burials and associated funerary items, was excluded from the exploitative dialectic of cultural resource commodifi cation. NAGPRA was written to ensure that human remains and sacred objects were not used in the free play of scientifi c/political meaning making. Science claims to produce valueless and objective truths, which it models with texts. The court’s decision proves that science is not without judgment and is put to use to support certain socially sanctioned practices, such as the dissection of human remains. Those favoring the reinterment of the Ancient One threaten the foundation of the codependent relationship between American law and science. For this reason, indigenous belief systems, threatening the established order, need not be considered. In law and order, as ever, there is an Indian scalp bounty. The Ancient One is but another body in a chain of uncontrollable and dangerous signs scheduled for classifi cation, imposition, appropriation, and eventual impotency. Tribal sovereignty poses one of the only socially valid and publicly sanctioned resistances to American capital - corporate empires. The host of Native American religious rights protection acts exhibit that policymakers, whether they are aware of it or not, are encouraging a form of diversity that threatens the status quo. One of the foundational stories of U.S. development is the respect and space afforded to the individual. NAGPRA, like the First Amendment of the U.S. Constitution, was written to ensure that the ”other” was embraced into the nation’s heritage. The court should recognize NAGPRA as a civil law, falsified as absolute law in the critical glare of science, but immediately necessary for religious and cultural diversity. Social policies can be informed by the epistemologies of science. But deploying science to test and validate a civil service is problematic. If NAGPRA is put to a test, indigenous people should criticize it. Scientifi c information can only obfuscate problems that are inherently social. In Bonnichsen v. U.S., NAGPRA did not stand up to the alien categories of science because NAGPRA was generated to protect the religious rights of citizens, a tradition encoded in the U.S. Constitution, another document probably incapable of defense against scientifi c dissection. The Ancient One has become an object in a power play between scientists and indigenous people in which history is used as a canvas on which to inscribe dominating ideologies. Scientifi c victory apparently affi rms the universal value of the present late - capitalistic way of being. It could be argued that archaeology and anthropology are explicitly linked to a process of incorporating the ”other” into a frame of reference visible to mass audiences. A social history of twentieth - century archaeological research on the Columbia Plateau exposes the politically situated knowledge produced by social scientists in pursuit of rational, predictive, and pragmatic models of social behavior. Not until the late 1980s did archaeologists refl ect on their postcolonial legacy,31 but these theories have had no effect on U.S. federal land management, a minimal effect on U.S. academies, and little to no effect on archaeologists of the Columbia Plateau. With the ascension of Tribal Historic Preservation Offi cers (THPOs), the World Archaeology Congress, international indigenous rights law, and the recognition of the politics of heritage management coming out of the transitional Third World countries and indigenous rights movements, it is now apparent to self - aware archaeologists throughout the world that archaeological projects have the potential to not only affect the tourist economy and social memory but also the validity and stability of nation - states and indigenous nations. NAGPRA forces archaeologists to confront this past and process, and NAGPRA’s potency was weakened as a result of Bonnichsen v. U.S. Some Plateau archaeologists fought having to refl ect upon their actions and become informed by contemporary postcolonial theory . . . and won. P O S T– A N C I E N T O N E F U T U R E The Ancient One localizes historical trends that significantly contribute to the public discourse on the religious rights of Native Americans, the peopling of Native America, the viability of NAGPRA and repatriation, the ethics of anthropological science, and the politics of the past. The legal rights to the Ancient One have been hotly litigated since its discovery in 1996, making the Ancient One site the most litigated archaeological site in the history of American archaeology. Two recent and interwoven historical trends changed with the discovery and legal proceedings of the Ancient One. One trend involves the legacy of Native American human rights, the second deals with the history of anthropological science. Before NAGPRA, Native Americans and archaeologists often clashed over the control of human remains and artifacts. Throughout the nineteenth and twentieth centuries, amateur pot hunters violated tribal property and religion by excavating burial sites and collecting grave goods. On the Columbia Plateau, from 1933 to 1975, scientists excavated burial grounds before the waters produced by the damming of major rivers fl ooded the sites, usually with little to no consultation with descendent communities. In 1990, with the establishment of NAGPRA, a professional protocol between Native Americans and archaeologists was initiated to 90 correct the earlier human rights errors and provide a vehicle for repatriation of remains collected in archaeological excavations and inadvertent discoveries. Since the discovery of the Ancient One site in 1996, and the subsequent court cases up until late 2004, NAGPRA protocol has been scrutinized and appears to have changed to favor the fundamentalist scientists who desire to retain skeletal material for study. The discovery of the Ancient One initiated an erosion of the historical trend of Native Americans legally claiming “prehistoric” human remains in North America while increasing the power of archaeological science to dominate the discourse and material culture of the past. These new trends, instigated by the court’s recent decision on the Ancient One, are in sharp contrast to anthropological labor through the 1990s and into the twenty - fi rst century as best observed in applied anthropology, 32 indigenous archaeology, the Code of Ethics of the American Anthropological Association, the Vermillion Accord,33 and the United Nations Draft Declaration on the Rights of Indigenous Peoples.34 The Ancient One is essential in mapping trends in the relationship between Native American values and dominant forms of science in late - twentieth - century Native American and American history. Fundaments of Columbia Plateau archaeological research for a century, such as building cultural chronologies and tracking cultural affi liation through time and space, are forced into self - refl exive critique by the legal proceedings on the repatriation of the Ancient One. Trends in the history of American epistemology, science, and Native American human rights coalesce around the Ancient One, as courts, Native Americans, the public, and scientists scrutinize the ethics of anthropological science and its questionable relationship to Native American culture. The discovery of the Ancient One forced into the praxis of anthropology a new future. Archaeologists and THPOs now speak of a “Post– Ancient One world.”35 Some of the tribes and appellants are not against scientifi c investigation (the appealing Confederated Tribes of the Colville Reservation for example). What the tribes require is a compromise with science. The court was unwilling to recognize that a compromise could have been reached by returning the Ancient One to the tribes after preliminary research had been conducted. To allow for this compromise would have strengthened the belief that there can be mutually autonomous, though complementary, historiographies. But this compromise would have weakened the monolithic belief that science is the only epistemology situated in reality and applicable in America. Science, claiming to be backed by democratic principles, high - technological innovations, and Protestant pragmatism, stands as the foremost opponent to the peaceful collaboration of diverse and marginal epistemologies. The Ninth District court affi rmed that the scientifi c method is the best epistemology with which to discern affi liation and recover mean91 ing from the Ancient One. This comes as no surprise to the tribes who have participated in numerous court cases seeking protection of sacred sites and religious rights. When the courts have weighed the structural components of the Western worldview (granted, it is a huge hegemony, containing as it does nationalism, democracy, capitalism, essentialism, rule of law, monotheism, positivism, rationality, and the military - industrial complex) versus Native American religion rights, the tribes have been defeated in every instance. The Ancient One is now the property of scientists, who, by claiming the authority and right to make universal meaning from the phenomenological world, will construct a history from the Ancient One that will implicitly support the structure of the Western worldview. Proponents of universal applications of scientifi c epistemologies claim that the Ancient One is the cultural property/progeny of all humans. While this is a fi ne ideal, contemporary local concerns surrounding the survival, sovereignty, and health of small - scale cultures is presently more essential than the creation of a world bank of osteological information for comparison, query, and graduate student research. The Ancient One’s return would affirm tribal autonomy and the power of pan - tribal confederations, and further legitimize the powers of tribal self - governance in cultural resources management in the eyes of the public, to funding federal agencies, and to governing tribal councils. The “recovery” of the Ancient One back from science would have been a symbol of indigenous perseverance, strengthening Native American culture, and the continuation of tribal religious traditions. The return of the Ancient One would have validated traditional ways of being to young Native people. Oral traditions are made ever more tenuous as legal documents, especially when contrasted to the approximations, models, and theories of science. This will further marginalize the teachings of elders and the transmission of traditional wisdom through song, dance, and story. The oral traditions submitted by the Columbia Plateau tribes are profound evidences of cultural continuity dating from before the time of the Ancient One. The oral traditions help elders to remember when the earth was in a period of transformation, a time when geological events occurred, over 14,000 years ago. These traditions are alive today and will forever be vibrant inspirations for tribal peoples. These stories are the vehicles and containers for culture, far more representative of culture, a lingua - cognitive phenomena, than the bald evidence presented by the archaeologists. NAGPRA was not written as a battleground for the bout between science and indigenous tradition, nor was it written to test the defi nition of what it is to be a Native American. Seen as an object not yet coded with a dominant paradigmatic sign, the Ancient One is that threatening or fueling substance. He exists in that virgin frontier of anomalies waiting to be transformed into meaning by archaeologists. He is one of the multitudes that threaten with resistance or constitute a passive fuel for progress. After the scientists fully exhaust all scientifi c studies and embrace the Ancient One with their incorporating technologies, the dominant paradigm will unfold within the Ancient One. Eventually, the Ancient One will be no more, replaced by a representation in archaeology texts, a postcard, a graph, a billboard, an anecdote, a cyborg. The structure of the Western worldview once proliferated by sword, Bible, and plough is now perpetuated by a self - replicating informational virus spread by the global culture industry in the form of advertising and American brand democracy. It seemed a perfectly sad joke when Dr. Jim Chatters reconstructed the Ancient One in such a manner as to look like Star Trek’s Captain Picard, as if he had become a spokesman for a line of sneakers or a discount airline, or maybe a superhero of amazing scientifi c power: K- MAN! It is now true, the Ancient One is another thing objectifi ed by a special light to become a supermodel for a Western - styled paradigm. “ T H E A N C I E N T O N E ” : T H E R E S U LT O F S I X T Y Y E A R S O F A R C H A E O L O G I C A L S C I E N C E S O N T H E C O L U M B I A P L AT E A U For over a century, Anglo - American anthropologists, archaeologists, and historians have mediated Columbia Plateau Native American cultural content with direct funding from the U.S. federal government. This work, usually salvage archaeology and salvage ethnography, done to the standards of the day, has profound political implications today, as witnessed by the power of the Indians Claims Commission, by setting restrictive trends in methodology, content, form, temporal depth, and geospatial breadth. Traditional people are offended by the publicizing of incorrect, sacred, and private content in these technical reports, interpretive ethnographies, and romanticized fi lms. Bureaucratic, militaristic, legal, and scientifi c historiography informed Native American archaeology throughout the nineteenth and twentieth centuries. On the Columbia Plateau in the twentieth century, ”science” excavated villages and burial grounds before the fl oods of reservoirs from electricity - producing dams seriously disturbed tribal subsistence and identity. Every one of these archaeological reports defined Native American culture as static, incremental, evolutionary, and ecologically determined, and, to the exclusion of all things, functional — usually only with rocks. In 2005, on the Columbia Plateau, a thousand archaeological reports will be written confi rming that the Native Americans had little agency, and, while redundant for more than 6,000 years, were not affi liated with prehistoric peoples of such antiquity. But in the wake of NAGPRA and traditional cultural properties policies, tribes are becoming important shareholders in the past. Materials and individuals excavated along the Columbia River and stored at Washington State University have been cataloged, prepared for repatriation, or repatriated.36 With the power to demand consultation and the repatriation of human remains and specifi c objects, Native Americans have been able to revolutionize the practice of archaeology. The conclusion of the case evinces the results of sixty years of archaeological research divorced from Native American complements. The case eventually boiled down to a judge with no archaeological training opining from arguments about such esoteric elements as radiocarbon dates, the absence of pithouses, the shape of projectile points, and the presence of a chemical in the bones to refer to anadromous fi sh consumption. Once the scientists had steered the legal discourse away from the language of ethics and to the language of the archaeologist, it was clear the archaeologists were going to win the court case. The elements that constitute culture — language, oral traditions, living narrative, memory identities, participant epistemologies, kinship, religion, and social agents — supported the tribes’ claims for repatriation. Hard archaeological evidence, eternally inconclusive, is the reason the Ancient One is destined to decay on a plastic shelf instead of in the Mother Earth. I have written this to encourage THPOs to assert their federal rights. The majority of the texts in the 1970s and 1980s, from which the data in Bonnichsen v. U.S. were drawn, were CRM experiments conducted on public land and funded by tax dollars. THPOs have the legal right to critically review all such reports for wrongful data inclusions, omissions, and interpretations. Today, tribes have a say in the conclusions made in archaeology texts whose writers are funded by tax dollars. Archaeological conclusions affect real living people. The present task for THPOs is to develop historiographical content and forms that best represent their histories.

#### The tale of the Palus people and their struggle for repatriation is not an isolated event – across the world, indigenous populations have been denied the fundamental right of ownership to their most prized possessions – cultural artifacts and the remains of their ancestors. The case of the Ancient One offers a key site of disruption of these practices, but we continue our genealogical examination on a more broad scale.

#### The US, in response to complaints about repatriation, created the Native American Graves Protection Act of 1990, or NAGPRA. While well-intentioned, the law reveals the pernicious implication of modern legalism – that rights and statutes apply to some and not others. Though it sought to create a forum for repatriation, the fundamental flaws in the legal system make effective large-scale action impossible.

Russell 13 (Steve, Steve Russell, Cherokee Nation of Oklahoma, is a Texas trial court judge by assignment and associate professor emeritus of criminal justice at Indiana University-Bloomington. He lives in Georgetown, Texas, “Anthropologists: Beasts of the Western Wild”, http://indiancountrytodaymedianetwork.com/opinion/anthropologists-beasts-western-wild-147974)

All Indigenous Peoples, not just American Indians, have a troubled history with anthropologists. This is because, early on, the study of humans was the study of primitive humans, and we are always considered primitive so as to justify separating us from land and minerals. We obviously did not know how to use them. Modern anthropology has finally taken on the study of humans in all their complexity, urban as well as rural, white as well as brown, but those of us who have always been classified as data still have some raw sores from the old days. Within my lifetime, anthropology still flirted with the socially constructed fiction of “race” as if it reflected biological reality and therefore destiny. Repatriation represents one of the sorest of the sore spots. Physical anthropologists, who study human bones, and archaeologists, who study human artifacts, are jokingly distinguished from cultural anthropologists in that it’s said they can’t stand dealing with living human beings. I wonder about the reality underneath that joke, since the grave robbers were so unable to deal with living Indians for so long? My academic training is focused on law, and specifically the English Common Law, which remains in force in all but one of the lower 48 United States unless it is altered by statute. Some basic principles in that tradition are: \*There is no recognized property interest in a corpse, but the next of kin has the power and the duty to supervise interment. \*Any ownership interest in grave goods is in the next of kin of the deceased person. \*A thief lacks the power to pass a legal title, even to one who did not know about the theft. It’s fairly obvious how these principles tend to slow down study of the contents of graves, or at least graves containing white people. The Americas, having been peopled last, contain fewer human remains than Europe or Africa, where finding graves while excavating for other reasons is routine. It’s been in the news recently that the bones of King Richard III of England were found under a parking lot. The dispute about the bones has not been over whether they will be reburied, but whether the reburial should be in Leicester or York. Sure, the scientists will have a look-see, and a little bit of bone will be destroyed by DNA testing, but in the end, a grave is a grave even when it shows up under a parking lot. Here in the US, a woman named Hai-Mecha Eunka, Maria Pearson in English, noticed that when a cemetery was disturbed for a highway, the white bodies went to a funeral director hired to rebury them and the Indian bodies went to the Iowa State Archeologist. When she was done raising a stink, Iowa had passed the first state level repatriation law in 1976. Ten years later, the US Congress began a similar effort that would come to fruition when the first President Bush signed the Native American Graves Protection and Repatriation Act in 1990. I agree with what is now a minority of the scientists that NAGPRA is preposterous, but what is preposterous about it is that Indians had to have a law to forbid disturbing our dead. I’ve been unable to find the part of the old law that said “except Indians.” The fallback position of the community that calls itself scientific is to introduce age as a proxy for race, and there has even been a court decision denying NAGPRA protection to graves that antedate the European Invasion. I suppose the intellectual justification for this, if it has one, is that we savages had no laws and therefore did not prohibit grave robbing before white people taught us what is sacred. This is demonstrably false. Traditional Cherokees would consider anyone who takes from a grave to be evil and demented and up to no good. This is not unusual among Indians or among humans generally. Of course, NAGPRA allows any Indian nation to consent to disturbance of their dead---just like white next of kin can consent. I don’t know what to say to those who remain offended at having to ask. The repatriation movement has lots of heroes from the Iowa fight onwards, but it has also brought forward anthropologists at first considered turncoats by their colleagues. I will never forget the look of contempt on the face of one my scientific adversaries when I cited an article by one of the “turncoats,” Larry Zimmerman. Another anthropologist famous for his view that Indians are human beings with interests that must be respected is Tim McKeown, who was the go-to guy in the Department of the Interior when NAGPRA was being implemented. Last year, McKeown made a book: In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986-1990. McKeown’s book is a detailed examination of the players behind NAGPRA in and out of Congress, what they said and did over those years, and how the wording of NAGPRA came to be as it is. Tribal representatives should keep this book around as a blueprint for action, so that when they press at the edges of the law they will be as certain as possible where the edges are. Anthropologists should be grateful that, thanks to McKeown’s work, Indians can’t claim anthropologists never did anything helpful to us. That will make it easier to ask permission to study us, if they can get used to asking.

#### That selective application of rights was not coincidental – modern legal systems continue to replicate the pervasive logic of coloniality, which marks non-white bodies as disposable populations to be enslaved or eradicated by any means necessary

Maldonado-Torres 7 (Nelson, Department of Ethnic Studies at UC Berkeley PhD, Religious Studies with a Certificate for Outstanding Work in Africana Studies, Brown University, BA, Philosophy, University of Puerto Rico, “On the Coloniality of Being”, http://www.decolonialtranslation.com/english/maldonado-on-the-coloniality-of-being.pdf)

The imperial attitude promotes a fundamentally genocidal attitude in respect to colonized and racialized people. Through it colonial and racial subjects are marked as dispensable. Ideas of war, conquest, and genocide here bring up another fundamental aspect of coloniality.28 The question about whether the indigenous peoples of the Americas had soul or not was framed around the question of just war. In the debates that took place in Valladolid in the sixteenth century Sepu´lveda argued against Las Casas that the Spanish had the obligation to engage in a just war against subjects who, in their inferiority, would not adopt by themselves the superior Christian religion and culture.29 Once more, just like it happens in respect to the question about the humanity of the so called Amerindians, the outcome of the discussion is not as important as the question itself. The ‘discovery’ and conquest of the Americas was no less than an ontological event with many implications, the most dramatic of which were established by the attitudes and questions that emerged in the context. By the time when the question about engaging in a just war against the Amerindians was answered the conquerors had already established a particular way of relating to the peoples that they encountered. And the way in which they pursued such relations did not correspond to the ethical standards that were followed in their countries of origin. Indeed, as Sylvia Wynter argues, Columbus’s redefinition of the purpose of land as being one for us , whereby for us meant for us who belong to the realm of Man vis-a`-vis those outside the human oecumene, already introduces the exceptional character that ethics is going to take in the New World.30 As we know, such exceptional situation gradually lost its exceptionality and became normative in the modern world. But before it gained such a widespread acceptance and became constitutive of a new reigning episteme, the exceptionality was shown in the way in which colonizers behaved in relation to the indigenous peoples and black slaves. And this behavior coincided more with the kind of actions shown at war, than with the ethics that regulated live with other European Christians. When the conquerors came to the Americas they did not follow the code of ethics that regulated behavior among subjects of the crown in their kingdom.31 Their actions were regulated by the ethics or rather the non-ethics of war. One cannot forget that while early Christians criticized slavery in the Roman Empire, later Christians considered that vanquished enemies in war could legitimately be enslaved.32 Indeed, in the Ancient world and the Middle Ages it was for the most part legitimate to enslaved some people, particularly prisoners of war and the vanquished. What happens in the Americas is a transformation and naturalization of the non-ethics of war, which represented a sort of exception to the ethics that regulate normal conduct in Christian countries, to a more stable and long-standing reality of damnation. Damnation, life in hell, refers here to modern forms of colonialism which constitute a reality characterized by the naturalization of war by means of the naturalization of slavery, now justified in relation to the very physical and ontological constitution of people ! by virtue of ‘race’ ! and not to their faith or belief.33 That human beings become slaves when they are vanquished in a war translates in the Americas to the suspicion that the conquered people, and then non- European peoples in general, are constitutively inferior and that therefore they should assume a position of slavery and serfdom. Sepu´lveda draws on Aristotle to justify this position, but he was more than anything translating into categories ideas that were already becoming common sense. Later the idea was going to be solidified in respect to the slavery of people from Africa and become stable until today under the tragic reality of different forms of racism. Coloniality, I am suggesting here, can be understood as a radicalization and naturalization of the non-ethics of war. This non-ethics included the practices of eliminating and slaving certain subjects ! e.g., indigenous and black ! as part of the enterprise of colonization. The hyperbolic expression of coloniality includes genocide, which is the paroxysm of the ego cogito ! a world in which the ego cogito exists alone. War, however, is not only about killing or enslaving. War includes a particular treatment of sexuality and of feminity: rape. Coloniality is an order of things that put people of color under the murderous and rapist sight of a vigilant ego. And the primary targets of rape are women. But men of color are also seeing through these lenses. Men of color are feminized and become for the ego conquiro fundamentally penetrable subjects.34 I will expand more on the several dimensions of murder and rape when I elaborate the existential aspect of the analytics of the coloniality of Being. The point that I want to make here is that racialization works through gender and sex and that the ego conquiro is constitutively a phallic ego as well.35 Enrique Dussel, who submits the thesis of the phallic character of the ego cogito, also makes links, albeit indirectly, with the reality of war. And thus, in the beginning of modernity, before Descartes discovered . . . a terrifying anthropological dualism in Europe, the Spanish conquistadors arrived in America. The phallic conception of the European-medieval world is now added to the forms of submission of the vanquished Indians. ‘Males’, Bartolome´ de las Casas writes, are reduced through ‘the hardest, most horrible, and harshest serfdom’; but this only occurs with those who have remained alive, because many of them have died; however, ‘in war typically they only leave alive young men (mozos) and women.36 Joshua Goldstein complements this account by depicting conquest as an extension of the rape and exploitation of women in wartime.37 He argues that to understand conquest one needs to examine: (1) male sexuality as a cause of aggression; (2) the feminization of enemies as symbolic domination, and (3) dependence on exploiting women’s labor. My argument is that these three things come together in the idea of race that began to emerge in the conquest and colonization of the Americas. Misanthropic skepticism posits its targets as racialized and sexualized subjects. Once vanquished, they are said to be inherently servants and their bodies come to form part of an economy of sexual abuse, exploitation, and control. The ethics of the ego conquiro ceased to be only a special code of behavior for periods of war and becomes in the Americas ! and gradually the modern world ! by virtue of misanthropic skepticism, the idea of race, and the coloniality of power, a standard of conduct that reflects the way things are ! a way of things whose naturalization reaches its climax with the use of natural science to validate racism in the nineteenth century. The way things supposedly are emerge from the idea of how a world is conceived to be in conditions of war and the code of behavior that is part of it. What happens in modernity is that such a view of the world and code of conduct is transformed ! through the idea of race ! and becomes naturalized. Thus, the treatment of vanquished peoples in conditions of war is perceived as legitimate long after war is over. Later on, it won’t be their aggression or opposition, but their ‘race’ which justifies continued serfdom, slavery, and rape. This represents a break with the European medieval tradition and its ethical codes. With the initial exploitation of Africa and the colonization of the Americas in the fifteenth century, the emerging modernity comes to be shaped by a paradigm of war.38 Building on the work of Dussel, Gordon, Quijano, and Wynter I articulated in this section what I see as three contributions to the understanding of coloniality and race: (1) the understanding of race as misanthropic skepticism, (2) the interrelation of race and gender, and (3) the understanding of race and gender conceptions in modernity as the result of the naturalization of the ethics of war. The lived experience of racialized people is deeply touched by the encounter with misanthropic skepticism and by the constant encounter with violence and death. The language that they use has also already being shaped by understanding of the world as a battle field in which they are permanently vanquished. Now that we have an idea about the basic conditions of life in the colonial side of the modern world or in the dark side of the color-line we can try to find a more precise philosophical articulation of these experiences and thus to lay out the fundamentals for a discourse about the coloniality of being. But, while we have explored to some extent the meaning of the idea of coloniality, we haven’t done the same with the idea of ‘being’. We shall do that next.

#### And this phenomenon is not unique to the United States and its native populations – in Cuba, Mexico and Venezuela, as well as nearly every country worldwide, artifacts have been stolen and indigenous peoples struggle to retrieve them. We continue our genealogy with an analysis of modern artifact repatriation in the topic countries:

#### In Cuba, efforts at repatriation exist, but they’re limited and held back by legal doctrines

Bauza 3 (Vanessa, writer for the Sun Sentinel, “Indian Remains Return To Ancestral Home In Cuba”, http://articles.sun-sentinel.com/2003-01-13/news/0301130177\_1\_repatriation-descendents-bones/2)

Caridad de los Indios, Cuba — Plucked from their graves in 1915 and stored in the drawer of a New York warehouse, the fragments of bones of seven Taino Indians finally completed their long journey home. On a hillside cemetery nestled in the mountains where Tainos once thrived, representatives of the Smithsonian Institution turned over a cardboard box containing the pre-Columbian remains to the tribe's descendents. "We didn't know these brothers, but we are proud to have them back in our homeland," said Panchito RamM-mrez Rojas, 67, a village elder who led the reburial ceremony Thursday. Members of Native American tribes from the Mohawk, Navajo and Kaw nations who came to Cuba for the bones' repatriation stood in a circle around RamM-mrez Rojas and his relatives as they sang to the benevolent spirit they call Chiriwa, asking him to protect the remains. One Navajo woman, in the tradition of her nation, burned cedar leaves nearby to cleanse the bones. A Puerto Rican Taino descendent raised in Spanish Harlem improvised a ceremony, placing blue parrot feathers and necklaces of dried corn and Camandula seeds on the small cement crypt. Finally, the bones were sealed in the crypt in the remote Caridad de los Indios cemetery, where Taino descendents have been buried for years. It was a simple ceremony marking both the end of a journey and, many hope, the beginning of a new consciousness about Cuba's Tainos. It took nearly seven years and the blessings of government officials in Havana and Washington for the Taino remains to be returned. "It's an amazing thing this got approved. I almost didn't expect it," said JosM-i Barreiro, a Cuban Taino descendent who lives in New York and spearheaded the effort in 1995. "There's been an explosion of Indian expression which over the years has led to this question of what right there was to loot the graves of Indian people." According to a 1989 law, federally funded museums are required to attempt to repatriate all human remains to their indigenous communities. So far the Smithsonian has returned thousands of bones and funereal objects to native communities across the United States, in some cases clashing with tribes such as the Zuni in New Mexico who prefer not to have ancestral skeletons repatriated because they have no ceremonies for reburying them. Though the federal grave protection act has no international jurisdiction, the Smithsonian has extended the spirit of the law to communities in South America, so far returning several mummies to Peru and about a dozen shrunken heads to Ecuador. "The whole concept of repatriation is the museum is returning items it should never have had to begin with," said James Pepper Henry, who handles repatriations for the Smithsonian Institution. Cuban anthropologists and historians are interested in some of the other 5,000 Taino artifacts in the Smithsonian's collection which were dug up by American archaeologist Mark Harrington during two trips to Cuba in 1915 and 1919. The collection includes pottery, shell masks and a particularly interesting 800-pound stalagmite known as the Cave of Patana petroglyph, which Harrington sawed into five sections and carried away by pack mule. However, the Smithsonian's policy is to return artifacts only to native communities, not museums or scientific institutions. Additional artifacts must be claimed by the Cuban Tainos, something they have not yet done, Pepper Henry said. For years, anthropologists widely believed the Taino-Arawak people, who lived in Cuba, Puerto Rico, Haiti and the Dominican Republic, were completely extinguished within a hundred years of Christopher Columbus' arrival in 1492. "From the Spanish historical point of view we've been taught those communities disappeared and there are no descendents," said Cuban anthropologist JosM-i Millet. "That's a great error. Now steps are being taken to show this is not a mere archaeological legacy but a spirituality that lives not only in these settlements but in the Cuban culture at large." From the northern town of Baracoa, Cuba's first capital and one of the oldest colonial settlements in the Americas, to the Sierra Maestra mountains, the island's eastern provinces are dotted with villages, such as Yateras, MaisM-m, JiguanM-m and La RancherM-ma, where about 1,000 Taino descendents still maintain the agricultural traditions and religious beliefs of their indigenous ancestors. A farmer and herbal healer, RamM-mrez Rojas remembers 50 years ago when his village, La RancherM-ma, had about 25 Indian families living in palm-thatched homes with no electricity or running water and surviving largely on what they grew. Today many of the homes are lighted with solar panels and two years ago RamM-mrez Rojas replaced his old, battery-powered transistor radio with a television set. But only 10 Indian families remain in La RancherM-ma, and many young descendents, including some of his 10 children, have moved to larger, nearby towns for an easier life. "The race is disintegrating," RamM-mrez Rojas said. "I'd like for my children to marry Indians but there aren't enough. We are living in a modern world." Still, he says they come to him for his knowledge of local medicinal plants and his blessings to guard against the malignant spirits of the "evil eye." He has also taught his children to plant root vegetables by the waning moon, a tradition said to bring greater yields, and to give thanks to the medicinal plants they pick and ask for their healing powers. "The Spaniards did away with most of us, many were killed, but they left our roots and we've flourished from them," said RamM-mrez Rojas. "There were many who said in Cuba there are no more Indians. I've had this culture since I was young. I teach my children so it doesn't disappear." For RamM-mrez Rojas, his family and a small group of visiting Puerto Ricans who claim Taino ancestry, the repatriation represents a recognition that their culture is alive. "Growing up, I thought we were the only Indian family," said David Rey CintrM-sn, who lives in Orlando. "I always prayed to meet other Tainos. That we might come together as a people."

#### In Mexico, stolen artifacts have been returned but vast collections are held by individuals and auctioned in other countries – they can be legally bought and sold with a license

CBP 8 (US Customs and Border Protection, “CBP Returns Suspected Stolen Antiquities to Mexico”, http://www.cbp.gov/newsroom/local-media-release/2008-09-19-040000/cbp-returns-suspected-stolen-antiquities-mexico)

San Bernardino, Calif. - U.S. Customs and Border Protection officials yesterday returned two centuries-old artifacts, one believed to date back to 200 BC, to the San Bernardino, Calif., consulate general of Mexico. They were illegally imported into the United States in 2004. Two Los Angeles CBP officers representing the CBP Portland, Ore., field operations office presented the artifacts to Acting Consul General Jeremias Guzman Barrera during a ceremony at the San Bernardino County Museum. "On behalf of the government of Mexico, I want to express our sincere appreciation to the government of the United States and U.S. Customs and Border Protection for returning these priceless artifacts to my country," said Consul Guzman. "They are beautiful and timeless symbols of Mexico's rich and ancient heritage." The return of the precious artifacts, just days after Mexico's Independence Day, marked the end of a long chain of events that began over four years ago when an enterprising art collector in Denver, Colo., sought to import the artifacts from an art dealer in Paris, France. The artifacts, described as a Teotihuacan Funerary Mask and Statuette, are believed to be from a north central Mexican region that has been emptied of many of its ancient artifacts primarily due to the increase in illicit trade. Chief CBP Officer Cristina Gamez, left, presented Mexican artifacts to San Bernardino Acting Mexico Consul General Jeremias Guzman Barrera as San Bernardino Mayor Patrick J. Morris, far right, and San Bernardino County Supervisor Josie Gonzales look on. In many areas of the world these artifacts are sold from prestigious art collections and international dealers to the highest bidder. When a Denver CBP import specialist reviewed entry documents and conducted an examination of the artifacts he suspected they were pre-Columbian but needed proof. The import specialist contacted the assistant professor of Anthropology at the University of Colorado to view the pieces. The professor verified the pieces were authentic pre-Columbian artifacts from Mexico. Said Chief CBP Officer Cristina Gamez, " On behalf of the United States and U.S. Customs and Border Protection, I am honored to repatriate these artifacts with their rightful owner, the people of Mexico," adding, "CBP will continue to vigorously enforce international law in the recovery, seizure and return of stolen antiquities which represents our shared connection as world citizens." The U.S. is a signatory to the United Nations Educational, Scientific and Cultural Organization enacted in 1970 to stem the trade of stolen art, and prohibit the importation into the United States. If an importer lacks the required license, the art can be seized. The importer in this case was advised by CBP of the requirement but was unable to obtain the license. CBP seized the artifacts which were administratively forfeited this year. The Denver office of U.S. Immigration and Customs Enforcement conducted an investigation and found no evidence to criminally implicate the importer. No arrests have been made to date.

#### In Venezuela, Pemon Indians lost the Kueka stone, a tribal artifact

Toothaker 12 (Christopher, “VENEZUELA INDIANS: GERMANY SHOULD RETURN BOULDER”, http://bigstory.ap.org/article/venezuela-indians-germany-should-return-boulder)

CARACAS, Venezuela (AP) — A 35-ton Venezuelan stone that makes up part of a global peace project in Germany is evoking more rage than harmony. The sandstone boulder on display in a Berlin park drew protests in Venezuela Thursday as a group of Pemon Indians demanded the rock, which they view as sacred, be returned to their homeland. More than 100 indigenous Pemon, many of them wearing loincloths, marched to the German Embassy in Caracas, raising ornamental spears and chanting: "Return the stone!" Melchor Flores, a 37-year-old representative of the Pemon who led the march, said, "It's not just a stone. It's part of our culture and they must return it." He said the boulder, known to the Pemon as the "Kueka Stone," belongs in his community among the grasslands and table-top mountains of the Gran Sabana region. He and others traveled overnight by bus from the region to reach Caracas. In Berlin, artist Wolfgang Kraker von Schwarzenfeld said the protest is the latest controversy over the stone in what has been a 15-year saga. Von Schwarzenfeld removed the boulder from Venezuela's Canaima National Park in 1997. He said that despite having permission from Venezuelan officials and documentation that the rock was a gift to "the German people," the initial operation was slowed by local officials who thought it had been stolen. It was then delayed further after the red sandstone was mistaken for semi-precious jasper, which is also found in the area. Von Schwarzenfeld said that Pemon Indians helped him choose it and there was never any question of it being of religious or cultural value to the indigenous community. He suggested that President Hugo Chavez's government may have contrived the current controversy in order to help secure political support from the Pemon ahead of an Oct. 7 presidential election. He said two YouTube videos have helped spread the idea that the stone is a sacred relic. "It is not a jasper, it is not stolen, it is not a holy stone — it's a pity it needed so many lies to make this conflict and that is why it is very important to get back to the truth," he said Thursday from Berlin's central Tiergarten park, where the stone is one of five that make up his "Global Stone" display. Pemon leaders say the stone is sacred because it represents a tribal legend handed down over many generations detailing how a young Pemon man named Kueka fell in love with a girl from another tribe and married her. Kueka's actions, they say, angered the Pemon deity Makunaima, who opposed inter-tribal marriage. Makunaima punished Kueka and his wife by turning them into stone, thereby immortalizing them as the Pemon's grandfather and grandmother. Flores and other Pemon Indians at Thursday's protest referred to the stone in Germany as the tribe's 'grandmother." Taking the stone away threw off Venezuela's natural balance, they contend, sparking the deadly floods and mudslides that killed tens of thousands of people in 1999, after the stone was taken. Germany's ambassador to Caracas, Georg-Clemens Dick, met with the protesters outside the embassy in Caracas and told them he would discuss their demands with government officials in Berlin. Reading a written statement, Dick said he has already spoken with officials from Venezuela's Foreign Ministry, and emphasized that bringing back the boulder would be no simple task. "I ask that you understand the difficulty that an act of this nature entails," he said. Von Schwarzenfeld said the upside of the current controversy is that it has focused attention on the native people in Venezuela and their rights. "The simplest way of solving the problem is ... talking with the indigenous people, saying this was an error and apologize, ask for forgiveness, and also ask for them to please donate the stone to the people of the world," he said. The stone display, he added, is a "worldwide peace project."

#### Like the archaeological proceedings in the case of the Ancient One and artifact repatriation globally, debate is an activity which privileges certain forms of knowledge. Objective truth, technical definitions and limiting interpretations are seen as essential to the creation of the ideal debate-space, one which fosters political education and technical skills. We believe that the injection of alternative perspectives is a vital and often overlooked practice, one which is essential to ensure that debate avoids the pitfalls of so-called objective knowledge, just as in modern archeology.

#### Thus, Ryan and I present our genealogical analysis of artifact repatriation between the US and Cuba, Mexico and Venezuela. We advocate for economic engagement through the repatriation of artifacts, but our method is distinct from the traditional call for policy action.

#### Prescriptive solutions for action are part of the problem – genealogy is a process for disrupting the processes of the modern world which opens up space for new solutions – by mandating action by the United States federal government, the entire point of our genealogy is corrupted

Flyvberg & Richardon 2 – dept of development @ Aalborg University (Bent, Aalborg University, Department of Development and Planning & Tim, University of Sheffield, Department of Town and Regional Planning, Planning and Foucault: In Search of the Dark Side of Planning Theory, http://flyvbjerg.plan.aau.dk/DarkSide2.pdf.) JPG

3. Towards Foucault Instead of side-stepping or seeking to remove the traces of power from planning, an alternative approach accepts power as unavoidable, recognising its all pervasive nature, and emphasising its productive as well as destructive potential. Here, theory engages squarely with policy made on a field of power struggles between different interests, where knowledge and truth are contested, and the rationality of planning is exposed as a focus of conflict. This is what Flyvbjerg has called realrationalität, or ‘real-life’ rationality (Flyvbjerg 1996), where the focus shifts from what should be done to what is actually done. This analysis embraces the idea that ‘rationality is penetrated by power’, and the dynamic between the two is critical in understanding what policy is about. It therefore becomes meaningless, or misleading - for politicians, administrators and researchers alike - to operate with a concept of rationality in which power is absent (Flyvbjerg 1998, 164-65). Both Foucault and Habermas are political thinkers. Habermas’s thinking is well developed as concerns political ideals, but weak in its understanding of actual political processes. Foucault’s thinking, conversely, is weak with reference to generalised ideals--Foucault is a declared opponent of ideals, understood as definitive answers to Kant’s question, ‘What ought I to do?’ or Lenin’s ‘What is to be done?’--but his work reflects a sophisticated understanding of Realpolitik. Both Foucault and Habermas agree that in politics one must ‘side with reason.’ Referring to Habermas and similar thinkers, however, Foucault (1980b) warns that ‘to respect rationalism as an ideal should never constitute a blackmail to prevent the analysis of the rationalities really at work’ (Rajchman 1988, 170). Habermas’s main complaint about Foucault is what Habermas sees as Foucault’s relativism. Thus Habermas (1987, 276) harshly dismisses Foucault’s genealogical historiographies as ‘relativistic, cryptonormative illusory science’. Such critique for relativism is correct, if by relativistic we mean unfounded in norms that can be rationally and universally grounded. Foucault’s norms are not foundationalist like Habermas’s: they are expressed in a desire to challenge ‘every abuse of power, whoever the author, whoever the victims’ (Miller 1993, 316) and in this way ‘to give new impetus, as far and wide as possible, to the undefined work of freedom’ (Foucault 1984a, 46). Foucault here is the Nietzschean democrat, for whom any form of government - liberal or totalitarian - must be subjected to analysis and critique based on a will not to be dominated, voicing concerns in public and withholding consent about anything that appears to be unacceptable. Such norms cannot be given a universal grounding independent of those people and that context, according to Foucault. Nor would such grounding be desirable, since it would entail an ethical uniformity with the kind of utopian-totalitarian implications that Foucault would warn against in any context, be it that of Marx, Rousseau or Habermas: ‘The search for a form of morality acceptable by everyone in the sense that everyone would have to submit to it, seems catastrophic to me’ (Foucault 1984c, 37 quoted in Dreyfus and Rabinow 1986, 119). In a Foucauldian interpretation, such a morality would endanger freedom, not empower it. Instead, Foucault focuses on the analysis of evils and shows restraint in matters of commitment to ideas and systems of thought about what is good for man, given the historical experience that few things have produced more suffering among humans than strong commitments to implementing utopian visions of the good. For Foucault the socially and historically conditioned context, and not fictive universals, constitutes the most effective bulwark against relativism and nihilism, and the best basis for action. Our sociality and history, according to Foucault, is the only foundation we have, the only solid ground under our feet. And this socio-historical foundation is fully adequate. Foucault, perhaps more than any recent philosopher, reminded us of the crucial importance of power in the shaping and control of discourses, the production of knowledge, and the social construction of spaces. His analysis of modern power has often been read by planning theorists as negative institutionalised oppression, expressed most chillingly in his analysis of the disciplinary regime of the prison in Discipline and Punish (Foucault 1979). However, it is Foucault’s explanation of power as productive and local, rather than oppressive and hierarchical, that suggests real opportunities for agency and change (McNay 1994). Whilst Foucault saw discourse as a medium which transmits and produces power, he points out that it is also ‘a hindrance, a stumbling-block, a point of resistance and a starting point for an opposing strategy’. So, at the same time as discourse reinforces power, it also ‘undermines and exposes it, renders it fragile and makes it possible to thwart it’ (Foucault 1990, 101). Foucault rarely separated knowledge from power, and the idea of ‘power/knowledge’ was of crucial importance: ‘ we should abandon a whole tradition that allows us to imagine that knowledge can exist only where the power relations are suspended and that knowledge can develop only outside its injunctions, its demands and its interests ... we should abandon the belief that power makes mad and that, by the same token, the renunciation of power is one of the conditions of knowledge. We should admit rather that power produced knowledge .. that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge ...’ (Foucault 1979, 27). For Foucault, then, rationality was contingent, shaped by power relations, rather than context-free and objective. According to Foucault, Habermas’s (undated, 8) ‘authorisation of power by law’ is inadequate (emphasis deleted). ‘[The juridical system] is utterly incongruous with the new methods of power,’ says Foucault (1980a, 89), ‘methods that are employed on all levels and in forms that go beyond the state and its apparatus... Our historical gradient carries us further and further away from a reign of law.’ The law, institutions - or policies and plans - provide no guarantee of freedom, equality or democracy. Not even entire institutional systems, according to Foucault, can ensure freedom, even though they are established with that purpose. Nor is freedom likely to be achieved by imposing abstract theoretical systems or ‘correct’ thinking. On the contrary, history has demonstrated--says Foucault--horrifying examples that it is precisely those social systems which have turned freedom into theoretical formulas and treated practice as social engineering, i.e., as an epistemically derived techne, that become most repressive. ‘[People] reproach me for not presenting an overall theory,’ says Foucault (1984b, 375-6), ‘I am attempting, to the contrary, apart from any totalisation - which would be at once abstract and limiting - to open up problems that are as concrete and general as possible’. What Foucault calls his ‘political task’ is ‘to criticise the working of institutions which appear to be both neutral and independent; to criticise them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight them’ (Chomsky and Foucault 1974, 171). This is what, in a Foucauldian interpretation, would be seen as an effective approach to institutional change, including change in the institutions of civil society. With direct reference to Habermas, Foucault (1988, 18) adds: ‘The problem is not of trying to dissolve [relations of power] in the utopia of a perfectly transparent communication, but to give...the rules of law, the techniques of management, and also the ethics...which would allow these games of power to be played with a minimum of domination.’ Here Foucault overestimates his differences with Habermas, for Habermas also believes that the ideal speech situation cannot be established as a conventional reality in actual communication. Both thinkers see the regulation of actual relations of dominance as crucial, but whereas Habermas approaches regulation from a universalistic theory of discourse, Foucault seeks out a genealogical understanding of actual power relations in specific contexts. Foucault is thus oriented towards phronesis, whereas Habermas’s orientation is towards episteme. For Foucault praxis and freedom are derived not from universals or theories. Freedom is a practice, and its ideal is not a utopian absence of power. Resistance and struggle, in contrast to consensus, is for Foucault the most solid basis for the practice of freedom. Whereas Habermas emphasises procedural macro politics, Foucault stresses substantive micro politics, though with the important shared feature that neither Foucault nor Habermas venture to define the actual content of political action. This is defined by the participants. Thus, both Habermas and Foucault are ‘bottom-up’ thinkers as concerns the content of politics, but where Habermas thinks in a ‘top-down’ moralist fashion as regards procedural rationality - having sketched out the procedures to be followed - Foucault is a ‘bottom-up’ thinker as regards both process and content. In this interpretation, Habermas would want to tell individuals and groups how to go about their affairs as regards procedure for discourse. He would not want, however, to say anything about the outcome of this procedure. Foucault would prescribe neither process nor outcome; he § Marked 08:43 § would only recommend a focus on conflict and power relations as the most effective point of departure for the fight against domination. It is because of his double ‘bottom-up’ thinking that Foucault has been described as non-action oriented. Foucault (1981) says about such criticism, in a manner that would be pertinent to those who work in the institutional setting of planning: It’s true that certain people, such as those who work in the institutional setting of the prison...are not likely to find advice or instructions in my books to tell them ‘what is to be done.’ But my project is precisely to bring it about that they ‘no longer know what to do,’ so that the acts, gestures, discourses that up until then had seemed to go without saying become problematic, difficult, dangerous (Miller 1993, 235). The depiction of Foucault as non-action oriented is correct to the extent that Foucault hesitates to give directives for action, and he directly distances himself from the kinds of universal ‘What is to be done?’ formulas which characterise procedure in Habermas’s communicative rationality. Foucault believes that ‘solutions’ of this type are themselves part of the problem. Seeing Foucault as non-action oriented would be misleading, however, insofar as Foucault’s genealogical studies are carried out only in order to show how things can be done differently to ‘separate out, from the contingency that has made us what we are, the possibility of no longer being, doing, or thinking what we are, do, or think’ (Foucault 1984a, 45-7). Thus Foucault was openly pleased when during a revolt in some of the French prisons the prisoners in their cells read his Discipline and Punish. ‘They shouted the text to other prisoners’, Foucault told an interviewer. ‘I know it’s pretentious to say’, Foucault said, ‘but that’s a proof of a truth--a political and actual truth--which started after the book was written’ (Dillon 1980, 5). This is the type of situated action Foucault would endorse, and as a genealogist, Foucault saw himself as highly action oriented, as ‘a dealer in instruments, a recipe maker, an indicator of objectives, a cartographer, a sketcher of plans, a gunsmith’ (Ezine 1985, 14). The establishment of a concrete genealogy opens possibilities for action by describing the genesis of a given situation and showing that this particular genesis is not connected to absolute historical necessity. Foucault’s genealogical studies of prisons, hospitals and sexuality demonstrate that social practices may always take an alternative form, even where there is no basis for voluntarism or idealism. Combined with Foucault’s focus on domination, it is easy to understand why this insight has been embraced by feminists and minority groups. Elaborating genealogies of, for instance, gender and race leads to an understanding of how relations of domination between women and men, and between different peoples, can be changed (McNay 1992, Bordo and Jaggar 1990, Fraser 1989, Benhabib and Cornell 1987). The value of Foucault’s approach is his emphasis on the dynamics of power. Understanding how power works is the first prerequisite for action, because action is the exercise of power. And such an understanding can best be achieved by focusing on the concrete. Foucault can help us with a materialist understanding of Realpolitik and Realrationalität, and how these might be changed in a specific context. The problem with Foucault is that because understanding and action have their points of departure in the particular and the local, we may come to overlook more generalised conditions concerning, for example, institutions, constitutions and structural issues. In sum, Foucault and Habermas agree that rationalisation and the misuse of power are among the most important problems of our time. They disagree as to how one can best understand and act in relation to these problems. From the perspective of the history of philosophy and political theory, the difference between Foucault and Habermas lies in the fact that Foucault works within a particularistic and contextualist tradition, with roots in Thucydides via Machiavelli to Nietzsche. Foucault is one of the more important twentieth century exponents of this tradition. Habermas is the most prominent living exponent of a universalistic and theorising tradition derived from Socrates and Plato, proceeding over Kant. In power terms, we are speaking of ‘strategic’ versus ‘constitution’ thinking, about struggle versus control, conflict versus consensus.