Since the days of Thomas Jefferson – America’s first scientific archaeologist – American Indians have been studied as part of the natural world. Like mammoth bones and the fruit trees in Jefferson’s own garden, American Indians were “specimens,” to be empirically investigated and objectively understood. Following the Jeffersonian model, nineteenth-century anthropologists studied American Indians by digging up their graves and exhibiting Indians in the "ethnographic zoos" that were popular additions to several World Fairs. Sometimes native people became "living fossils" tucked away in the museums of America; sometimes, when these “museum Indians” died, their bodies were
sometimes not buried at all, but rendered into bones, numbered and stored away as part of America's greater heritage.¹

By 1900, American Indians seemed to be vanishing as surely as the American bison, and so too were the archaeological vestiges of Indian history. As museum anthropologists hurried to document and collect the last of Indian culture, the United States Congress passing the Antiquities Act of 1906, legislation crafted to preserve America's remote past and to ensure its continued study by a rapidly growing scientific community. The archaeological record was seen as a critical part of America's national identity because it documented its progression from savagery to the most civilized place on earth, and in 1906 this heritage was formally entrusted to science. Whatever Indians had to say about their past was irrelevant to the American narrative.

But American Indians, of course, refused to vanish. Their numbers bottomed out in the 1890s and have dramatically increased ever since. Particularly since the 1960s, Indian people have stepped up their fight to reclaim and reinforce their treaty-guaranteed sovereignty, borrowing strategies and guidelines from the world of international law. Such indigenous ideologies assert an essential native subjectivity, promoting themes of self-worth and cultural preservation, and suggesting that Indian culture could help correct some problems of the modern mainstream.

Achieving power over their own history has tangible payoffs in the everyday life of Indian people, where life is still subject to long-conflicted federal policies. Economic development in Indian Country remains integrally connected to politics—intertwined with issues of sovereignty, tribal identity, access to resources, cultural issues, and

¹ For more on Jefferson and the early history of American archaeology, see David Hurst Thomas, *Skull Wars: Kennewick Man, Archaeology, and the Battle for Native American Identity* (New York: Basic Books, 2000);
ideology. By emphasizing histories absent from white-dominated curricula, native people are attempting to build institutional mechanisms to help their communities and reassert their rights. By taking hold of the imagery that still frame negotiations with state and federal governments, they seek to translate historical and cultural identities into tangible political power.

The bottom line is defining which history gets taught and who gets to teach it. In seeking identities independent of non-Indian historians and anthropologists, many Native Americans have come to resent the appropriation of their ancient artifacts and ancestral bones by "experts" claiming an authority denied to the Indians themselves. As native people across the land try to recapture their own language, culture, and history, they are increasingly concerned with recovering and taking control of tribal heirlooms and human remains.

Congress responded to these sensitivities in 1990 by passing the Native American Graves Protection and Repatriation Act (NAGPRA for short). This legislation marked a significant shift in the federal stance toward the rights of Indian people and a sea change in the perception and practice of American archaeology. As in 1906, the federal government asserted its right to legislate access to the American past. But the 1990 law explicitly acknowledged that Indian pasts are relevant to the American present. This public and visible benchmark reflected a deep-seated shift in thinking, emphasizing America's self-perception as a multifaceted, pluralistic society. The American Creed shifted away from the time-honored melting pot to newer perspectives recognizing the merits of a multicultural society.
Such an interpretation of the American character was unimaginable in 1906. The Antiquities Act of 1906, which legally transferred the Indian past on the American public domain, was crafted without Indian involvement and with no suggestion that Indian people might have spiritual affiliations with that past. In 1990, for the first time, native people were empowered to question mainstream American ownership of the Indian past, both literally and metaphorically. No longer were Indian bones found on public lands automatically defined as natural resources, as federal property to be safeguarded in scientific custody. No longer did science have a monopoly on defining the meaning of archaeology; instead, native groups were invited to assign their own spiritual and historical meanings to archaeological sites and their contents. It is hard to overlook the sense of loss among mainstream scientists and historians who see their power and authority eroding as late twentieth-century America experiments with multicultural alternatives to the traditional melting pot imagery.

This paper will discuss the evolving relationship between the scientific and Native American communities by discussing three important discoveries, each of great significance to science:

- **Kennewick Man**: The nearly complete skeleton of a man who died 800-8500 years ago along the banks of the Columbia River;

- **The Willamette Meteorite**: The largest meteorite ever found in the Americas, this rock is older than the earth itself and it may provide clues about the origins of the solar system;
• **KDT**: The first well-preserved ancient human body ever recovered from a North American glacier, this frozen man holds the keys to unlock the secrets of daily life as it existed in America in the decades before the arrival Columbus. These same three discoveries – known under different names – likewise hold great spiritual significance to Native American people:

• **Oyt.pa.ma.na.tit.tite (“The Ancient One”)**: The Confederated Tribes of the Umatilla Indian Reservation believe that the remains of their ancestor should be reburied immediately, without scientific study.

• **Tomanowos (“The Sky Person”)**: The Confederated Tribes of the Grand Ronde believe that the meteorite is rightfully theirs, a sacred object needed for the practice of their traditional religion.

• **Kwädą́gy Dän Ts’inch̀ (“Long Ago Person Found”)**: The Champagne and Aishihik First Nations believe that this ancestor with much to tell about their past, but the Coastal Tlingit tribe believes that the frozen man was related to them.

This paper will use these three examples to explore the shifting relationships between Native North Americans and those non-Indians who wish to study them.

**The Case of Kennewick Man/Oyt.pa.ma.na.tit.tite (“The Ancient One”)**

The Kennewick saga began in late July 1996, when the coroner of Benton County, Washington showed archaeologist James Chatters a skull that had washed out from a Columbia River cutbank in the town of Kennewick, Washington. Chatters accompanied the coroner to where the skull had been found by a couple of college
students watching a hydroplane race. Although he could find no evidence of a burial pit, he did discover more bones were lying about the riverbank, and he collected them all.

In his preliminary forensic analysis, Chatters concluded that the individual was male, Caucasoid, about 45 years old at death and standing about five feet eight inches tall. For his day, the man was probably considered to be healthy, but today, he seems more like a survivor, a fellow who had lived a rough life. At the age of five, he had suffered a severe disease (or perhaps malnutrition). He suffered from minor arthritis of the joints. His skull had been fractured, chest crushed, and a chipped elbow reduced the use of his left arm. Some sort of large projectile—maybe a bullet or piece of shrapnel—had penetrated well into the right side of his hip. The man had survived this injury, and the bone had healed over, sealing the object deep inside.² A CAT scan showed that it was a stone spear point, a distinctive leaf-shape "Cascade point," like those used by hunters of the Columbia Plateau between 4,500 and 9,000 years ago. "I've got a white guy with a stone point in him," Chatters later told The New York Times. "That's pretty exciting. I thought we had a pioneer."³

But how did a white settler get speared by a stone point perhaps thousands of years old? Chatters decided to resolve the inconsistencies by sending a scrap of hand bone to the radiocarbon laboratory at the University of California (Riverside). They called back three weeks later, with news that would change Chatters' life. The bone

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sample was 9,400 years old, making it one of the most ancient skeletons in the Americas — and perhaps the most complete. ⁴

**Finders Keepers?**

So began the saga of Kennewick Man, as Chatters called his find. ⁵ Based on the sketchiest of evidence, archaeologists and journalists alike began framing fresh theories about the earliest Americans. Perhaps several populations crossed the land bridge from Asia to America in distinct waves—white-skinned Caucasoids first, followed by the dusky-skinned Mongoloids of northern Asia. What happened when they met up? Was there an ancient American race war? Did the tawny Mongoloids attack Kennewick Man with a stone-tipped spear? Or are modern American Indians descended from a blend of both races—the multicultural product of an original American melting pot? The issue of Indian arrival is critical to Indian people as well, as Lakota activist Vine Deloria, Jr., pointed out. If Indians had "barely unpacked before Columbus came knocking on the door," won't people question Indian claims to the land and its resources? ⁶

As theories began to proliferate, archaeologists seemed to agree on just one thing: Kennewick is a monumental find that must be studied extensively by specialists. The


bones must be analyzed in great detail, additional radiocarbon tests should be run, and ancient DNA extracted from the bones. To ensure accuracy and eliminate bias, this testing must be conducted in several independent laboratories, supervised by the country's best research scientists.

**Kennewick Man and NAGPRA**

As the scientific teams geared up, the already dramatic story of Kennewick Man took an extraordinary turn. Five days after the startling results of the radiocarbon tests were made public, the Army Corps of Engineers announced its intent to repatriate the remains to an alliance of five Northwest tribes: Umatilla, Yakima, Nez Perce, Wanapum, and Colville. The Umatilla tribe of northeastern Oregon took the lead, demanding that Chatters immediately—and without further study—surrender the bones. Armand Minthorn, a Umatilla leader, said simply: "Our oral history goes back 10,000 years. We know how time began and how Indian people were created. They can say whatever they want, the scientists. They are being disrespectful." Claiming the skeleton as their own, the Umatilla tribe rejected the scientist's name, preferring the term “Oyt.pâ.ma.nâ.tê.tê” which translates as "The Ancient One." From the Umatilla perspective, the bones were theirs to name.

The Umatilla explained that the scientific probing and destruction of human bones was offensive, sacrilegious, and illegal under the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990. A significant triumph for Indian people,

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7 Minthorn in Egan, “Tribe stops study …” 1996.
NAGPRA permitted living Indians to exercise their traditional responsibilities toward the dead. The 1990 legislation covered several basic areas of concern. First, it recognized the importance of tribal consent when dealing with Indian graves on tribal lands, and required "consultation" with tribes over remains found on federal lands. NAGPRA also mandated that, by November 16, 1993, all museums and universities receiving federal funds (personal collections were not included) send a summary of Native American sacred and ceremonial objects and unassociated funerary items to Indian tribes potentially affiliated with those artifacts. Two years later, on November 16, 1995, these same institutions were required to file an inventory of Native American human remains and associated grave goods with culturally affiliated tribes. Indian tribes culturally affiliated with these artifacts and remains could then request their return. The National Park Service provided museums a listing of 771 tribes, bands, and nations to which the appropriate inventories should be sent. Only federally recognized native groups appear on the list; tribes recognized only by state-level governments, and those whose federal standing is pending are not covered by the legislation. As a federally recognized tribe, the...
Umatilla declared that the Kennewick skeleton be returned to them for immediate reburial.  

The Resolution

Scientists across the country screamed foul: If Kennewick Man – one of the oldest, most complete skeletons in the Americas – did not look like an American Indian, how could a modern tribe claim his remains under NAGPRA? Several scientists argued that considerably more study would be required before tribal affinity, if any, could be established. No matter how the study comes out, some argued, the bones are so ancient that they rightfully belong to the American public rather than any special-interest group.

The dilemma landed in the lap of the Army Corps of Engineers, the governmental agency with immediate jurisdiction over the find spot. In September 1996, the Corps confiscated the bones from Chatters and announced plans to turn them over to the Umatilla within 30 days. Although Washington's congressional delegation immediately urged that qualified scientists be allowed to examine the bones, the Corps refused.

The Army Corps refused to allow scientific study because the Umatilla said that such analysis would violate their religious beliefs about the dead. Many archaeologists countered that Kennewick Man could not be adequately affiliated with any living tribe and, most likely, not with Indian people at all. To permit one tribe—or perhaps a single faction within a tribe—to veto scientific study, they claimed, would violate the rights of all other Americans.

9 The tribal claimants: the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce of Idaho, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Colville Reservation, and the Wanapum Band (which is not a federal recognized tribe).
In *Bonnichsen et al. v. United States of America*, eight prominent archaeologists and physical anthropologists filed suit to obtain access to the Kennewick bones. The lawsuit questioned whether NAGPRA, a piece of legislation designed to protect Indian graves, could be applied to 9,400-year-old remains. Citing a lack of due process, the scientists accused the Army Corps of arbitrary and capricious decision-making. Not only does the U. S. Constitution protect freedom of expression, the scientists argued, it safeguards the right to gather and receive information. If the Kennewick skeleton is locked away or reburied, the American public is deprived of potentially irreplaceable information about its own past.

The Kennewick lawsuit also reflected the belief that the Corps had violated the Civil Rights Act of 1866. This law, originally written to guarantee nonwhites the same legal protection as whites, has recently been read as offering reciprocal protection to whites: If scientists were denied access because of race or ethnicity, then their civil rights were being violated.

In 1997, the Army Corps was prepared to repatriate the Kennewick remains to the tribal coalition. But later that year, the Federal court ruled that the Corps had acted inappropriately and instructed the agency to review the matter using proper procedures. The lawsuit was tabled until this process could be completed. ¹⁰ The *Bonnichsen v. US* lawsuit temporarily halted the Army Corp from repatriating Kennewick Man remains to the Umatilla tribe.

Here is a timeline summarizing subsequent legal actions:

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• **March 1998**: The Department of the Interior and National Park Service agrees to assist the Army Corps of Engineers and commission a series of scientific examinations by eighteen distinguished scientists who conducted a variety of biological, radiometric, ethnographic, archaeological, and linguistic studies.  

• **September 2000**: Bruce Babbitt (Secretary of the Interior) declares that Kennewick Man, by now stored at the Burke Museum of Natural and Cultural History in Seattle, is indeed culturally affiliated with the five Indian tribes and should be returned to them. The Secretary’s determination precludes further study of the remains. The eight plaintiffs dispute Babbitt’s determination and pursue judicial review. Judge John Jelderks, of Oregon’s Ninth District Circuit Court, faces uncharted legal waters: Is this 8000-8500 year-old man a Native American? And, if so, is he culturally affiliated with the modern tribe claiming him as an ancestor? The legal and scientific answers to these questions promise to condition the direction of American archaeology for decades.

• **August 2002**: Judge Jelderks overturns Secretary Babbitt’s decision, concluding that the administrative record from the Department of Interior contains “insufficient evidence to support the conclusion that the [Kennewick] remains are related to the present-day tribe, people, or culture that is indigenous to the United

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States as required by the statute.” 13 Judge Jelderks declares that the plaintiffs can study the Kennewick skeleton and the tribal appellants appeal the decision.

- **February 2004:** The Ninth Circuit Court of Appeals upholds the previous District Court decision. 14 Writing for the three-judge panel, Judge Ronald M. Gould agrees that because the government had failed to establish Kennewick Man’s status as Native American, NAGPRA does not apply. The Joint Tribal Coalition petitions for a rehearing.

- **April 2004:** The Ninth Circuit Court of Appeals denies the tribal appellant’s petition, virtually exhausting their legal options.

Before discussing further the implications of the Kennewick court case, we will explore some alternatives for resolving cultural heritage disputes in Native North America.

**The Case of the Willamette Meteorite / Tomanowos (“Sky Person”)**

Ten thousand years ago, give or take a millennium, a giant meteorite traveling more than 40,000 miles per hour crashed onto a hillside overlooking the Willamette Valley (near modern West Linn, Oregon). It is the iron core of an ancient planet formed perhaps 4.5 billion years ago and later shattered in a stellar collision. This battered remnant came to Earth from an asteroid belt located between Mars and Juniper. Because the meteorite is older than the earth itself, geochemists believe that it may hold clues about how the solar system came into being.

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14 (Bonnichsen v. United States (2004).
The so-called “Willamette meteorite” is the largest ever found in America. Although most meteorites look like shapeless lumps, the Willamette meteorite has a starkly powerful, unearthly appearance. It is semi-circular – about the size and shape of a Volkswagon beetle – flattened on the bottom and humped on top, riddled with large, smooth cavities. One photograph from 1911 shows two small children posing _inside_ the meteorite itself, surrounded by sixteen tons of nickel-iron ore.\(^\text{15}\)

**Finders Keepers?**

The meteorite landed on territory traditionally held by the Clackamas people of Oregon’s upper Willamette Valley. As part of the Treaty of 1855, the tribe ceded this land in exchange for reservation territory in Oregon’s Coast Range. The Clackamas survivors joined the Confederated Tribes of the Grand Ronde (established by Executive Order in 1857), which fused nearly two-dozen bands and tribes from western Oregon and northern California (including the Kalapuya, Molalla, Chasta, Umpqua, and Rogue River peoples).\(^\text{16}\)

When the Oregon Iron and Steel Company purchased some of the land ceded by the Clackamas, they were totally unaware of the massive meteorite imbedded in the property. In 1902, one Ellis Hughes – a Welsh immigrant who owned an adjoining tract of land – stumbled upon the partially buried iron boulder. A former miner, Hughes


\(^{16}\) In 1901, the Grand Ronde reservation was reduced from the original 59,000 acres to about 33,000 acres, with the remaining land sold to outsiders as “surplus;” see Sylvester L. Lahren, Jr., “Reservations and Reserves” in _Plateau, vol. 12 Handbook of North American Indians_, edited by Deward E. Walker, Jr. (Washington DC: The Smithsonian Institution Press, 1998): 484-498.
immediately recognized the scientific and commercial potential of his find, which he
disguised beneath a pile of pine boughs as he concocted a plan to remove the meteorite to
his own property.

Assisted only by his teenage son and an aging horse, Hughes jacked and levered
the meteorite onto a sturdy log cart, supported by tree-trunks attached as wheels and
attached by steel cable to a capstan (a vertical log positioned nearby). Working in
complete secrecy, Hughes led his horse in endless circles, winding the cable round and
round the capstan, inching the cart-and-meteorite along a wooden plank road toward his
land. Three months and three-quarters of a mile later, Hughes announced the discovery of
America’s biggest meteorite – on his property. He raised a wooden shack over his find,
and collected twenty-five cents admission to view the meteorite.

The long-term legalities surrounding the Willamette meteorite have proved to be
as contorted as its twisted iron surface. One of Hughes’ first customers, a lawyer
representing Oregon Iron and Steel, backtracked the conspicuous swath leading off of
Hughes’ property and came upon the original impact crater (located, of course, on his
client’s land). Although caught red-handed, Hughes refused to surrender the meteorite;
the Oregon Iron and Steel Company filed suit to retrieve their property.

Hughes and his attorney crafted a novel, finders-keepers defense. They called
several Native American elders to the witness stand, each of whom declared that the
meteorite had long belonged to the Clackamas people. Old Soosap and Sol Clark, two
elderly Wasco Indians, recounted (under oath and before a court recorder) their
conversations with long-deceased Clackamas elders, including chief Wochimo. Using the term *Tomanowos* (meaning “Sky Person” in the Chinook language), the Indians explained the Clackamas belief that the meteorite had journeyed from the moon as a representative of the Sky People. Resting in its new home, *Tomanowos* collected rainwater in its bowl-shaped cavities, thereby symbolized the unique union of sky, earth, and water.

When the Clackamas owned the land immediately surrounding *Tomanowos*, tribal members had collected water from the rock’s cavities for medicinal use. Hunters, seeking courage in war and good fortune in the hunt, dipped their arrowheads in the sacred water. Even after ceding the land, those seeking strength and children at puberty made spirit quests to the meteorite; but in the 1870s, the Clackamas people bowed to government pressure directed at suppressing traditional Native American religious practices. Although they stopped making pilgrimages to meteorite, the tribe maintained a spiritual link with *Tomanowos* through ceremonies, songs, and oral tradition.

The lawyer defending Hughes argued three points: (1) Although the Clackamas tribe had originally owned the meteorite, (2) they had abandoned the giant “artifact” when they relocated to the Grand Ronde reservation, (3) thus, it was perfectly legal for Mr. Hughes to claim the cast-off meteorite as his own. Wasn’t this just like picking up an ancient stone arrowhead in the woods? Finders Keepers, right?

19 As a further legal backstop, Hughes’ lawyer attempted to cloud the issue of “ownership” by suggesting that perhaps the meteorite had originally fallen someplace
The judge dismissed Hughes’ claim as “irrelevant” and ruled in favor of the plaintiff. During a flurry of appeals, injunctions, and additional lawsuits, Oregon Iron and Steel Company posted a round-the-clock guard – who sat atop the meteorite, loaded gun at the ready – until a team of horses could finally remove the meteorite from the Hughes property.

On final appeal, the Supreme Court of the State of Oregon ruled on July 17, 1905 that ”meteorites, though not embedded in the earth, are real estate and consequently belong to the owner of the land on which they are found.” Later that year, the Oregon Iron and Steel Company displayed its meteorite at the Lewis and Clark Exposition in Portland, where the Governor proudly announced that America’s largest meteorite would stay in Oregon forever.

But Oregon Iron and Steel had other plans and a year later, they sold the Willamette meteorite to Elizabeth E. Dodge II of New York City, for the sum of $20,600. Mrs. Dodge immediately donated her meteorite to the American Museum of Natural History, where the meteorite has remained on display ever since. Neil deGrasse Tyson, astrophysicist and current director of the Hayden Planetarium, estimates that 40 – 50 million people have now seen the Willamette meteorite, including “untold numbers of
visitors who were turned on to science because of their encounter with this meteorite. …

It’s not simply an artifact on display.”\textsuperscript{21}

**Tomanowos and NAGPRA**

Like many smaller tribes, the Confederated Tribes of the Grand Ronde were officially “terminated” during the Eisenhower administration, a time when Indian policy emphasized the total assimilation of Indian people into the American mainstream. After years of intense lobbying, the Grand Ronde (and several other tribes) were “restored” in 1983 and five years later, Congress added 9,800 of land to their reservation, which is still headquartered in the Willamette Valley (about 60 miles southwest of Portland). The 4,500 tribal members own and operate the Spirit Mountain Casino, the most successful gaming operation in the Pacific Northwest. Since 1997, the Spirit Mountain Community Fund has donated more than $25 million to non-profit organizations, making it one of Oregon’s largest charitable foundations.\textsuperscript{22}

As part of the NAGPRA-mandated consultations between tribes and museums, a delegation from the Grand Ronde visited New York City in the fall of 1999, specifically to examine objects in the collections of the American Museum of Natural History for potential repatriation. During this consultation, they learned that *Tomanowos* was slated to become the centerpiece of the new Cullman Hall of the Universe, the lower exhibition space in the Museum’s ambitious Rose Center for Earth and Space, which was scheduled to open in a few weeks as part of Millennial Celebration of January 1, 2000. Visiting the


hard-hat construction area, the Grand Ronde delegation saw for themselves how the gleaming glass-and-steel Rose Center was literally being constructed around the massive meteorite.23 “To be close to it,” marveled June Olson (the tribe’s cultural resource manager), “to be able to know my ancestors stood in the presence of this stone was a real moving experience for me.”24

So moving, in fact, that the Confederated Tribes of the Grand Ronde soon declared their intent to claim Tomanowos as a “sacred object” 25 as defined in the Native American Grave Protection and Repatriation Act of 1990 – the very same piece of legislation under which the five tribal claimants had claimed Kennewick Man three years before. 26 “It’s an extremely important sacred object to us” explained Olson. “It is a link from our tribal people today to our ancestors in traditional beliefs. It’s a connection that we’re all kind of looking for, and there isn’t a lot of them left.” To bolster their case, staff members of the Grand Ronde Cultural Resource program began interviewing elders and other knowledgeable persons, to formalize the oral tradition surrounding Tomanowos.

“So much of Indian culture has been lost. Our people were discouraged, even forbidden

24 Diedtra Henderson, “Meteorite Case Update” Archaeology 53(3).
25 According to NAGPRA “‘sacred objects’ … shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents” Section 2 (3B).
26 The Grand Ronde are not the first Oregonians to attempt a retrieval of meteorite. In late 1980s, group of school children from Lake Oswego persuaded the Oregon senate and former U. S. Senator Bob Packwood & former US Rep. Les AuCoin to champion the cause to return the meteorite to Oregon. They convinced the Oregon Museum of Science of Industry to make a suitable home for the meteorite, should it return home. The school children also appeared on The Tonight Show with Johnny Carson. But citing scientific procols and concern over shipping the meteorite across country, the museum declined to return the meteorite. Geneva Cobb Iijima, “Who owns a meteorite?” Odyssey 4(2) (1995).
http://www.usgennet.org/alhnorus/ahorclak/MeteorWhose.
to practice their religion” said Tracy Dugan, a tribal spokeswoman. “We want the meteorite back, and not some settlement.”  

Under the provisions of NAGPRA, any tribe requesting a cultural repatriation must prove three key points: (1) the tribe must have legal standing, (2) the object must fit into a NAGPRA category (“funerary object,” “sacred object,” or item of “cultural patrimony”), and (3) “cultural affiliation” must be demonstrated between the claimant and the object being sought. Museums have 90 days to respond to a repatriation claim, in this case meaning that a formal response was required from the American Museum no later than February 29, 2000.

But rather than addressing the NAGPRA claim (which is administered by the National Park Service and the Department of the Interior), the American Museum pursued a second legal option by suing the Confederated Tribes of the Grand Ronde in Manhattan federal court. The lawsuit, filed only a week after the long-awaited opening of the Rose Center, argued that the meteorite is not the kind of “sacred object” covered by NAGPRA; it is, rather, “a natural feature of the landscape, [not] a specific ceremonial object.” The museum contended that the meteorite “has never been marked or altered. There’s no indication that it was ever moved by the tribe. No custody or control was taken over it”  

Alleging that the tribe’s claim “potentially impairs the museum’s ability to share this exceptional scientific specimen with the public,” the museum sought a court ruling specifying (1) that the museum is the rightful owner of the meteorite and (2) that

27 McFadden, “Meteorite dispute …”  
28 According to Tim McKeown, a National Park Service official charged with overseeing NAGPRA claims, quoted in Henderson, “Meteorite Case Update.”  
29 Henderson, “Meteorite case update.”
the museum was not required to repatriate the extraterrestrial object being claimed by the Grand Ronde. ³⁰

A spokesman for the Grand Ronde expressed disappointment in the lawsuit and suggested that “the museum should do the right thing and resolve this dispute now, directly with our tribe, instead of marching off to court behind a squadron of attorneys … We intend to gather our thoughts, communicate with our tribal members and, then, take the steps necessary to regain what is rightfully ours.”³¹ The tribe added that, if successful in their repatriation claim, they wished to bring Tomawonos to the Grand Ronde reservation, perhaps making it available to view by tribal members and the public in an open-air indoor garden. “I know the stone is important to nontribal people, to Oregonians, and people around the world” said Olson. “We are aware of the need to provide access to these folks as well.” ³² The “Return the Rock” movement quickly gained momentum in Oregon as a states’ rights issue, and became a familiar theme in the pages of Portland’s The Oregonian: “If we had our way,” one editorial read, “it would be heading back on the next westbound freight train.”³³

Archaeologists and Native Americans across the country closely monitored the escalating custody battle over the Willamette/Tomanomos meteorite, anxious to see if a law that had mandated the return of thousands of artifacts and hundreds of human

³¹ Henderson, “Meteorite case update.”
skeletons could be broadened to apply to unmodified artifacts of nature. Whereas the Kennewick case promised to provide a legal review of protocols for extending the definition of cultural affiliation back into distant time, the meteorite dispute carried with it a potential for significantly broadening the definition of “sacred object.” After all, if an eight thousand year-old skeleton could be “culturally affiliated” with a modern Indian tribe, could an object on the landscape – or maybe even the landscape itself – be repatriated as a “sacred object” under NAGPRA?

There were also major financial concerns because, should the courts grant custody of the meteorite to the Grand Ronde, the costs to the American Museum would be staggering. The gleaming new $210 million Rose Center for Earth and Space had literally been constructed around the 16-ton meteorite. A year before, contractors had sunk three deep steel pilings into bedrock, then hoisted the meteorite into place with a crane, where it was firmly secured in a permanent exhibition hall. The 95-foot high glass and steel “cube” that comprises the Rose Center – itself the largest suspended glass curtain wall in the United States – would literally have to be disassembled piece by piece to remove the meteorite from the exhibition hall.

The Resolution

As both parties marshaled their courtroom arguments, they also instigated a series of private, off-the-record discussions aimed at heading off a Kennewick-like standoff. On June 22, 2000, the American Museum of Natural History and the Confederated Tribes of

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34 Henderson, “Meteorite case update.”
35 McFadden, “Meteorite dispute …”
the Grand Ronde Community of Oregon jointly announced a “historic” out-of-court settlement that (1) maintained the presence of the meteorite at the museum (for scientific and educational purposes), (2) while insuring access for religious, historical and cultural purposes to the tribe. The Tribe agreed to drop its repatriation claim for the meteorite and not contest the Museum’s ownership of it; but the agreement also stipulated that the meteorite would be conveyed to the tribe should the museum fail to publicly display it (excepting temporary periods for preservation, safety, construction and reasons beyond the Museum’s direct control). The agreement “reflects mutual recognition of and respect for the traditions of both the Tribe and the Museum.”

Both parties breathed deep sighs of relief. “I can’t begin to tell you how much this means to us” said Kathryn Harrison, Tribal Council Chair of the Grand Ronde. “Since the termination of our tribe by the federal government in 1954, we have worked hard to gather our people together to share our unique and important past. This agreement goes even further because it looks towards our future. I consider it one of the outstanding milestones we’ve reached for our tribal members.” Ellen V. Futter, President of the American Museum of Natural History, noted that “this constructive resolution demonstrates the Tribe’s and the Museum’s enlightened and progressive approach to


37 Growing out of these discussions – but separate from the formal agreement – the Tribe and the Museum agreed to establish an internship program for Native American young people to foster Native Americans’ sharing a deeper understanding and appreciation of their customs, traditions and history with the museum community and the general public, to share with Native Americans information from the Museum collection, to share Museum expertise in archaeology and anthropology, and to cultivate scientific knowledge and appreciation of modern Native American tribes.
discovering the opportunities that lie within our traditions. Our agreement reflects mutual respect and understand and signals new possibilities for an ongoing and fruitful relationship….”

The Grand Ronde began making plans for a new pilgrimage – this time to New York City – to reestablish their ties to Tomanowos. Several tribal members expressed skepticism about visiting New York, but others felt strongly that a personal reunion was long overdue. “Everyone in the group wondered if the rock still had power.” On May 16, 2001, when a delegation from Grand Ronde arrived at the museum, “everyone … wondered if the rock still had power.” The Cullman Hall of the Universe was temporarily closed to the public to allow F. Travis Benoist (Cheyenne River Sioux) and Grand Ronde tribal member CeCe Kneeland to conduct a private blessing of the meteorite. The ceremony and the talking circle that followed proved to be an emotional moment for many in the group. According to Kathryn Harrison, if they listened intently, Tomanowos spoke to the visitors. “Why did it take you so long” she heard it say “I’ve been waiting a long time to see you.”

Today, the meteorite sports two silver labels. One oval plaque explains the geophysical specifics of the Willamette meteorite (“Billions of years ago, an early planet orbiting the sun was shattered, perhaps in a collision with another protoplanet …). A second plaque describes the special significance of this meteorite to the Clackamas and their descendants, explaining how Tomanowos has “has healed and empowered the people of the valley since the beginning of time.”

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38 Brent Merrill, “‘Tomanowos’ meteorite – star powe,r” Smoke Signals, June 1, 2001.
Every June, on their annual pilgrimage to visit and bless *Tomanowos*, the Grand Ronde delegation also drops off two teenage interns and a tribal staff chaperone, to participate in the “Inside View” program at the American Museum. They join dozens of high school-age New Yorkers, each of whom is assigned to work on special projects with a mentor or one of the museum scientists.\(^4\) Cristina Lara, one of the first of the Grand Ronde interns, was assigned to work in the Museum’s Discovery Room, a section for kids that featured fossils, bones, and a model excavation site. Lara said the fit was good because it renewed her interest in history, which she decided to study in college “It has given me some direction, that’s for sure”\(^5\) Teresa Henry, another Grand Ronde intern, was assigned to the Communications office, researching press releases and working in the IMAX theater. Subsequent interns have studied the geology of New York City, and answered questions about the tribe for visitors and museum patrons. “A lot of people don’t know about Indians” said Richard Sohappy “Or what they do know is from movies. So it was good for them to break down those barriers and perceptions. It was cool”\(^6\) The interns also spent some private time with *Tomanowos* meteorite. "I touched it” said Cristina Lara ”It was a trip. I mean this thing is from outer space.” But Teresa Henry had some misgivings after returning home. “There kids crawling over it. I didn’t understand. It felt awkward. It was of place. It should be here”\(^7\)

\(^{5}\) Chris Mercier, “Tribal members in New York,” *Smoke Signals*, September 1, 2001
Smoke Signals, the tribal newspaper of the Grand Ronde, tracks each New York pilgrimage and publishes accounts of the adventures of the tribal interns. The writers generally speak of the experience in positive terms, although an occasional dissenting voice suggests that one day, Tomanowos might still come home. To Kathryn Harrison, the threatened legal actions and amicable settlement demonstrates beyond doubt that “Tomanowas still has power … Look what it’s done. Whoever thought it would be the center of this new museum?”

The Case of Kwäday Dän Ts’ìnchí (“Long Ago Person Found”)

On August 14, 1999, three hunters stalked Dall’s sheep in the remote St. Elias Mountains of northwestern British Columbia, not far from the Yukon/Alaska boundary. As they traversing the remote and roadless landscape of the Tatshenshini Alsek Park, one of them, squinting through binoculars, saw a curious “smudge” on the faraway blue snow. “It looked like the National Geographic pictures we’d been seeing for years.” Recalled Warren Ward. “I could see a lot of tattered bucked leather, and pieces of fringe.”

Finders Keepers?

The hunters were soon staring down at a headless frozen corpse, lying on its side near the edge of the ice. Not far away was a wooden throwing dart, an extraordinarily

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44 Larry McShane (AP) “Oregon tribes agree to share sacred meteorite with NYC museum,” June 22, 2000.
fine hat woven of cedar roots, and a decomposing fur robe. Knowing that this man had
died long ago, the hunters immediately grasped the importance of their find. They
retrieved the hat and part of a fur garment, headed out across the raw landscape, arriving
two days later at the Beringia Centre at Whitehorse (the Yukon capital) to report their
find.

Tatshenshini Alsek Park is located in the British Columbia portion of the
traditional territory of the Champagne and Aishihik First Nations (CAFN). These are
Tutchone Indians, traditionally a highly-mobile people who once subsisted by hunting
and fishing. Their aboriginal language is Southern Tutchone (one of several Athapascan
dialects spoken in the area). Over the past two centuries, the Tutchone people have
adjusted to the impact of the fur trade, the Klondike gold rush and the building of the
Alaskan highway. In recent years, several Southern Tutchone leaders have been active in
negotiating land settlement claims with both federal and territorial governments, and the
CAFN has been active in attempting to preserve certain aspects of their traditional
lifeway. 46 The Southern Tutchone have long traded with the Tlingit, their coastal
neighbors in Alaska. Intermarriage between the two groups has been so pervasive that the
Southern Tutchone had adopted features of the Tlingit clan system, and many spoke the
Tlingit language.

46 For more on the history and ethnography of the Tutchone people, see Catharine
McClellan, “Tutchone” in June Helm (ed) Subarctic, volume 6 of the Handbook of North
rights of the CAFN to the Yukon portion of their traditional lands and resources were
confirmed in a land claims agreement in 1993. Their claims to the corresponding land in
the British Columbia portion of the park remain at dispute, but in 1996, the Province and
CAFN signed an agreement to co-manage Tatshenshini-Alsek Park. The First Nations has
had a formal Heritage Program since 1993.
When heritage officials in Whitehorse notified the CAFN elders of the new find, many recalled haunting stories about the mystical, ethereal world of the glaciers, where unseen chasms can swallow up the unexpected. Owls sometimes emerged from their sleep beneath the ice to consume the unwary. According to one well-known legend, a coastal trader was for dead after fall into an ice chasm in the southern Yukon. Entombed, he listened to mourners miles away, wailing at his funeral potlatch. But this legendary traveler was eventually saved by a dogged search party who refuse to give up. Both the CAFN and the Tlingit maintained stories about travelers who had vanished on the ice, and many Tlingit felt that perhaps the frozen man was one of their own. But because the body had clearly been found in Southern Tutchone territory, the CAFN assumed legal authority over the find. ⁴⁷

When they first learned of the new find, several CAFN elders had expressed concern that “this man has not had a burial. You can’t leave him there” said Gaunt (a heritage planner for the Yukon First Nations). “Bring him down and try to find who he was and how long he’d been there.” ⁴⁸ And so they did.

Nine days after the initial find (on August 22 and 23, 1999), a recovery team flew by helicopter to the find site. The team leader was Owen Beattie (University of Alberta), a well-known physical anthropologist with previous research experience with frozen remains from the Arctic. He was accompanied by archaeologists, a glaciologist, and First Nations representatives.

⁴⁷ This meant that Canadian heritage laws would govern the disposition of the new find.
⁴⁸ Quoted in Heather Pringle, “Out of the ice. Who was this ancient traveler discovered in an alpine glacier?” Canadian Geographic July/August 2002: 56-64.
Wearing Tyvek biohazard suits and sterile latex gloves, the recovery team approached the remains from the downwind side, to minimize contamination. After locating the frozen remains lodged in an east-west ridge feature, they found that the body had been severed in two by slow glacial movement. The head and right arm had disappeared entirely (perhaps carved away by rushing torrents of meltwater or scavengers), but the surviving remains were astonishingly well preserved. His flesh still showed goose pimples and strands of his neatly-trimmed black hair lay in the nearby ice. They gingerly lifted the remains by hand, immediately shrouding the body parts in two layers of sterile hospital wraps and an outer layer of sterile clear plastic sheeting. These bundles were stored in rigid plastic containers, which were temporarily housed in a nearby snowbank as the team scoured the area for additional human remains and artifacts. A pressing cold front the recovery team to cut their trip short, and the remains were brought to Whitehorse.

The Iceman and Cultural Heritage Law

A round of meetings was held in Whitehorse, and diverse opinions were expressed about the proper way to proceed. Recovering the remains caused some concern because among the Champagne and Aishihik people, because two clans – the Wolf and the Crow – are charged with supervising all mortuary functions, and neither clan felt comfortable in claiming the frozen body as a clansman. Some were even unsure whether he was really a tribesman at all. Some CAFN members, perhaps influenced by evangelical Christian theology, attributed a series of local accidents to the fact the frozen
body remained unburied; they urged immediate cremation of the remains and all of his possessions.

Several members of the Coastal Tlingit tribe also traveled to discuss the matter with their interior relatives and representatives of other Canadian Indians. Each group expressed the belief that the frozen man might be one of their tribal members. Coastal Tlingit people recalled a song about one of their tribal members who was injured on a glacier on a return trip from the Interior, and they argued for continued studies of both the remains and the cultural artifacts.

The Resolution

Three weeks after the recovery, the research team and First Nations representatives held a press conference to announce their find to the world. The frozen man was to be called Kwäday Dän Ts’inchí (pronounced KwuhDAY Dun Sinchee), which means “long-ago person found” in the Southern Tutchone language; the name has since been commonly abbreviated as “KDT.” In assigning this name Kwäday Dän Ts’inchí, CAFN leaders assured the Tlingit that they were not asserting a tribal affiliation. CAFN was simply assuming responsibility for his care because he was found on their lands.49

In light of the co-management agreement that governs the Tatshenshini-Alsek Park, the CAFN and the Province of British Columbia formed a collaborative partnership that emphasized two key points: (1) the need for respectful treatment of the newly-discovered human remains and artifacts and (2) the desire for state-of-the-art scientific

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49 According to Rosita Worl (a Tlingit leader involved in the process), the Tlingit “came to the conclusion that he was instead claiming us all” (Personal communication, 2004).
study of the find, including contextual studies involving ethnography and oral history. From the outset, the decision regarding final disposition of the human remains and artifacts was assigned to CAFN, effective December 31, 2000. This compromise position thus allowed for scientific studies to be conducted within a specific time period, after which the remains would be cremated, with the artifacts retained for additional study.

On August 25, 1999, the *Yukon News* quoted CAFN leader Bob Charlie:

The Elders have indicated that we should use this situation, what appears to be an ancient tragedy, to learn more about this person, when he lived and how his clothes were made and how he died. This person has much to tell us, to help us understand our past, and the history of our homeland. We wish to see these human remains treated with dignity and respect and to see the most positive outcome of this long-ago event … In fact, the band sees the find as more than a cultural boon. It’s already planning to tap into the research grants that will help pay its members to study the remains”  

Members of CAFN also recognized the importance of the new find in reinforcing pending land claims with the Canadian government. According Diane Strand (the tribe’s heritage resource officer), “stories recorded by our elders, [say] we have been here since time immemorial, since when animals could speak to people.”  

At the initial press conference, CAFN spokesman Ron Chambers emphasized the delicate political situation surrounding his people, and stated that since the find proved the long-term aboriginal use of the landscape, it thereby strengthening the First Nations claim on the land.  

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With the blessing of the Yukon’s First Nations, two dozen researchers from Canada, England, Scotland, Australia and the United States were recruited to apply the most recent high-tech forensic and paleobiological techniques to the remains of Kwäday Dän Ts’ìnchi. The frozen body had been temporarily stored at Yukon Heritage Branch facility at minus 17 degrees C, while an agreement was negotiated between CAFN and the BC Archaeology Branch. Seeking to establish the most stable environment for the remains, the conservation team also consulted with a number of experts in the field, ultimately elected to follow the protocols established to preserve Ötzi, the famous “iceman,” who had died 5,300 years ago in the area of the Oetzal Alps, found in 1991 along the Austrian-Italian border.

The entire freezer was flown to Victoria in the constant company of the conservator and representatives of the BC Archaeology Branch and CAFN. At the Royal British Columbia Museum (in Victoria), the human remains were housed in a large sterile freezer that simulated the glacier’s high humidity and sub-zero temperature. Most of the artifacts were taken to the Yukon Heritage Branch, which maintains an agreement with CAFN to assist in the care and management of such materials. The fur garment and some of the smaller artifacts were subsequently transferred to the Royal British Columbia Museum for conservation and analysis.

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53 The specialties include mitrochondrial and microbial DNA, parasitology, entomology, pathology, palaeoradiology, paleobotany, palaeodiet, skeletal biology, low temperature preservation, glaciology, taphonomy, trace elements, and additional radiocarbon dating.
Kwâday Dân Ts’íinchí was the first well preserved ancient human body ever recovered from a North American glacier, and his remains took on special significance to the research team. Unlike most frozen burials – including those of the Inuit, the sacrificed Andean children or the Siberian Pazyryks, KDT had died accidentally, taking with him only everyday items; no elaborate funerary items had been added by grieving kinsmen. This meant that KDT held the keys to unlock the secrets of his daily life, and the research team framed several basic questions: How old was Kwâday Dân Ts’íinchí when he died? What did he look like? What did he eat? Was he healthy? Where had he traveled? Did KDT belong to a coastal people, such as the Tlingits or an interior, Athapascan-speaking group (such as the Champagne and Aishihik First Nations), in whose traditional territory the body was found? Answers to the questions emerged slowly appeared as the scientific examination proceeded. A series of radiocarbon dates determined that the hat and robe had been made sometime between A.D. 1415 and 1445. This meant Kwâday Dân Ts’íinchí had likely died a few decades before Columbus waded ashore in the Caribbean (and a full three centuries before European vessels appeared off the coast of British Columbia).

The paleoautopsy, conducted by forensic specialists, disclosed that KDT had died in his late teens (or possibly early twenties). He was in excellent health before he died alone in the bitterly cold Canadian northland. His neatly combined and trimmed hair was worn loose and unbraided. His clothing was clearly aboriginal, a conclusion confirmed by

DNA analysis (confirming that KDT was clearly a Native American, likely from the local area). His broad-brimmed hat had been constructed from roots of cedar (or maybe spruce), so tightly woven that it still repels rain.

His robe was made from the skins of 95 Arctic ground squirrel, each one pierced by tiny holes, then sewn with a very fine, two-ply animal sinew – “almost as fine as button thread.” The collar was made of moose (deer or caribou?) hide, and fringes were added to keep rainwater from penetrating; a mix of grease and red ocher sealed the seams from the inside. An admiring conservator at the Royal British Columbia Museum marvels “I’m pretty sure that some granny or mother made this for him to keep him warm.”

*Kwáday Dän Ts’închì* carried a small wooden hand tool, housed in a leather sheath and encrusted with a curious rust stain. If KDT died decades before Columbus arrived in the Americans – as the radiocarbon evidence clearly indicated – then how did he acquire an iron-tipped tool? Although the iron might have originated from a meteoritic source, the more likely source would be an (unknown) pre-Columbian shipwreck, perhaps blown off course from a distant Asiatic coastline.

KDT also carried a small hide bag or pouch that the First Nations researchers immediately identified as a personal medicine bag concealing the man’s sacred objects. Because of the cultural significance and private nature of such medicine pouches, they asked the scientists refrain from opening, studying, or documenting the artifacts. Although curious about the contents of the sealed bad, all scientists involved in the TDK research complied with the request and the medicine bag was kept in its frozen state and stored with the human remains.

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56 Quoted in Pringle “Out of the ice,” 62.
KDT’s clothing thus posed a problem: his exquisite robe of arctic ground squirrel pelts is an interior-type garment, once a common mode of dress for the Tutchone people. But the coastal Tlingit immediately recognized the woven hat as their own, and they even commissioned a skilled weaver to study and replicate the piece at her home village of Klukwan. So where was home to Kwädąy Dän Ts’inch?

One clue comes from the small pieces of fish and scales found adhering to the fur robe. This four-year old chum salmon had been caught just as it entered its spawning run. Unlike other salmon species, chum salmon are unusual in that they spawn only in the lower reaches of the rivers; this evidence seems to suggest that KDT may have lived near a riverbank along the coast. But, of course, if the fish had been smoked, he could also have traded for it from elsewhere.

Seeking more clues, scientists conducted both electronic and light microscope studies of remains in the intact alimentary canal (i.e. stomach and intestinal contents, plus fecal material). These results indicate the meals consumed during the last few days before death, and can be compared with long-term evidence available from stable isotopic study (conducted on collagen extracts from tissue). KDT’s digestive tract contained pollen from glasswort (today restricted to intertidal marshes and inland salt flats) and pieces of a marine crustacean (likely a marine crab from the shores of the Pacific Northwest coast). The coastal connection is further reinforced by the fruit of a flowering plant (mountain sweet-cicely) and a needle of a coniferous tree (mountain hemlock) found adhered to his robe. Stable isotope analysis of bone and tissue sample further confirm that the great bulk (90 percent) of KDT’s died derived from marine sources. James Dickson and his
colleagues concluded that “this individual had strong coastal connections during his life, and had been on the coast shortly before he died.”

Isotopic studies were also been conducted on KDT’s hair. Because human hair is known to grow about 1 cm each month, incremental isotope studies can indicate something about short-term diet as well. A distinct “terrestrial” isotope signature characterizes the most recent hair fragments, indicating that KDT spent his last days (perhaps even a few months) in an inland environment.

To sum up, KDT was found buried within a glacier about 85 km inland from the nearest point along the strongly intended Alaskan coastline. He likely lived along this Alaskan coastline for most of his life, and moved inland shortly before he perished. Ethnography and oral history from both Tlingit and Southern Athapascan people amply people document the well-used trade routes that connected the coastal fjords with the interior Tutchone homeland. The combined paleobotanical evidence thus suggests that his homeland was mostly likely somewhere between the Chilkoot/Chilkat Inlets and the Yakutat.

*Kwäday Dän Ts’inchí* was probably caught in a freak summer snowstorm as the young traveler headed home from a trading trip – maybe swapping lynx, wolverine, moose, skins and bighorn sheep horns from the interior for sea resources. Overtaken by hypothermia, lapsed into a final lethal sleep of his body was quickly buried in snow, quickly frozen before decay set in.

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58 James H. Dickson, personal communication.
A friendly rivalry continues between coastal and interior groups, each anxious to establish direct tribal affiliation with Kwäday Dän Ts'inchí. Some recalled the story of Cheddar Man, a 9000 year-old skeleton whose bones were discovered in 1903 inside Gough’s Cave, about 130 miles west of London. In 1997, scientists at Oxford University’s Institute of Molecular Medicine studied mitochondrial DNA extracted from one of Cheddar Man’s molars. Wondering whether any descendants could still be living in the area, scientists collected DNA samples from a number of local school children and adults at their school. The genetic fit between Cheddar Man and Adrian Targett (a history teacher at the school) was almost exact, immediately establishing the world’s oldest family tree. Mr. Targett is thrilled with his Ice Age genealogy, and scientists have used this evidence to argue that modern-day Britons descended from early hunter-gatherers who later starting farming the area.

More than one hundred Coastal and Interior Tlingit have contributed their DNA study (conducted in June 2001). Harryet Rappier, of Juneau, said she was curious to learn about her northern relatives, especially since her mother was born in 1903 in Klukshu, Yukon “I can’t get enough information from that part of the world.” Loretta Marvin, one of the more than one hundred Coastal and Interior Tlingits participating in the DNA testing, agrees. “This is pretty interesting, very fascinating, to be able to find out and check back what it is, 500 years, and there is maybe a possibility I could be a relative.” Says Rosita Worl, “We Tlingit have a concept ‘haa Shagoon’ which ties simultaneously to our ancestors and future generations. In the instance of Long Ago Person Found … our traditional leaders said that our ancestors are offering us and our future children

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knowledge. They were also especially gleeful since they [the Tlingit] said now these finds confirm that ‘We have been here since time immemorial.’ At the present writing, financial problems plague this intriguing project, and the study has yet to be completed.

After extensive consultation, Champagne and Aishihik leaders cremated the human remains and medicine bundle in July 2001, returning the ashes to the glacier where he was found. Says Diane Strand, the ceremony was “very emotional. It was though you were burying your loved one. It was an extremely uplifting and moving thing to do.”

Conclusion: Litigation or Negotiation?

We have presented three case studies, each one illustrating a rather different approach to the issue of cultural patrimony in Native America. We began with the multicultural tug-of-war over Kennewick Man, which raises deep questions about how the past can serve the diverse purposes of the present, Indian as well as white.

The Kennewick conflict has often been portrayed as a face-off between science and religion, a reprise of the famous Scopes trial of the 1920s—except that Red Creationists have now assumed the role of Christian fundamentalists. But the facts of the case indicate otherwise.

At the heart of the matter, the Kennewick dispute boils down to issues of power and control. Who gets to control ancient American history—governmental agencies, the academic community, or modern Indian people? To understand the deeply political

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60 Rosita Worl, personal communication.
nature of the Kennewick conflict, one must remember the long-term interactions between Euroamerican and Indian populations. Over more than five centuries, several distinct American Indian histories have developed, of which three are especially critical: a larger national narrative that glorifies assimilation into the Great American Melting Pot; an academic discourse written by anthropologists and historians who view Indians as subjects of scholarly inquiry; and an indigenous "insider's" perspective long maintained in the oral traditions of Indian people themselves. Although sometimes overlapping, these distinct histories often paint quite different visions of America, past and present. Proponents of each strongly believe that "their" history is the correct one, the version that should be published in textbooks, protected by law, and defended in the courtroom.

The Kennewick case also challenges us to define when ancient bones stop being tribal and become simply human. If Indian people lose the fight to retain and rebury their ancestor's bones, they worry about also losing other treaty-guaranteed rights that define their unique, sovereign status under United States law? If archaeologists surrender the right to study ancient human bones and artifacts, will the scientific community have to fear continual censure by the religious beliefs of a few? Should this happen, then mainstream archaeology's views on American origins would no longer carry the clout of authority. From whatever perspective, Kennewick became a very public fight that neither side felt it could afford to lose. 62

But in a real sense, all sides lost. Many Native Americans are, of course, deeply disappointed in the outcome of the Kennewick case. One tribal spokesman termed the Gould decision “a staggering blow to the tribes’ ability to protect their cultural

properties.\textsuperscript{63} The Umatilla had opposed the destructive DNA and radiocarbon testing conducted to prepare the court case and they protested the National Park Service decision to send fragments of the Kennewick skeleton to laboratories in Arizona, California, Florida, Michigan, and Connecticut. The tribe claimed that “these studies are not being done to prove cultural affiliation. They are being done to appease the scientists and the court.”\textsuperscript{64} And amazingly, when Douglas W. Owsley (one of the Bonnichsen scientist plaintiffs), inventoried the Kennewick remains in October 1998, he found that some of the bones had been stolen. Although the Department of Justice launched an investigation, nobody has been charged. \textsuperscript{65} In other words, even had the tribes ultimately won custody of the bones, tribal official fumed, the remains had already been treated in a destructive and disrespectful manner.

The Gould ruling also casts doubt upon the status of oral history in subsequent court cases. A key provision of NAGPRA stipulates that “cultural affiliation” is established 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.” \textsuperscript{66} In so doing, NAGPRA implicitly recognized that differing histories had evolved for ancient Native America.

\textsuperscript{63} Associated Press “Scientists win another battle over Kennewick man,” April 20, 2004.
\textsuperscript{64} Confederated Tribes of the Umatilla Indian Reservation, “Tribe opposed to DNA testing of Ancient One,” 2000. \url{http://www.umatilla.nsn.us/kman5.html}.
One was written down in books, taught in schools, and exhibited in museums—this is mainstream history reflecting the perspective of the outsider, the conqueror of continents. An entirely different history existed in Indian Country, a history handed down by Indian people from elder to child as tribal tradition, language, spirituality, ritual, and ceremonies—even in jewelry and personal ornamentation.

Archaeology and oral tradition differ, of course, in how observations are made and interpreted. Western science relies on discrete observational units and measurable variables that can be analytically combined and/or held constant. Native observations arise from people who view themselves within a holistic environment and societal framework. These are separate ways of knowing the past, but they tend to converge in a broad sense because certain important issues tend to dominate both realms—migrations, warfare, land use, ethnicity, and so forth. Because different standards apply to how relevant information is collected, evaluated, and used, however, the two ways of knowing will never completely coincide.

But Judge Gould’s decision states, in part, that “because oral accounts have been inevitably changed in context of transmission, because the traditions include myths that cannot be considered as if factual histories, because the value of such accounts is limited by concerns of authenticity, reliability, and accuracy, and because the record as a whole does not show where historical fact ends and mythic tale begins, we do not think that the oral traditions … were adequate to show the required significant relationship of the Kennewick Man’s remains to the Tribal Claimants.” 67 Thus, not only have the tribes

(apparently) lost the battle over the bones, the February 2004 ruling may undermine the role of oral tradition in establishing cultural affiliation in future repatriation cases.

Archaeologist Robson Bonnichsen, one of the eight scientist-plaintiffs, calls the recent court decisions “fantastic news. We’ve been waiting so long, and it’s been so immensely frustrating.”\(^6^8\) But the Kennewick case has extracted a dear price from the scientific perspective as well. For one thing, the actual site of the Kennewick discovery has been destroyed. Although permitting a preliminary geological study of the Kennewick site, the Corps defied the will of Congress and in April 1998, covered the Kennewick Man site with 600 tons of boulders, gravel, logs, and backdirt, planting thousands of closely-spaced cottonwood, dogwood, and willow trees on top of the fill. In this $160,000 cover-up, the Army Corps had not only made the site inaccessible to scientists and tourists; they have destroyed any undiscovered evidence beyond recovery. In his August 2002 ruling, Judge Jelderks ruled that the Army Corps had violated the National Historic Preservation Act by burying the discovery site.

At its legal core, *Bonnichsen et al. v. United States of America* was a lawsuit against a federal agency for lack of compliance with existing laws, and the costs involved are staggering\(^6^9\). To date, the federal government has spent at least $1.1 million (and perhaps as much as $3 million) on this case, and these expenses continue to mount, for storage fees (to conservators, time and travel by government personnel) store the skeleton at the Burke Museum. According to Alan Schneider lead attorney for the plaintiffs, “Despite all the time and money invested by the federal government in the Kennewick

\(^6^8\) Quoted in Hill 2004.
\(^6^9\) Owsley and Jantz, “Kennewick Man,” 155.
Man affair, little has been accomplished other than to provide an expensive example of poor-decision making.”  

Further, although some important information was generated in the course of presenting the court case, many are critical of the various scientific and contextual studies commissioned by the National Park Service. The geological study was quite incomplete, leaving numerous questions that should have been answered (but may never be because of the heavy-handed approach of the Corps in burying the site). Some believe that excessive samples of bone were sacrificed for radiocarbon dating, destroying 50 grams of the Kennewick skeleton (as opposed to the 4 grams requested by the Bonnichsen plaintiffs). Excessive x-rays may also have damaged any residual DNA in the Kennewick bones.

Finally, many observers had hoped that the high-profile Kennewick lawsuit would generate, for the first time, an adequate judicial review of the circumstances under which NAGPRA would (or would not) permit the scientific study of human remains. Despite the 22,000 pages of documented testimony, this considered review did not take place. In a lone footnote, Judge Jelderks noted that because Kennewick Man was not a Native

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71 Schneider, “Kennewick Man”, 208.
American under the law, the provisions of NAGPRA for scientific study were irrelevant. Furthermore, the 1990 statute had clearly established independent criteria for determining if remains are “Native American” and, if so, whether they are “culturally affiliated” with a modern tribe or Native Hawaiian organization. The Jelderks and Gould decisions seem to muddy the waters by collapsing the two lines of inquiry and conflating the terms in a way that Congress certainly did not intend.

The Kennewick controversy clearly highlights the difficulties in asking the court system to resolve disputes involving cultural heritage and intellectual property rights. To be sure, the eight scientists filing the Kennewick Man lawsuit felt a sense of urgency, even desperation. But as the argument over Kennewick Man came to be viewed in terms of "winners" and "losers," it overshadowed the search for a relationship based on mutual respect and consensus.

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73 Commonsense, of course, would seem to suggest that any eight thousand year-old skeleton found within the United States was indeed Native American. In fact, Secretary of the Interior Babbitt decided that Kennewick is Native American largely because he pre-dates A.D. 1492, the generally accepted beginning of European colonization of the New World. In overturning this view, Judge Jelderks insisted that legal determining of whether human remains are “Native American” requires a closer reading of NAGPRA’s definition of Native American: “of, or relating to, a tribe, people, or culture that is indigenous to the United States.” Emphasizing that age does not figure anywhere in this definition, Jelderks ruled that Kennewick is Native American merely because he pre-dates A.D. 1492.

74 It likewise remains unclear whether NAGPRA could withstand a constitutional challenge; see Jennifer R. Richman, “NAGPRA: Constitutionally Adequate?” in Jennifer R. Richman and Marion P. Forsyth (eds), Legal Perspectives on Cultural Resources, (Walnut Creek, CA: AltaMira Press, 2004): 216-231.

74 Christopher A. Amato, “Using the courts to enforce repatriation rights: A case study under NAGPRA” in Jennifer R. Richman and Marion P. Forsyth (eds), Legal Perspectives on Cultural Resources, (Walnut Creek, CA: AltaMira Press, 2004): 232-251.
The dispute over the Willamette meteorite (*Tomanowas*) was resolved because parties explicitly recognized the downside of a Kennewick-style court battle. In the early rounds, the Confederated Tribes of the Grand Ronde argued that NAGPRA required the return of *Tomanowas* because it qualified as a “sacred object.” The American Museum of Natural History countered by asserting its right of possession and arguing that the meteorite was a natural feature of the landscape (and hence immune to NAGPRA). But rather than proceeding with the threatened litigation, both parties worked behind the scene to find channels for mediating their differences. That is, instead of framing their differences in the finders-keepers, winners-losers mentality that characterized the Kennewick Man case, representatives of the Grand Ronde and American Museum explored alternatives in an atmosphere of mutual respect and common interest.

Because *Kwâday Dân Ts’îinchí* was found in British Columbia, the NAGPRA legislation was not directly involved. Canadian law dealing with cultural heritage, repatriation, and reburial had been in place long before the NAGPRA legislation was passed in the United States. Because the First Nations’ authority had been established by previous protocols, a spirit of cooperation and respect permeated the discussions about KDT.

There were some compromises, to be sure. The consulting scientists worked within the constraints set out by the CAFN. Museum officials, for instance, agreed not to publicly release any photographic images without permission of the CAFN. 75 Although the scientific team would have vastly preferred that the remains be curated for further studies, they respected the CAFN decision to cremate and reinter the ashes.

Archaeologists would, of course, wished to study the associated medicine bundle and its contents, but they too abided by tribal wishes for privacy. Many of the scientists involved in the project had previously studied the remains of Ötzi, the famous 5,300 year-old “iceman” from the Austrian-Italian Alps; to them, it seemed natural to draw parallels to the New World “iceman,” but responding to the wishes of CAFN, the scientists agreed that the term “iceman” will never appear in the scientific literature discussing Kwäday Dän Ts'inchį. 76 “We are lucky in that we have a long-standing tradition of cooperation between archaeologists in the Yukon and British Columbia and Elders of the Champagne and Aishihik First Nations” asserts Paige MacFarlane, an official with the Canadian government in British Columbia. “Because of this relationship, we have been permitted to go ahead with an in-depth analysis of the remains.” 77 Grant Hughes, head of the research project at Royal British Columbia Museum, agrees, suggesting that the case of Kwäday Dän Ts’inchį is “a model of co-operation between a first nation and a museum to allow for respectful research. We have this balance between the needs of the scientific community and the cultural sensitivities to the aboriginal community. This is a project where we’re respecting both.” 78

76 James H. Dickson (personal communication). The power to name has been the single most enduring theme throughout the centuries of Indian-Euroamerican interaction because the names ultimately reflect the power to conquer and control. Naming is central to the writing of history, and history is a primary way we define ourselves. By explicitly recognizing the importance of native names and by acknowledging previous difficulties in the lasting legacy of the finders-keepers strategy, scientists have been able to pursue their studies in a more respectful, more sensitive manner; see also Thomas, Skull Wars, chapter 1.
78 Kim Lunman, “Iceman provides clues to life” (2000).
Robert McLaughlin speaks of “a more introspective” brand of museum anthropology that is being practiced during the NAGPRA era. Although the Willamette meteorite and KDT cases did not generate the headlines associated with Kennewick Man, they may well indicate future directions for resolving disputes over cultural heritage and reburial issues.

Archaeologists and Native Americans increasingly agree on certain key issues: the past is important—we should attempt to understand it and preserve whatever remains of it. As we saw in the case of Kwāday Dän Ts’ìnchị, the archaeological evidence may support CAFN land claims over disputed territory. Some tribes have used their own archaeology to promote tribal sovereignty, a critical social and political issue throughout Indian Country. Many tribes and First Nations today maintain large and effective archaeology programs employing both Indian and non-Indian archaeologists. Some native groups are conducting archaeology to encourage tourism, to inform educational programs, and to preserve sacred sites on their own land. Several tribes sponsor their own museums that display archaeological materials. The Society for American Archaeology (SAA) sponsors a Native American Scholarship Fund—named after Arthur S. Parker, an American Indian who served as the SAA's first President—encouraging Indian people to train as professional archaeologists and funded, in part, from royalties earned on books written by archaeologists about the Native American past. Throughout Native North America, Indian people are increasingly involved in archaeological meetings and publications—not merely as "informants," but participants and collaborators.

Perhaps the lasting legacy of the Kennewick Man dispute is that of negative role model. Litigation and legislation appear to be increasingly unattractive ways to settle conflicts over cultural patrimony and intellectual property rights. Over the past decade, we can document literally dozens (and dozens) of cases in which American Indian and scientific interests have elected to work together to resolve their differences amicably, doing what ethnologist Michael Brown characterizes as “thoughtful people coming together to negotiate workable solutions, however provisional and inelegant.” 80 Perhaps the Kennewick case will be viewed as a worst-case scenario – quite literally, a court of last resort – for resolving disputes between American Indians and the non-Indians who wish to study them.