Elimination Through the Production of Race: The Settler Colonial Constitution of "Native Americans" and Indigenous Attempts to Define Themselves

By

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Elimination Through the Production of Race: The Settler Colonial Constitution of "Native Americans" and Indigenous Attempts to Define Themselves

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Abstract

The ability of Native American and Indigenous peoples and nations to rhetorically constitute who they are and who their ancestors are is a fundamental act of sovereignty. The constitution of race has supported many settler colonial injustices through rhetorically constructing and racializing "Native American" bodies. Instead of listening to and honoring how Indigenous and Native American peoples define themselves, the settler colonial machine violates Native American and Indigenous sovereignty by constituting what is "Native American" for them. Tracing the rhetorical constitution of Native American and Indigenous identities as it comes to bear through the settler colonial mechanisms of blood quantum, anthropology and the ancient Kennewick human remains, and the case of *Bonnichsen v. United States*, I argue that the biological construction of race and scientific racism has constructed paradigmatic definitions of "Native American" that work to eliminate Indigenous peoples from being recognized as "Native American." Constituted by way of blood, bones, and the law, the settler colonial racial category of "Native American" operates as a universalized epistemic center that turns settler colonialism's eliminatory parts by making Indigenous peoples less "Native American," limiting the legal recognition of "Native Americans" to settler modernity, and disassociating ancient human remains from present-day Indigenous peoples. Further, I posit the Blackfeet and the Native American coalition attempt to find ways to define themselves through the channels of blood quantum, the federal law, and science. It seems that race is a settler colonial mechanism that allows for the honoring of Indigenous rhetorical sovereignty and continuation of survivance by being utilized in different ways to decolonize. Settler colonialism is a machine that mechanizes race to support Indigenous elimination, but like any machine, it can be repurposed to produce decolonial outcomes that support Native American and Indigenous sovereignty and survivance.

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Writing a dissertation is not an easy task. And completing a dissertation suddenly feels much more difficult amid a global pandemic. Thankfully I have family, friends, colleagues, mentors, and advisors that provided me with abundant amounts of support and advice that made completing this project doable. There is not enough space here for to thank all the people who have supported me throughout the years, but I would be remiss not to acknowledge some of them here.

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I am lucky enough to have a younger brother who has been a constant companion. Whether Tyler is aware of it or not, my brother has shown me the importance of being understanding toward others, of being generous, of having a sense of humor, to relax and enjoy the moment, and how to be loyal. And though the distance of our separate life journeys keeps us

apart, I know that we will always make time to be together and I can't wait to see what life has in store for the both of us.

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Table of Contents

Chapter 1: Introduction

The human body has long been used to explain and justify human difference and hierarchy and has been vital in the construction of race. The biological construction of the so-called races has justified settler colonial logics and hierarchies, drawing boundaries between the bodies of white settlers and non-white Others. In the U.S., the constitution of race has supported many settler colonial injustices through rhetorically constructing and racializing "Native American" bodies. Settler colonialism is the practice of material and rhetorical violence that eliminates Native American and Indigenous peoples and their cultures in order to open up space for settlers. Whether by blood or bones, the quantifying, measuring, and tracking of "Native American" bodies through rhetorics of biological and scientific racism support settler colonialism's organizing racial logic "that is continuously communicated (discursively and affectively) to arrange the relationships between settler bodies, native bodies, occupied lands, and technologies of occupation" (Lechuga, 2020, p. 382). In this dissertation I investigate how contemporary political, scientific, and legal rhetorics that support the settler colonial constructions of race work to limit the number of Indigenous peoples that are recognized as "Native American" and subtract Indigenous peoples' sovereign right to define for themselves who they are and who their ancestors are. "Native American" is a settler colonial racial category, built from the study of Indigenous bodies, that works to eliminate Indigenous bodies that do not meet these settler colonial standards from being recognized as "Native American."

Anthropologists and others have long believed that race can be measured and tracked through the analysis human skulls and skeletons. In 2002, forensic anthropologist James Chatters tried to ascertain if the ancient human remains known as Kennewick Man or the Ancient One were in fact "Native American" by measuring and comparing the ancient skeleton to other human skeletons. The Kennewick skeleton's dissimilarity to the perceived

traits characteristic of "Native American" skeletons proved for Chatters that the ancient remains were not "Native American." In an interview with Lesli Stahl of *60 Minutes* Chatters demonstrated why he thought the skull of the Kennewick remains indicated that the ancient human skeleton might not be "Native American":

> Chatters: See the angularity here?
>
> Stahl: Uh-huh.
>
> Chatters: The angle that it forms?
>
> Stahl: Right.
>
> Chatters: That's very typical American Indian. It's a very round head, as opposed to a long, narrow head. He [the Kennewick skull] just jumps out at you. You could put this one in a crowd of—of Native American skulls. I mean, you can put him in with 100 of them, and you'd still pick him right out of the crowd. (Finkelstein & Columbia Broadcasting System, 2002)

For Chatters, it is a "very round head" that constitutes a "Native American" skull, and because the "long, narrow head" of the Kennewick skull "jumps out at you" the skull does not align with the features that compose the scientifically constructed settler colonial racial category of "Native American." It is the rhetorical construction of race through Indigenous bodies that supports settler colonial logics and mechanisms of elimination. The constitution of "Native American" supports settler colonialism's eliminatory mechanisms by removing Indigenous bodies, or in this case skeletons, that do not meet the standards of these settler colonial racial logics.

Patrick Wolfe (2006) argued, race is the organizing grammar of settler colonialism (p. 387). By rhetorically constituting what is "Native American" for Indigenous peoples, the settler colonial construction of race limits the options for Native American peoples to define themselves and their communities: either they allow themselves to be defined as "Native

American" in ways that racialize their bodies and support settler colonial logics, or they refuse to be recognized according to settler colonial standards and then run the risk of not being recognized as "Native American." Either choice seems to perpetuate settler colonialism's inherently eliminatory logics and mechanisms that work to eliminate/assimilate Indigenous peoples (Wolfe, 2006, p. 387). Complicating things even further is that some Native American communities and nations utilize race and the racial constitution of their identity to their advantage. Some speak about race as crucial for identifying who is or not "Native American," as a preventative measure against ethnic fraud and cultural appropriation by "wannabes" that falsely claim Native American identity and ancestry (Cornsilk, 2018; see also Sturm, 1998). In this way, the racially constituted category of "Native American" can be a preventative barrier that prevents outsiders from appropriating Indigenous identity and dispossessing their land and resources. The rhetorical racial constitution of "Native American" identities is a major thread I trace by discussing the rhetorical dynamics of blood quantum, the scientific study of bones, and the violence of settler colonial courts.

The ability for Indigenous and Native American peoples to define and constitute who they are and their own identity is a fundamental act of sovereignty (Cisneros, 2014; Flores, 1996; Lyons, 2000). U.S. settler colonial logics and structures violate Native American and Indigenous sovereignty by attempting to constitute for Indigenous peoples their identities and cultures. Constitutive rhetorics, those which bring about a kind of people (Charland, 1987), seem to be key in defining American and Indigenous identities, as well as for maintaining or resisting the asymmetrical relations of power between the U.S. and Native American nations and tribes. In the book *Playing Indian*, Philip Deloria (1998) highlighted how American national identity has always been in flux, and that the creation of American identity has been continually generated in opposition to the construction of "Indian" identity. Deloria argued, "Indianness was the bedrock for creative American identities, but it was also one of the

foundations (slavery and gender relations being two others) for imagining and performing domination and power in America" (1998, p. 186). It is through the rhetorical constitution of "Native American" or "Indianness" that we see settler colonialism's asymmetrical power relations and logics of elimination manifest.

Similarly, Vine Deloria Jr. described how the settler colonial operation to define Native American identities and nations according to settler ideas has long supported the domination of Indigenous bodies and communities. Deloria Jr. (1969/1988) argued,

> Tribes have been defined as one thing, the definition has been completely explored, test scores have been advanced promoting and deriding the thesis, and finally the conclusion has been reached—Indians must be redefined in terms that white men will accept, even if that means re-Indianizing them according to a white man's idea of what they were like in the past and should logically become in the future. (p. 92)

Deloria Jr. further argued that for far too long scholars have operated from "the unarticulated assumption" that they "should always control the definitions that people use to describe and communicate" (1998, pp. 67-68). I will demonstrate in this dissertation that whether it is through political channels (blood quantum), epistemological routes (skeletons and anthropology), or the court of law, the logics of settler coloniality have long constituted Indigenous peoples according to the "white man's idea." These imposed definitions have been built by and perpetuate settler colonial racial logics that have justified the elimination of Indigenous peoples and the dispossession of their lands. As Jodi Byrd argued, "Indians and Indianness have served as the ontological ground through which U.S. settler colonialism enacts itself" (2011, p. xix).

I trace the settler colonial rhetorical constitution of Native American identities as it comes to bear through the mechanisms of blood quantum (Chapter 2), anthropology and the ancient Kennewick skeleton (Chapter 3), and *Bonnichsen v. United States* legal challenge to

repatriating the Kennewick human remains (Chapter 4). Throughout these chapters I explore the rhetorical dynamics of settler colonialism exercising its eliminatory operations by defining what is Native American blood, bones, and identity for Native Americans, and how the Native American peoples described in this dissertation attempt to challenge settler coloniality by constituting themselves on their own terms to maintain their sovereignty and decolonize. In this dissertation, I comprehensively argue that the biological construction of race and scientific racism has constructed paradigmatic definitions of "Native American" that work to eliminate Indigenous peoples from being recognized as "Native American." Constituted by way of bones and blood, the settler colonial racial category of "Native American" operates as a universalized epistemic center that perpetuates settler coloniality by 1) making Indigenous peoples less and less "Native American;" 2) limiting the legal existence and recognition of "Native Americans" to settler modernity; and 3) challenging Indigenous sovereignty by disassociating ancient human remains from present-day Native American peoples. Through the mechanisms of blood, bones, or the court of law, settler colonialism rhetorically works to eliminate Indigenous peoples by defining what is "Native American" in ways that violate their sovereignty and challenge their material existence.

Additionally, I further argue that Native American peoples and nations attempt to rhetorically navigate the settler colonial imposition of their identities by finding ways to define themselves through the channels of blood quantum, federal law, and science, seemingly settler colonial spaces designed to eliminate/assimilate Indigenous peoples. Sometimes this included the Blackfeet using settler colonial racial logics to their advantage or members of the Native American coalition in the Kennewick remains controversy using mechanisms of science to ensure the reburial of their ancestor. By doing so, they illustrate how settler colonial logics can be repurposed to potentially decolonize and support their sovereignty. It is the settler colonial constitution of Native American identity and Indigenous

peoples "talking back" by enacting their sovereignty to define themselves that is traced throughout this dissertation.

Honoring the Diversity and Sovereignty of the Blackfeet and Native American Coalition

I must acknowledge my position as a rhetorical scholar that resides in spaces of settler privilege. Doing so is part of my attempt to listen to the voices of the Blackfeet and Native American coalition in ways that honor their rhetorical sovereignty. Scott Lyons defined rhetorical sovereignty as "the inherent right and ability of peoples to determine their own communicative needs and desires in the pursuit of self-determination," and as requiring "above all the presence of an Indian voice, speaking or writing in an ongoing context of colonization and setting at least some of the terms of debate" (2000, p. 462). Rhetorical sovereignty is Native American peoples "decid[ing] for themselves the goals, modes, styles, and languages of public discourse" (2000, p. 449-450). Honoring rhetorical sovereignty involves listening to how Blackfeet talk about tribal enrollment on their own terms, and how the Native American coalition constitute their ancient connection to the land through their oral traditions and connection with the Kennewick remains. Native American tribes and nations are composed of a diversity of individuals who might be labeled as "progressive," "traditional," "full-blood," "mixed-blood," "liberal," "conservative," and the like (Mihesuah, 1996). The Blackfeet and Native American coalition illustrate this reality and why it is important for communication studies and rhetoric scholars to honor and respect the diversity of voices present as Native American and Indigenous tribes and nations discuss important and divisive issues, and how to enact survivance.

A way to honor the rhetorical sovereignty of the Native American coalition and the Blackfeet is to acknowledge that I live, breath, think, work, and write in settler spaces, and with that comes forms of settler privilege and power. It is important that I openly address this reality to hopefully avoid reproducing and engaging in the very settler colonial logics that

have long subjugated Indigenous knowledges and voices. While I approach the Native American and Indigenous voices in this dissertation with the decolonial ethic to center their voices and honor their sovereignty, neither my methods nor subjectivity and position enable me to describe the deep, cultural meanings that actions like listening or honoring elders may have for them. As a phenotypically white, cishet, non-Indigenous individual, I cannot and do not claim Indigenous ancestry or affiliation. I personally do not know the pains of social, cultural, and political exclusion due to perceived fractions of "Indian blood." I cannot come close to understanding what it feels like to be told that the shape of my bones determines my identity. I cannot pretend to be able to attest to the heartbreak one may feel knowing the bones of their ancestor have been collected, studied, and then put on display or in storage without being properly buried and returned to the earth. I cannot attest to loss or abandonment felt when denied access to rights, resources, or sense of belonging because of my ancestry despite having possibly lived in a community and culture for my entire life. I have not and probably won't experience judgment based on the composition of my blood, ancestry, or skeleton. I cannot completely understand—and do not pretend to speak for—the entirety of turmoil and pain felt because of blood quantum and the scientific study of human bones. Colonial power structures me as an outsider. And my position as outsider researcher must always be spoken about and acknowledged to hopefully avoid perpetuating settler coloniality through my rhetorical research practices. Therefore, it is my duty to center the voices of the Blackfeet and Native American coalition as much as possible, to honor their rhetorical sovereignty by listening to their public, explicit talk when debating how to challenge settler coloniality and define themselves on their own terms and in their own way.

One attempt I make to honor the diversity and sovereignty of Native American and Indigenous voices is through my language. It is always important to honor the sovereignty and the peoplehood of the populations being discussed, and there is not clear consensus on

what terms are most preferable when referring to Indigenous peoples in the U.S. (Yellow Bird, 1999). The labels I use throughout are capitalized to honor the political agency and sovereignty of the groups and individuals I discuss. For some Indigenous is a term that best honors the diversity and sovereignty of the first peoples to live in the Americas. And for others, Native American is a term they prefer. In my attempt to honor and respect what people themselves want to be called I utilize both the terms Indigenous and Native American when discussing the collective first inhabitants of North America. When referring to a specific group, tribe, or nation I will use the terms they themselves use, such as Blackfeet, Umatilla, Colville, or the Native American coalition. Because this dissertation traces the racial constitution of settler colonial categories the term "Native American" frequently appears in quotes. This is meant to signify I am specifically referring to the imposed settler colonial racial and identity category that is used to construct race and perpetuate scientific racism and settler coloniality.

Additionally, the controversy of the ancient Kennewick human skeleton did not come without the use of different labels and terminology. Popular press, scientists, and anthropologists primarily refer to the ancient skeleton as "Kennewick Man." However, many voices from the Native American coalition arguing for the repatriation of the remains preferred to use the term the "Ancient One." The rhetoric I examine connected to the Kennewick human remains controversy took place in scientific and legal contexts where the term "Kennewick Man" was primarily used. Therefore "Kennewick Man" will be presented when I directly quote from these rhetorics. The "Ancient One" is also present when it is used directly by voices included in the dissertation. However, to avoid confusion by continually rotating between "Kennewick Man" and the "Ancient One," and to avoid reproducing settler coloniality I try to use the phrase "Kennewick human remains" when referring to the Kennewick case and skeleton. Even within our discipline of rhetoric and communication

studies, there is no clear consensus regarding which terminology should be used when investigating the communication of Indigenous peoples. It is not our job as a discipline, nor is it my job in this dissertation, to reach a definitive conclusion about which terms to use. But we can try our best to honor the diversity of these voices and their sovereignty as first inhabitants to the Americas by listening to and respecting how they talk about themselves and the terms they use.

Literature Review

Settler Colonialism & Decolonial Thought

Ania Loomba (2015) argued, "Colonialism was not an identical process in different parts of the world but everywhere it locked the original inhabitants and the newcomers into the most complex and traumatic relationships in human history" (p. 20). Colonialism typically refers to the material, economic, and political relations between an outside foreign power and a subservient population. One process of colonialism is referred to as settler colonialism. Patrick Wolfe (1999) stated that for settler colonialism "The colonizers come to stay—invasion is a structure not an event" (p. 2). Tiara Na'puti (2019) argued settler colonialism should be understood "as an enduring phenomenon of colonial violence and as a power structure" (p. 497). And Michael Lechuga (2020) argued,

> settler colonial governance is an assemblage of ideological power in North America that territorializes the lands stewarded by native peoples, codes the bodies of native, Mestizx, and black peoples as Other, and shapes rhetorical/communicable landscapes into spaces conducive to the reproduction of settlement. (p. 382)

Through multiple structures, logics, and mechanisms settler colonialism engages in material and rhetorical violence that produces land for invading settlers and the elimination of Indigenous peoples. To acquire land, "Settler colonialism destroys" Indigenous peoples and their knowledges and connection with the land in order "to replace" them with settlers

(Wolfe, 2006, p. 388). Patrick Wolfe (2016) argued the elimination of Indigenous peoples is "the core feature" fueling the settler colonial machine (p. 201). Settler colonialism is wired to destroy to replace.

I follow the thinking of la paperson (2017) who argued that settler colonialism should be thought of as a machine of violence and elimination that is comprised of many changing and interlocking parts. In this way, settler colonialism should be viewed and treated "as a set of technologies" (2017, p. 5). When viewed as a machine we can see how settler colonialism is constructed and maintained by several interlocking political, legal, cultural, and epistemological mechanisms. When settler colonialism is understood as a machine, we can comprehend that "settler colonialism is an inclusive, land-centered project that *coordinates a comprehensive range of agencies*" (Wolfe, 2006, p. 393, emphasis added), which are continually shape-shifting because "*the instruments of domination* are evolving and inventing new methods to erase Indigenous histories and sense of place" (Alfred & Corntassel, 2005, p. 601, emphasis added). Viewing settler colonialism mechanistically permits us to see not only the "why" (land accumulation and Indigenous elimination) behind settler colonialism, but the "how" (the various technologies of colonial violence).

There are several morphing parts that enforce settler supremacy, and these mechanisms operate across many cultural, political, and epistemological spaces. I demonstrate this by exploring how settler colonialism enacts its eliminatory operations through the utilization of various rhetorical parts (e.g., blood quantum, anthropology, and the law). In this way we can see the rhetorical enactment of colonial power and settler coloniality across various contexts and across time and space, and in arenas where overt corporeal violence may not seem to occur. Viewed mechanistically we can see settler colonialism reassembling itself, continuously in transit, eliminating Indigenous peoples through blood

quantum (Chapter 2), the scientific study of ancient human remains (Chapter 3), and the legal delegitimization of Native American oral traditions (Chapter 4).

Like any machine, settler colonialism can be rewired, rebuilt, and deconstructed. Decolonial thought attempts to engage in such operations by presenting both a critique and an attempt to reassemble the material, symbolic, rhetorical, and political enactment of settler colonial power and coloniality (Mignolo, 2012; Schiwy, 2007; Wanzer, 2012). Decolonial thought involves listening to and centering long silenced and ignored Indigenous epistemologies, voices, ways of being, and bodies as they disengage from imposed structures of settler colonial modernity and instead craft their own vision of Indigenous life on its own terms. Mack and Na'puti (2019) argued decolonialism "resist[s] colonial logics by centering dissident epistemologies emerging from the embodied knowledge of resistant subjectivities at the colonial difference" (p. 352).

Further, decolonial thought also challenges settler colonial rhetorical and epistemological violence that supports coloniality. Maldonado-Torres defined coloniality as "the long-standing patterns of power that emerged as a result of colonialism, but that define culture, labor, intersubjective relations, and knowledge production" (2007, p. 243). The constitution of coloniality is synonymous with the rise of modernity (Mignolo, 2011, p. 2), and "As modern subjects we breath coloniality all the time and everyday" (Maldonado-Torres, 2007, p. 243). Darrel Wanzer-Serrano argued that "One way to understand coloniality is to see it as a multifarious articulation of modern/colonial discourses and logics that totalize" Western/American epistemologies and ways of being (2015, p. 22). Similarly, Michael Lechuga (2020) argued that settler colonialism's organizing logics "are communicated rhetorically" (p. 384), what others have referred to as "rhetorical colonialism" (Endres, 2015; Stuckey & Murphy, 2001). These mechanisms, whether they be legal, epistemological, or political, seem to center around forwarding race in the settler colonial

rhetorical constitution of "Native American" bodies and identities. At its core, decolonial thought advocates for dismantling settler colonialism by challenging settler coloniality's epistemic privilege by listening to the embodied communicative practices of those existing at the colonial difference.

Rhetorical Sovereignty & Survivance

Native American and Indigenous peoples can enact decolonial thought and challenge settler colonialism through, first, the enactment of rhetorical sovereignty, and second, strategies of survivance. Initially, settler coloniality is an epistemological and ontological order built upon the settler colonial construction of race and racism, where race is "the key element of the social classification of colonized and colonizers" (Quijano, 2007, p. 171). In the United States, there is a long history of racializing Indigenous bodies through biological definitions of "Native American" that have been imposed through multiple mechanisms. These settler colonial operations have worked to subsume and/or ignore Native American sovereignty by only recognizing Indigenous identities and nations that match the "white man's idea of what they were like in the past and should logically become in the future" (Deloria Jr., 1969/1988, p. 92). Sims (2013) postulated, "We need to rethink race in more complex ways that disrupt homogenous conceptions of who belongs in the U.S." as defined by settler colonial racial logics (pp. 4-5). The settler colonial constitution of Native American identities and nations rhetorically frames "settler-state sovereignty as legitimate and indigenous people's sovereignty as illegitimate" (Bruyneel, 2007, p. 8). This produces contemporary contexts where Indigenous and Native American peoples have little to no political and legal agency to enact their sovereignty and define themselves on their own terms (Lake, 1991; la paperson, 2017). As Eddie Glenn (2014) argued, the "power of the federal government to constitute tribes in an image of its own choosing casts a long shadow over the concept of tribal sovereignty" (p. 4).

The enactment of Native American rhetorical sovereignty challenges the settler colonial racial constitution of Indigenous peoples and the elimination of their sovereignty by defining themselves on their own terms. Rhetorical sovereignty is "the inherent right and ability of *peoples* to determine their own communicative needs and desires" (Lyons, 2000, p. 449, emphasis in original). Native American and Indigenous peoples and nations have always "talked back" and resisted settler colonial power and violence (Black, 2009, 2015), exercising their rhetorical sovereignty to define who they and who their ancestors are. Native American and Indigenous peoples resist settler colonialism by "decid[ing] for themselves the goals, modes, styles, and languages of public discourse" (Lyons, 2000, pp. 449-450). The resistance of the settler colonial constitution of identities, bodies, and nations has not and does not always involve the complete disavowal of settler colonial logics and structures (Quijano, 2000). Lyons (2010) argued that sometimes Indigenous peoples "assent to things (concepts, policies, technologies, ideas) that, while not necessarily traditional in origin, can sometimes turn out all right and occasionally even good" (p. 3). Instead, settler colonial parts can be rewired to turn in other directions as Native American peoples navigate settler colonialism's ills to exercise their "decolonial options" (Mignolo, 2009, p. 16). The enactment of Native American rhetorical sovereignty is complex and sometimes necessitates Indigenous peoples use a wide range of strategies to speak and exist "across the boundaries and through the gaps of colonial imposition" (Bruyneel, 2007, p. 124; see also Deloria Jr., 1970/20077, p. 46).

One way Indigenous and Native American peoples can speak across colonial impositions and decolonize is through strategies of survivance. Strategies of survivance argue that Native American peoples are not just surviving, but they are also actively resisting settler colonial logics and processes. In this way survivance should be understood as enacting an active Native American presence that is resisting settler colonialism. Gerald Vizenor argued that strategies of survivance provide "an undeniable trace of presence over absence, nihility,

and victimry (2008, p. 17), making manifest "an active sense of presence over absence, deracination, and oblivion" (Vizenor, 2009, p. 85). Native American and Indigenous strategies of survivance "draw upon one's culture and tradition" to challenge the elision of settler colonial violence and to enact Native American sovereignty (Kuokkanen, 2003, p. 699). In this way, survivance rejects the notion of simply surviving and instead "offers native modes of personal and social renewal" (Kroeber, 2008, p. 25). Strategies of survivance enact decolonial thought because they fundamentally argue that settler colonialism has not succeeded in eliminating Indigenous peoples and that Indigenous peoples, by their very presence, cultures, knowledges, and stories, are actively resisting settler colonialism.

Decolonial thought is both a project of unveiling of settler coloniality and the practice of Native American peoples speaking from their embodied positions to define themselves and their communities in their own way. As such, decolonial thought operates in what Bruyneel (2007) called a "third space of sovereignty," where Indigenous voices that have been and still are silenced or marginalized by settler colonialism exercise their sovereignty to rhetorically construct their own identities, knowledges, and communities outside of the confines of settler coloniality. My investigation of the settler colonial racial construction of "Native American" and its function as part of the settler colonial machine, as well as the Indigenous attempts to decolonize and constitute themselves on their own terms through mechanisms made available to them by structures of settler colonialism addresses scholarly needs in the areas of Native American and Indigenous rhetorics of protest, rhetorics of science, and legal rhetoric.

Native American & Indigenous Rhetorics of Protest

First, there is a need to investigate the settler colonial constitution of Native American and Indigenous bodies and their identities through settler colonial discourses of race. Previous scholars have investigated Native American and Indigenous rhetorics, primarily through discussions of protest and resistive rhetoric (e.g., Black 2007, Endres, 2009; Kelly,

2007, 2014a, 2014b; Lake, 1983, 1991; McCue-Enser, 2017; Morris & Wander, 1990; Ono & Buescher, 2001; Palczewski, 2005; Presley & Crane, 2018; Sanchez et al., 1999; Sanchez & Stuckey, 2000). These discussions have demonstrated that Indigenous rhetorics deploy Indigenous peoples' inherent sovereignty, often engaging in strategies of decolonization. They have stressed the need to place and understand Native American and Indigenous voices/rhetorics in the context of colonization in the Americas—both past and present—to hear and analyze Indigenous voices/rhetorics on their own terms. They have shown how Indigenous peoples "talked back" to the processes and rhetorics of settler colonialism and participated in both historical and contemporary decolonial resistance (Black, 2009). Casey Kelly and Jason Black argued that Indigenous peoples are continually "viewed as irrevocably trapped in the past" (Kelly & Black, 2018, p. 4), as such settler colonial constitutions reinforce tropes of the "Vanishing Indian." These constructions have resulted in viewing and treating Indigenous peoples and rhetorics as "lost to time, close to nature, mysterious, and inaccessible" (Schmitt, 2015, p. 311). Indigenous rhetorics challenge and resist these settler colonial constructions of Indigenous peoples that serve to foster "American pride in its 'antiquities' while configuring Native Americans as the nation's objects rather than its subjects" (Chevrette & Hess, 2015, p. 142). This is further evident in the work of Jackson Miller (1999), who argued that Indigenous protest rhetorics can often be "viewed as a performative struggle for identity because they constitute an attempt to reclaim or recapture popular notions of what it means to be Native American" (p. 189). Rhetorical scholars have argued these rhetorical constructions of Indigenous identities are products of and support settler colonial logics that position Indigenous peoples as Other and have served as justifications for Indigenous land dispossession and assimilation.

Clearly, there is a strong body of scholarship that has investigated Native American and Indigenous rhetorics of protest. Such work has begun to engage in the scholarly

"decolonial turn" (Enck-Wanzer, 2011, p. 364), but these conversations need to continue to center strategies by Indigenous peoples as they attempt to decolonize their bodies and identities from the racial logics of settler coloniality. The settler colonial construction of Indigenous bodies and identity through rhetorics that support biological race have gone largely unattended by rhetorical and communication scholars. There seems to be a need to investigate how rhetorics of blood quantum, physical anthropology, and the law support settler coloniality and the rhetorical constitution of the racial category of "Native American." Aside from the works of Casey Kelly (2011) and Leah Ceccarelli (2013), a prolonged discussion pertaining to the dynamics of how settlers constitute what is "Native American" through their bodies, and how Indigenous peoples attempt to decolonize from these imposed racialized identities has yet to take place.

Furthermore, there is a need to explore how race is rhetorically utilized by those challenging the racial constitution of their identities in ways that ensure their continued survivance. The ways Native American and Indigenous peoples may rhetorically take advantage of race to construct a barrier designed to prevent others from appropriating or co-opting their identities as strategies of survivance seems to illustrate how those challenging settler coloniality use parts of the settler colonial machine to produce operations that honor Indigenous sovereignty and decolonize. Because machines can be rewired and rebuilt to produce many different ends, there is a need to investigate how race serves as a switchboard that provides junctures toward multiple talking points about protecting culture, identity, community, and survivance.

This dissertation addresses this need by centering the strategies used by scientists, the court of law, and the Native American coalition and Blackfeet, as they either reify and/or challenge biological constitutions of race and their identity. In chapter three I analyze the rhetorical strategies used by anthropologists during the scientific study of the ancient

Kennewick human remains. I fill the need of exploring how rhetorics of science perpetuate settler colonial racial logics by showing how the racial category of "Native American" is rhetorically constituted through the study of human skeletons, and how these biological constructions work to eliminate the Kennewick remains from being recognized as "Native American." Furthermore, in chapter two I describe how the Blackfeet nation navigated the many pitfalls of blood quantum when debating their nation's enrollment criteria. This chapter shows how Blackfeet exercise their sovereignty and attempt to decolonize from settler coloniality by defining themselves in ways they believed to be in the best interest for maintaining the material existence of the Blackfeet nation. This chapter highlights how race was used as a wrench to turn mechanisms of Blackfeet survivance, arguing either the racial definition of Blackfeet membership or removal of settler colonial race logics will ensure the nation's continued survivance. Additionally, chapter four illustrates how the arguments in *Bonnichsen v. United States* universalized a settler colonial legal definition of "Native American" that argued ancient human remains must be biologically affiliated with present-day Native Americans. As will be made evident, this dissertation contributes to understandings of how settler colonial mechanisms reinforce race through the rhetorical constitution of Native American bodies and identities, and how the Blackfeet and Native American coalition attempted to dismantle these settler colonial logics and decolonize.

Rhetoric of Science

In this dissertation, I address the need for the scholarship pertinent to the rhetoric of science to investigate how rhetorics of biological race and racism produced by scientists rhetorically constitute Native American and Indigenous identities, and how these constructions operate to eliminate Indigenous peoples and challenge their sovereignty. Previous rhetoric of science scholarship has investigated several topics related to science, scientists, and social issues (e.g., Ceccarelli, 2011; Coleman, 2018; Finocchiaro, 1977; Gross,

1995; Lessl, 2007; Poulakos & Crick, 2012). Furthermore, previous rhetoric of science research has examined the role science communication plays in topics pertaining to race and eugenics, anthropology, disability and the human body, and DNA (Condit, 1996; Condit et al., 2002; Crenshaw & Roskos-Ewoldsen, 1999; Dolmage, 2018; Hasian Jr., 1996; Lynch, 2009; Maxwell, 2012; Muller, 2017; Wheeler, 2017). What this research has demonstrated is the statistical data scientists use to measure and describe humans are not purely objective and unbiased; and that scientific practice, research, and rhetoric can perpetuate scientific racism. Examining *Crania Americana* Daniel Cole (2015) argued, "A rhetorical analysis of *Crania Americana* itself from the standpoint of *kairos* brings to light ways in which it used numerical rigor and an appearance of empirical detachment to mask what essentially was a compendium of longstanding assumptions and misapprehensions" (p. 32). Additionally, Stephanie Grey (1999) noted the scientific utilization of statistics and empirical measurements, particularly when used to measure ethnic and racial groups, often results in "making racial differences and current class disparities appear natural" (p. 307).

Prior rhetoric of science scholarship has routinely pointed out that scientific investigations and their subsequent rhetorics do not occur in an isolated echo chamber, and that when treated and viewed as such, "the effacement of their inherent rhetoricity" and failure to recognize the overlaying of science with ideology and power can occur (Grey, 1999, p. 304). Sims (2013) previously interrogated the role memory plays in contemporary negotiations of race and Native American and American identities. However, to my knowledge, previous scholarship has not engaged in a prolonged investigation into how rhetoric from scientists can support settler coloniality and settler colonial structures by perpetuating ideas of biological race and scientific racism. The rhetoric surrounding biological requirements for Native American enrollment (blood quantum), or the anthropological study of ancient Indigenous human skeletons (the Kennewick human

remains), have not been critically investigated to ascertain how they interlock with settler colonial ideas of race and how these biological constitutions of "Native American" fuel the settler colonial machine. Given that the study of Indigenous bones and the measurement of "Indian" blood have long been part of the anthropological drive to ascertain the racial differences between settler and Native and have resulted in the dispossession of Indigenous lands and other settler colonial harms, it is crucial that these areas of scientific rhetoric receive critical scrutiny.

Furthermore, there is a need for scholarship pertinent to the rhetoric of science to explore how settler colonial dichotomies like scientific knowledge/Indigenous knowledge and colonizer/colonized are not only reinforced through the examination of Indigenous bodies, but also how Indigenous peoples challenge these binaries by using science and scientific knowledge to constitute their own identities and affirm their connection to ancient human remains. The scientific practices of anthropology, archaeology, and genetics can be rewired to produce knowledge and engage in research practices that are done in collaboration with and for Indigenous peoples (Atalay, 2006). Examples like the genetic study of the 12,000-year-old Anzick child in Montana or the On Your Knees Skeleton in Alaska have demonstrated that scientists and scientific practices can work collaboratively with Indigenous researchers and the cultural practices of local Indigenous communities. By working with local Indigenous and Native American communities throughout the process and ensuring the remains were reburied once studies were complete, both instances illustrated how scientists and Indigenous peoples can work together in ways that facilitate both the scientific production of knowledge and Indigenous cultural practices (e.g., Gibbons, 2017; Rasmussen et al., 2014). These two instances illustrated how both science and Indigenous peoples can work across settler colonial boundaries while studying ancient human remains, producing knowledge that strengthens Indigenous ties to the land by answering questions about ancient

human habitation in the Americas. More recently, during the COVID-19 pandemic the Blackfeet nation's early closures of their borders, strictly enforced stay-at-home orders and mask mandates, and having fully vaccinated over 90% of adults has been held up by Center for Disease Control and Prevention as an example for how following scientific and public health policies can save lives (Bolton, 2021).

Therefore, it would be wrong to uphold this settler colonial binary and assume that Indigenous peoples are wholeheartedly opposed to scientific knowledge production or science entirely. In this dissertation I address this need to explore the settler colonial dichotomies between science and Indigeneity through my investigation of the Kennewick human remains controversy in chapters three and four. In these chapters I not only describe how these binaries are reinforced during the legal battle over possession of the remains and during their scientific study, but I also show how the Native American coalition challenged the science/Indigeneity binary by working with the Department of the Interior to corroborate their oral traditions with anthropologic and archaeological evidence in the *Bonnichsen v. United States* case and through the Colville's willingness to have their DNA tested to prove that the Kennewick human remains was their ancestor. These instances show how perceived divisions between settlers and Indigenous peoples can be dismantled by the very parts and components used to construct the binaries to begin with. Scientific parts, like other parts of the settler colonial machine, can be leveraged in different ways to fuel decolonial operations of survivance.

In this dissertation I address this need by examining how the rhetoric from the anthropologic study of the Kennewick human remains and the rhetoric from Blackfeet navigating blood quantum challenge and/or reify the settler colonial constitution of their identities based off the composition of their bodies. Chapter two focuses on the issue of blood quantum and its contemporary utilization in the Blackfeet nation to determine their

enrollment. Blood quantum regulations are a settler colonial apparatus that constitute authentic "Native American" identity based off the perceived composition of a person's blood. Blood quantum makes it hard for Native American descendants to meet the biological standard for tribal membership. However, for some, blood quantum is viewed as necessary to protect Blackfeet resources and identity from further assimilation. Chapter two describes how the Blackfeet navigated the settler colonial constitution of their identity by exercising their sovereignty to define themselves and their nation's membership rules in ways they thought best to ensure their continued survivance. Moreover, in chapter three I explore the rhetorical strategies utilized in the anthropological studies resulting from the scientific study of the Kennewick human remains. I illustrate how the rhetoric from the anthropological study of an ancient human skeleton operates to fuel the settler colonial machine by cementing the scientifically constructed category of "Native American" in ways that disassociated the ancient human remains from the present-day Native American tribes. Chapter three highlights how scientific constructions of "paradigmatic Indianness" rhetorically sparking settler colonialism's eliminatory engines by distancing ancient human remains found in the land from Native American groups and challenging their sovereignty. Because this dissertation explores how both scientific and Native American rhetorics affirm and/or challenge biological race through discourses about blood and bones, I contribute to the field of rhetoric of science by providing a critique of race science as it continues to fire settler colonialism's cylinders.

Legal Rhetoric

The law has long been a mechanism that has perpetuated the settler colonial constitution and racialization of Native American and Indigenous identities. Constructed by and centered around settler colonial logics and structures, U.S. courts have long defined what is a "Native American" and "Native American" culture for Indigenous peoples, leaving

behind an extensive history of "epistemic injustice" (Tsosie, 2012). Rhetorical scholars have investigated legal rhetoric attendant to issues surrounding religion and free speech (Bruner, & Balter-Reitz, 2013), queer futures (Campbell, 2012), gender and political asylum (McKinnon, 2011), abortion (Gibson, 2019), child pornography (Rand, 2019), and suffrage rhetoric (Ray & Richards, 2007). Scholars of legal rhetoric have shown how broader ideological, geopolitical, cultural, and economic forces shape the rhetoric that occurs in legal contexts (McKinnon, 2016). They have argued that we should view legal rhetoric as not only a site of formal recognition, but also the very logic of legal recognition is structured by and constitutes settler colonialism (Burgess, 2015; Dennison, 2014).

McKinnon (2011) argued for the importance for studying "the function of rhetoric in perpetuating" dichotomies that perpetuate injustices (p. 180). To my knowledge, legal rhetoric scholars have not analyzed *Bonnichsen v. United States*, and how legal rhetoric supports settler colonial racial logics and processes of elimination by defining "Native American" through the composition of their bodies. Considering how the law has perpetuated harmful settler colonial dichotomies (i.e., past/present, savage/civilized, reliable/unreliable, settler/Native American) it is important to look at the rhetorical strategies in the Kennewick controversy legal case. Glenn (2014) investigated how the changing meanings of "tribe" across three federal acts worked to integrate the Cherokee nation into the American economy. However, there is a need to investigate how rhetoric is used to reinterpret contemporary human rights legislation in ways that enforce settler colonial racial logics, ignoring Native American sovereignty by preventing the repatriation of their ancestors.

I address this need in chapter four by analyzing the arguments made in *Bonnichsen v. United States* against the sovereign right of the five Native American tribes and nations that were attempting to gain possession of the ancient Kennewick human remains to prevent the anthropological study of the remains and have them reburied. By critically examining Judge

Jelderks' and Judge Gould's decisions in the *Bonnichsen v. United States* (2002/2004) case I argue the courts universalize a settler colonial definition of "Native American" that engages in epistemic injustice by not listening to the Native American appeals to their oral traditions that they have an ancestral connection to the land and cultural affiliation with the Kennewick human remains. The enforcement of this definition not only reinterpreted the Native American Graves Protection and Repatriation Act (NAGPRA), but also rhetorically defined what is "Native American" through material and biological evidence produced from Western scientists. Therefore, I address the needs of legal rhetoric to attune to the settler colonial construction of the law by illustrating how the law functions as a site of settler colonial recognition, where for peoples to be recognized as "Native American" they must fit within the definition rhetorically constituted by the racial logics of settler coloniality.

Preview of the Chapters

Chapter 2 – The Blackfeet and Blood Quantum: Rhetorical Strategies for Navigating Enrollment

A part of the settler colonial machine, blood quantum is a construct that requires Native American nations and peoples to prove their tribal identity through their amount of so-called "Indian blood." Since their inception, blood quantum regulations and discourses have been used to construct and define what it means to be Native American and to regulate who is officially "Native American." Despite not being an official standard by the U.S. federal government, the Bureau of Indians Affairs (BIA) generally defines a Native American and Indigenous individual as "someone who has blood degree from and is recognized as such by a federally recognized tribe or village" (Bureau of Indian Affairs, n.d.). Blood quantum materializes Native American tribal identity into a fixed racial category and has resulted in the dispossession of Indigenous lands and the exclusion of Native American peoples from full rights and membership in their tribal nations. Blood quantum also ignores the complex

and multiple ways Native American and Indigenous peoples constitute and define themselves through their community and cultural knowledge. Blood quantum rules have created many settler colonial harms, causing pain, division, reduction of tribal numbers, and turmoil. For some, blood quantum is a tool of settler colonial elimination and has been imposed onto Native American nations and communities. For others, blood quantum protects Native American nations and identities from further assimilation, making it harder for outsiders to claim membership in their communities.

The Blackfeet nation in northwest Montana has a one-quarter blood quantum requirement. In 2012, a new constitution was proposed for the Blackfeet nation. Part of the proposed constitutional restructure was changing the nation's enrollment from one-fourth blood quantum to third-generation lineal descent. At play in Native American tribal enrollment discussions are the power dynamics between officially "enrolled" tribal members and "descendants." By meeting the criteria for tribal enrollment, "enrolled" members have access to a number of rights and privileges that come with tribal membership. Tribal "descendants" may be able to trace their family lineage to a specific tribe, and in some cases have lived in tribal communities their entire lives but cannot become officially enrolled because they fall short of a tribe's membership criteria. In this chapter I investigate the rhetorical strategies used by Blackfeet to discuss blood quantum. These strategies provide insights regarding how Native Americans rhetorically constitute themselves and what it means to exercise their sovereignty and decolonize. I argue the Blackfeet blood quantum debate brings to light how Native American communities must define themselves according to settler colonial standards or otherwise risk not being recognized as "Native American." However, the very act of defining themselves according to settler colonial logics is also detrimental to the very existence of the tribe. I find that advocates for both retaining blood quantum or moving to lineal descent engaged in rhetorical strategies that claimed to resist

settler colonialism. By engaging in strategies of sovereignty and survivance, both positions argued they were acting in the best interest of the tribe by protecting and honoring the Blackfeet nation.

I find that the rhetoric from the Blackfeet can be viewed as a Native American nation in the twenty-first century attempting to define for themselves their own membership criteria and what it means to be Blackfeet, constituting their identity outside settler coloniality and enacting survivance while exercising multiple rhetorical options. The Blackfeet nation's decision to keep one-quarter blood quantum illustrates how the settler colonial mechanism of race can produce several different outcomes that ensure the nation's survivance, such as making it difficult for outsiders to claim membership and fuel the continued dispossession of Blackfeet land and culture.

Chapter 3 – Skulls, Bones, and Anthropology: The Settler Colonial Machine and the Scientific Investigation of the Kennewick Remains

On July 28, 1996, the human remains of the Ancient One, whom scientists referred to as Kennewick Man, were found on the banks of the Columbia River in Kennewick, Washington. After years of legal debate, courts ruled in 2004 that scientific studies on the remains could take place. Approaching the analysis of these ancient bones as part of the settler colonial machine, in this chapter I analyze the anthropological studies published in the edited volume, *Kennewick Man: The Scientific Investigation of An Ancient American Skeleton*. I argue the anthropological analyses in *Kennewick Man* cement the racial category of "Native American" as a universalized center that destabilizes the remains' connections to present-day Native American groups. These analyses support settler colonialism's eliminatory mechanisms through three rhetorical parts: 1) the operationalization of settler colonial racial categories produces racially oriented rhetoric that excludes the remains from being considered Native American; 2) talking about the remains in statistical terms

constitutes “paradigmatic Indianness” that works to eliminate the remains from being considered Native American; and 3) discussions about ancient human bones provides the grounds for questioning who were the original inhabitants to the land. In this way, the volume challenged Native American sovereignty by disassociating ancient human remains found in the land from present-day Native American peoples, putting in place contemporary settler colonial mechanisms that erase ancient Native American connections to and presence on the land. From race to statistical analysis to broader implications, settler colonialism is at work in the rhetoric from *Kennewick Man* and entails not recognizing Native American peoples’ sovereignty, eliminating Indigenous connections to the land, and using Native American bones as sites of resource extraction.

Chapter 4 – NAGPRA and Bonnichsen v. United States: The Logics of Settler Colonial Recognition and the Refusal of Repatriation

Signed into law on November 16, 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) requires that Native American tribes and nations must be consulted when human skeletal remains or objects are found. If the objects or human remains are determined to be Native American, then they must be repatriated to the Native American tribe, nation, or family believed to be either biologically or culturally affiliated with the remains or objects. However, when the roughly 9,200-year-old Kennewick human remains were found emerging from the banks of the Columbia River in 1996, repatriating the ancient human remains to local Native American tribes claiming the remains as their ancestor would quickly turn into a two-decade controversy.

After the United States Army Corps of Engineers (USACE) determined the remains to be “Native American” they fully intended to dispose the Kennewick human remains to a coalition of five Native American tribes claiming the remains as their ancestor. However, this would be halted when a group of anthropologists and archaeologists filed litigation to stop the

enaction of NAGPRA so the scientific study of the ancient Kennewick remains could occur. *Bonnichsen v. United States* would be one of the first major repatriation cases to test NAGPRA. In August 2002, Judge John Jelderks would rule that the decision that the ancient remains were affiliated with the five claimant tribes was "arbitrary" and "capricious" and determined that the remains should be allowed to be studied by the plaintiff scientists. Jelderks' ruling would then be affirmed by the 9th Circuit Court of Appeals in 2004. In this chapter, I posit that the rhetoric from the *Bonnichsen v. United States* rulings turn settler colonialism's legal mechanisms by privileging the pursuit of Western science and knowledge production to the detriment of Native American peoples and their sovereignty. *Bonnichsen v. United States* (2002/2004) brings to bear the intersections of law, science, human rights, and Native American sovereignty in the United States, and how legal parts interlock with settler colonialism.

I argue that by not listening to the Native American coalition's appeals to their oral traditions that speak to their ancestral connection to the land and cultural affiliation with the Kennewick human remains, the rhetoric in *Bonnichsen v. United States* universalized settler colonial definitions for what is legally recognized as a "Native American." Doing so rhetorically enacted colonial time, which cemented the legal definition of "Native American" to the modern day, fixing settler colonialism as the beginning and end point for the legal existence of "Native Americans." The *Bonnichsen* decisions also engaged in rhetorical strategies that prioritized material evidence from Western scientists when deciding what is a "Native American" and whether an ancient skeleton is indeed the ancestor of Native American peoples. The rhetoric from the court cases can be understood as settlers not only defining what is knowledge, but also defining what is Native American identity; speaking for Native Americans about themselves, and in the process, violating Native American sovereignty to rhetorically constitute themselves and their ancestors.

Chapter 5 – Discussion, Limitations, and Implications

In the final chapter, I engage in a discussion of how I advance, extend, and continue scholarly conversations around blood-speak, rhetoric of science, and legal rhetoric. I argue that chapter two demonstrates a need to understand Casey Kelly's (2011) blood-speak as an exercise of political autonomy and sovereignty by deciding what membership is best for their own nation and enacting survivance. I posit chapter three illustrates the construction of race still occurring in the twenty-first century through the scientific analysis of bones, and it is prudent that rhetoric of science scholars do not leave unattended the ways discussions of bones are operationalized to erase Indigenous presence on the land. Given that federal Indian law is an important area of legal practice, scholarship, and theorizing, I argue that legal rhetoric scholarship needs to interrogate further how the law works in conjunction with settler coloniality and how Native American and Indigenous peoples attempt to decolonize through legal channels. I then explore future implications and directions for further research. I reason that settler colonial racial logics present in rhetorics of Indigenous blood and bones have been extended and transmuted into the rhetorics of human DNA and ancestry. Future scholars should investigate these rhetorics as they seem to continue the settler colonial elimination of Indigenous presence on the land by crafting colonizing narratives of ancient settler connections to the land. I also argue that the Native American and Indigenous voices described in this dissertation demonstrate ways to decolonize that repurpose mechanisms of settler colonialism to produce new and decolonize ends. Future scholars looking at how peoples seek to decolonize from settler coloniality should investigate how their talk works to protect and regain material resources by rotating settler colonialism's mechanisms in other directions to support their sovereignty and to decolonize.

By tracing the settler colonial racial constitution of "Native American" bodies and identities, and the Indigenous challenges to these settler colonial impositions, this dissertation

illustrates that settler colonialism is a machine of elimination that can be rebuilt and repurposed to produce decolonial outcomes that honor Native American and Indigenous sovereignty and ensure survivance.

Chapter 2 – The Blackfeet and Blood Quantum: Rhetorical Strategies for Navigating Enrollment

Blood quantum is a complex issue with a long and contentious history. Blood quantum laws have their roots in the General Allotment Act of 1887, commonly known as the Dawes Act. The Dawes Act divided what was communally owned land on Native American reservations into private allotments. Tracking and quantifying "Indian" blood was key in composing the first registries of tribal members used to allot the land. This was because blood was believed to carry essential attributes for determining the "Indian" race. The goal of blood quantum is to regulate who is officially "Native American," with blood quantum becoming official federal legislation with the 1934 Indian Reorganization Act (Ellinghaus, 2017). As Sterling HolyWhiteMountain put it, "The simplest way to explain this is the government was only going to pay money according to the number of people who had enough 'Indian blood' to qualify as being fully 'Indian'" (2019). Blood quantum requirements for tribal enrollment were created by the U.S. government "to diminish the recognition of Indigenous claims to land over generations" (Arvin et al., 2013, p. 12; see also Schmidt, 2011). Through social, political, and legal channels blood quantum and the discourses of "Indian blood" have been used to construct and define what it means to be "Native American" and has "helped to constitute unique formations of the Indian and the tribe for more than a century" (TallBear, 2013, p. 47).

A Native American and Indigenous tribe that is federally recognized by the U.S. is an entity "that is recognized as having a government-to-government relationship with the United States" (Bureau of Indian Affairs, n.d.). Historically federal recognition for Native American tribes has been established through treaties and other acts of Congress, with formally recognized Native American tribes and nations deciding for themselves their criteria for membership. Often Native American tribal membership requires some form of definitive proof of tribal ancestry, whether that be a degree of blood quantum or other forms of descent.

Definitive proof of being a tribal descendant can be established through a variety of methods; blood quantum and third generation lineal descent are two examples. Some Native American tribes and nations like the Crow and the Seneca determine their membership through matrilineal descent. This means enrollment is determined not by perceived amount of a certain type of "Indian" blood, but rather "the mother must be an enrolled member in order for the children to be enrolled" (Seneca Nation of Indians, 2021). This means descendants who have an enrolled Seneca father and a non-enrolled Seneca mother do not appear on official records as enrolled Seneca. While blood quantum quantifies "Native American" through rhetorics of race, matrilineal descent measures what is means to be "Native American" through rhetorics of gender. Regardless, both are methods of determining Native American tribal enrollment that are controversial and make it difficult for some to become officially enrollment members of their community.

Determining someone's "Native American-ness" is important because only officially enrolled members of a Native American nation are eligible for voting rights, can hold tribal offices, have access to lands and resources on the reservation, and per capita payments for members. Blood quantum materializes Native American identity into a fixed racial category that often results in the dispossession of Indigenous lands and the exclusion of Native American peoples from equal rights and citizenship (Sturm, 2002). This brings to light the power dynamics between those who are officially "enrolled" and those who are "descendants." Those who are "enrolled" are officially recognized as members of a tribe because they fulfill the tribe's criteria for membership. This means they have access to the gamut of tribal rights and benefits available (i.e., such as voting in tribal elections or retaining inherited lands). Those who are descended from a member or members of a Native American tribe but do not meet the tribe's enrollment rules fall into the category of "descendants." In

some cases, descendants may live their entire lives in a tribal community and culture but never be recognized as officially enrolled members of their community.

Eva Garroutte (2003) argued, “The ultimate and explicit federal intention was to use the blood quantum standard as a means to liquidate tribal lands” (p. 42). Blood quantum requirements prevent those who may not meet the biological standards for tribal membership from maintaining political agency in their communities and unable to retain lands their families have lived on for generations. When used for enrollment, blood quantum also reduces the criteria for tribal membership to biology, ignoring how involvement in the community and engagement in tribal culture and cultural knowledge are key important components of Indigenous identity. Eddie Glenn (2014) noted that blood quantum is a technology used “to integrate populations of Indigenous Americans into the American economic system by [re]constituting those populations as something other than what they had been before” (p. 10). Yet, as Circe Sturm (1998) argued, there seems to be a “contradictory consciousness” surrounding blood quantum, because many “resent discrimination on the basis of race and yet use racially hegemonic concepts to legitimize their social identities and police their political boundaries” (p. 231). For some, blood quantum is a settler colonial construct imposed on Native American nations. For others, the continued use of blood quantum represents Native American tribes exercising their sovereign right to decide for themselves their membership rules. Blood quantum rules have created many pitfalls in Native American communities, and there is deep division about whether to keep blood quantum criteria (Irvine, 2020).

The Blackfeet nation, located in northwestern Montana, maintains a blood quantum law. Article II of the Blackfeet constitution requires members to have at least one-quarter Blackfeet “Indian blood” to be officially enrolled (Blackfeet Const. art. II). One-quarter blood quantum rules were amended into the Blackfeet constitution in 1962; but in 2012 a new

constitution was proposed. Correcting issues of tribal corruption and recurring abuses of power by members of the Blackfeet Tribal Business Council (BTBC) came to the fore in the Blackfeet community; the main goal of the new constitution was to reorganize the Blackfeet nation's government away from a tribal council and toward a government with three elected branches (Flathead Beacon, 2013). Part of this proposed constitutional restructure was changing the nation's enrollment requirements from one-fourth blood quantum to third-generation lineal descent. This proposed change created an impasse, with seemingly the entire community split between either maintaining blood quantum or removing it.

Amongst the Blackfeet there were two groups debating the merits of blood quantum: BEAR (Blackfeet Enrollment Amendment Reform) and BAOE (Blackfeet Against Open Enrollment). Blackfeet Council Chairman Harry Barnes once mentioned that "We have either broken or strained every relationship that we as a tribe have, this division has split the community, it has caused anger, it has caused accusations" (Murray, 2016a). After years of debate and division, on June 15, 2016, the BTBC voted 8-1 to approve the new constitution and lineal descent (Murray, 2016b). The new constitution was reviewed by the Bureau of Indian Affairs and then opened for vote by all enrolled members of the Blackfeet nation. In June 2017, officially enrolled members voted on and rejected the proposed new constitution (Franz, 2017), retaining the one-fourth blood quantum requirement. I posit that an investigation of the rhetorical strategies used by Blackfeet to discuss blood quantum can provide insights regarding how a Native American nation rhetorically constituted themselves and determined what it means to exercise their sovereignty and to decolonize.

Previous scholars have investigated Native American rhetorics debating issues related to memorial spaces, folk art, and what is authentic Native American identity (Palczewski, 2005; McCue-Enser, 2017; McGeough et al., 2015; Roberts, 2007). Other scholars have engaged in more ethnographic research that has described how Blackfeet cultural practices

construct cultural discourses that bring about a way of being and talking about the world that is uniquely Blackfeet (Carbaugh, 1999; Carbaugh & Rudnick, 2006). Furthermore, the biopolitical and necropolitical management of human bodies through discourses of blood have also been investigated (Happe et al., 2018). Of note, Casey Kelly (2011) argued that "blood-speak" rhetorically tethers ideas of "Indian blood" as the necessary component for authentic Native American identity and membership, operating as a barrier that constructs Native American identity as a biologically determined racial category.

Blackfeet arguments concerning blood quantum are blood-speak in action, and blood-speak is one dimension of settler coloniality. Decolonial thinkers have shown that settler colonialism is not just a structure of material elimination enacted toward Indigenous peoples, but also settler colonialism has produced long-standing political, symbolic, and discursive "patterns of power" that continue to subjugate Indigenous peoples (Maldonado-Torres, 2007, p. 243; see also Mignolo, 2011; Wolfe, 1999). Coloniality is the continuation of settler colonialism through rhetorics that position Native American peoples to identify "with the profoundly asymmetrical and nonreciprocal forms of recognition" (Coulthard, 2014, p. 25). Blood quantum and blood-speak are one dimension of settler coloniality, where the Blackfeet's blood-speak illustrated not only these asymmetrical forms of colonial power but also demonstrated rhetorical resistance to colonization.

Communication studies researchers have investigated communication practices by and for people marginalized by settler coloniality and reflected upon their own research practices to attempt to avoid reproducing it (e.g., Agboka, 2014; Angel & López-Londoño, 2019; Hanchey, 2019; Vats, 2016). Researchers have also stressed the importance for communication studies and rhetoric scholars to read decolonizing communication on its own terms (e.g., Calafell & Delgado, 2004; Mack & Na'puti, 2019; Wanzer-Serrrano, 2015). They have shown how Native American and Indigenous peoples communicatively resist settler

coloniality (e.g., Black, 2007, 2009; Kelly, 2014a, 2014b; Lake, 1983, 1991) and how Indigenous peoples worldwide protest government policies not of their own making (e.g., Barker, 2015; Dreher et al., 2016). However, to my knowledge there has not been an investigation of how a Native American nation, like the Blackfeet, debates the merits of blood quantum and how such rhetoric demonstrates a Native American nation deciding for itself how to exercise their sovereignty and to decolonize.

Debates about blood quantum bring the logics of coloniality out of hiding because they demonstrate the Blackfeet rhetorically negotiating their own identities and sovereignty within political and legal structures organized and run by settler colonialism. It is necessary to study the rhetorical strategies used by the Blackfeet to discuss blood quantum because the strategies demonstrate a Native American nation negotiating amongst themselves about what decisions truly are in the best interest of their nation and collective sovereignty. Their strategies of survivance show how settler colonial mechanisms, like blood quantum and race, can be rewired to protect Blackfeet resources and sovereignty. The Blackfeet strategies speak to ongoing questions about how to manage disagreement about problems rooted in settler colonialism. Moreover, there is an abundance of public communication and texts available that provide a window into the various perspectives present as the Blackfeet openly discussed how to best define themselves and their community. Therefore, this chapter's investigation of the strategies used by Blackfeet members and descendants to debate blood quantum will answer the call for "greater recognition of the actually existing diversity in Native America" by highlighting how Blackfeet members and descendants debate the highly divisive issue of blood quantum (Lyons, 2010, p. 32; see also Endres, 2015, p. 675). Doing so will add to understandings of how peoples long subjugated by the settler colonial machine communicatively resist settler colonialism and how they protest government policies not of their own making.

In this chapter I argue that the Blackfeet blood quantum debate brings to light how Native American communities are placed in a scenario where they must define themselves according to settler colonial standards or otherwise risk not being recognized as "Native American." However, the very act of defining themselves according to settler colonial logics is also detrimental to the very existence of the tribe. I posit the Blackfeet attempted to rhetorically navigate this situation by debating blood quantum in ways that seek to promote the nation's sovereignty and decolonize. I find that when debating blood quantum advocates for both lineal descent and blood quantum engaged in argumentative strategies that claimed to resist contemporary colonization. These strategies were: 1) avoid dehumanizing others by engaging in racism, 2) avoid perpetuating further colonization of the Blackfeet, 3) ensure Blackfeet survivance, and 4) support Blackfeet rights to self-determination. Regardless of stance, both positions argued they were acting in the best interest of the tribe by protecting and honoring the Blackfeet nation. Both sides utilized these strategies to not only debate the merits of blood quantum, but also how to best exercise their nation's sovereignty and decolonize when navigating contemporary settler colonial problems. They showed how race can be used to the advantage of Blackfeet sovereignty by manipulating settler colonial gears to turn in decolonial directions. In doing so, both sides' blood-speak rhetorically navigated the ills of settler colonialism by constituting Blackfeet community and identity outside of settler colonial logics and enacted survivance.

In what follows I first provide greater context of the Blackfeet blood quantum debate before describing how decolonial thought and Native American survivance helps to explicate how the Blackfeet attempt to navigate blood quantum. Next, I highlight how the Blackfeet's blood-speak presented messages of decolonial survivance. Last, I provide implications regarding the rhetorical undoing of settler coloniality and the importance for rhetorical

scholars to attend to rhetorical nuance when looking at the voices of those navigating contemporary settler colonial pitfalls.

Context

Blackfeet discussion of blood quantum clashed on issues of expediency, tribal corruption, and justice. As one Blackfeet stated, discussions of blood quantum are really "about corruption. It's about changing this government and the things that have been going on" (Mountain Child, 2013). Supporters of third generation lineal descent argued that enrolling descendants would enable Blackfeet to maintain the nation's land base and continue receiving financial support from the U.S. government by increasing the nation's membership and would give descendants who are Blackfeet in all but blood degree—e.g., who grew up and still live on the reservation, participate in cultural events, speak the language, and more—a voice by vote. Supporters of third-generation lineal descent argued that removing blood quantum would change the population of Blackfeet voters, making it harder for the same tribal leaders to be elected every year, which is "One of the reasons there's so much resistance to it" (Mountain Child, 2013). The group named themselves BEAR (Blackfeet Enrollment Amendment Reform). Blackfeet opponents of enrollment reform argued that changing enrollment criteria would produce harmful consequences including loss of federal recognition of tribal status, spreading even more thinly limited resources for enrolled Blackfeet, assimilation into white culture, and racial degradation. They organized and named themselves BAOE (Blackfeet Against Open Enrollment) (Associated Press, 2012; Redman, 2013).

In mid-January 2012 one enrolled Blackfeet posted on the Facebook Blackfeet Descendants Group, "just for discussion, I want to ask the group: If a change were to happen, what do you think should be the criteria for enrollment?" (L. Juneau, 2012). Group members soon settled on a criterion of third generation lineal descent from an enrolled Blackfeet and

decided to undertake processes for amending the Blackfeet constitution. They first needed to collect signatures from two-thirds of enrolled Blackfeet on a petition to the Bureau of Indian Affairs for a Secretarial election to vote on the proposed amendment.

Blackfeet faced significant opposition to broader public discussion of enrollment reform. In early February 2012 when signs were put up on the reservation about a meeting to discuss enrollment reform, "almost as fast as" the signs were put up, somebody took them down (Humphrey, 2012a). In late February the tribe's governing body, the Blackfeet Tribal Business Council (BTBC), voted 5-4 to prohibit BEAR from meeting in tribal buildings. In March a front-page story in the local newspaper, the Glacier Reporter, reported that "simply discussing enrollment created an immediate backlash" (McGill, 2012). The news story went on to note, "But with a large presence on Facebook as well as their own website at www.blackfeetforever.com, physical limitations mean less than they might have in earlier times" (McGill, 2012).

Blackfeet overcame many hurdles and succeeded in generating public debate about enrollment through public meetings, letters to the editor of the Glacier Reporter, radio debates, and Facebook groups. This is remarkable given ongoing reluctance and resistance to discussing the issue. For example, opponents of enrollment reform walked out during testimony by a supporter at one public meeting, tried to stop off-reservation meetings by calling the venues hosting the meetings, created a Facebook page closed to the public, and tried to remove a booth for reform supporters from an Indian Days celebration (Daisy, 2012; Humphrey, 2012b). Likewise, supporters of enrollment reform acknowledged that discussion was painful and that it took courage to stand up and speak, and repeatedly called on Blackfeet to overcome fear and apathy. While the BTBC refused to take an official position on the issue of enrollment reform (Show, 2012), members of the BTBC were seemingly split between two separate factions as the Blackfeet nation attempted to sort out these problems of tribal

governance and corruption, and enrollment reform (Bergeson, 2014). In June 2016, the BTBC voted to approve the new constitution, which was then opened for vote by enrolled Blackfeet. A year later enrolled Blackfeet rejected the proposed new constitution, retaining the nation's one-fourth blood quantum requirement (Franz, 2017).

In this chapter, I focus on a Blackfeet public discussion of blood quantum and enrollment reform from 2012 – 2016. Much of my analysis focuses on rhetoric that occurred in 2012 and 2013 because Blackfeet identify 2012 as the beginning of the movement and these early years as particularly significant and active (e.g., McGill, 2012; Burns, 2012). For instance, in 2012 the *Glacier Reporter* published at least 43 letters to the editor supporting enrollment reform and 21 against; by comparison, in 2013 it published only around 7 letters to the editor for and 3 against enrollment reform. This analysis focuses on a variety of Blackfeet voices from both sides of the enrollment debate. The rhetoric from Blackfeet originates from sources like the *Glacier Reporter*, *Native News Project*, blogposts, and posts on the Blackfeet Descendants Facebook group.

Decolonial Thought & Survivance

Settler colonialism is a structure of settler supremacy that destroys Indigenous peoples and knowledges to accumulate land for settlers. The mechanisms and logics of settler colonialism are "inherently eliminatory" (Wolfe, 2006, p. 387), where through channels like blood quantum settler colonial structures and logics subtract Indigeneity to make Indigenous peoples "less and less native" (la paperson, 2017, p. 14). In this way, settler colonialism "is different from other forms of colonialism in that settlers come with the intention of making a new home on the land" (Tuck & Yang, 2012, p. 5; see also Wolfe, 1999).

There are several morphing technologies that enforce settler colonialism, and these technologies operate across many cultural, political, and epistemological contexts and arenas. Blood quantum regulations are in their origin an apparatus for settler colonial land

dispossession instituted through the Dawes Act (TallBear, 2013, p. 55-6). Blood quantum cements biological ideas of race and culture through quantifying and ranking human bodies through political, legal, and cultural channels. Blood quantum regulations also produce ethnocentric rhetorics for European (White) superiority and have provided rationales for conquest and colonization (Brown & Schenck, 2002). By making it difficult for the descendants of Native American tribes and nations to have enough "Indian blood" to meet membership requirements, blood quantum acts as a buttress for the settler colonial acquisition of land and eventual elimination of Indigenous peoples. The settler colonial ills stemming from blood quantum are being dealt with in present-day Native American communities, as blood quantum is still used—for the tribes and nations that have a blood quantum requirement—to determine membership and allocate tribal resources, and it has split families and communities between enrolled and non-enrolled, between "mixed-blood" and "full-blood."

Decolonial thought both critiques and attempts to transform the material, symbolic, rhetorical, and political enactment of settler colonial power and coloniality (Maldonado-Torres, 2007; Mignolo, 2012; Schiwy, 2007; Wanzer, 2012). Blood quantum and blood-speak is one part of settler coloniality that continues the "multifarious articulation of modern/colonial discourses and logics" (Wanzer-Serrano, 2015, p. 22). Decolonial thought involves listening to and centering Indigenous epistemologies, voices, ways of being, and bodies as they disengage from imposed structures of settler colonial modernity and instead craft their own vision of Indigenous life on its own terms. Decolonial thought is both a project of unveiling the coloniality behind blood quantum and the practice of Native American peoples speaking from their embodied positions to define themselves and their communities in their own way. As such, decolonial thought operates in what Bruyneel (2007) calls a "third space of sovereignty," where voices that are attempted to be silenced by settler

colonialism exercise their sovereignty to construct their own identities, knowledges, and communities outside of the confines of settler coloniality. Decolonial thought is always simultaneously pointing to the co-constitution of modernity/coloniality and the building of decolonial alternatives, futures, and options.

One-way Native American rhetorics and voices can engage in strategies of decolonial thought is through the enactment of what Gerald Vizenor called survivance. Strategies of survivance continually assert an active "Native resistance of dominance" and craft "an undeniable trace of presence over absence, nihility, and victimry" (Vizenor, 2008, p. 17). Survivance should be understood as a combination of survival with resistance, where survivance rejects the notion of just surviving settler colonialism and instead survivance "offers native modes of personal and social renewal" (Kroeber, 2008, p. 25). Survivance centers the fact that Native American and Indigenous tribes, communities, and nations are not just surviving settler colonialism, but are continually and actively resisting. In this way, strategies of survivance can be understand as one way to enact decolonial thought because they center Native American voices as they speak to how they are an active presence on the land and are "surviving the documented, centuries-long genocide of American Indian peoples and resisting still the narratives and policies" that produce the assimilation and elimination of Indigenous peoples (King et al., 2015, p. 7).

Survivance strategies argue settler colonialism has not succeeded in eliminating Native American and Indigenous peoples, and that Indigenous peoples by their very presence, cultures, and knowledges are still resisting settler colonialism. The Blackfeet blood-speak presented strategies of survivance that worked to maintain the existence and sovereignty of the Blackfeet nation by trying to find ways to decolonize their tribal identity and community outside of the logics and mechanisms of settler colonialism. First, they spoke from and emphasized their embodied experience, culture, and knowledge as Blackfeet members and

descendants. They attempted to define their nation's enrollment criteria and Blackfeet identity through rhetorical avenues outside settler coloniality. Doing so provided decolonial strategies that challenged the cloaking of settler colonial power and the universalization of settler coloniality. Second, their blood-speak enacted survivance because they voiced how they were working in the best interest of the nation, and they spoke about their enrollment in ways that worked to constitute Blackfeet membership and identity outside of settler colonial power. They constructed a vision where Blackfeet enrollment criteria were not determined by outside powers but rather by themselves. Blood quantum is a buttress for settler colonialism, but it is important to avoid the critique that Native Americans who support blood quantum are supporters of colonization. This occludes what Scott Lyons importantly argued, that Native Americans have continually "resisted and appropriated the dominant discourses of their times" in order to escape "from the prison house of dominant discourse" (2010, p. 30; see also Black, 2009). Therefore, the blood-speak of the Blackfeet constituted themselves in ways that attempted to resist past and present colonial injustices by deciding for themselves their collective identity, enacting their sovereignty, and ensuring their survivance.

Analysis

When debating enrollment reform, advocates for both blood quantum and lineal descent engaged in multiple rhetorical strategies of survivance that claimed to be in the best interest of the Blackfeet nation because they resisted contemporary settler coloniality and colonization. In doing so, the following strategies were utilized: 1) avoid engaging in racism, 2) avoid perpetuating colonization, 3) ensure Blackfeet survival, and 4) support Blackfeet rights to self-determination. Because these four strategies claimed to resist both blood quantum and lineal descent as a buttress for colonization, both BEAR and BAOE viewed their strategies as promoting the nation's sovereignty and continued existence. Therefore, their blood-speak presents messages of decolonial survivance that attempted to resist

contemporary colonization by constituting Blackfeet identity and community outside of the logics of settler coloniality.

Avoid Engaging in Racism

First, advocates for both lineal descent and blood quantum utilized the strategy of avoiding racism and the dehumanization of others. In doing so, this strategy attempted to set the terms of the enrollment reform debate in ways that called others out for reproducing settler colonial logics that solidify biological ideas of race that have long subjugated Indigenous bodies and communities. This strategy of survivance encouraged Blackfeet, both for and against blood quantum, to avoid the racist logics of settler coloniality by constituting their own and tribal identities in ways that best ensure the survival and sovereignty of the Blackfeet. This decolonial strategy of survivance argued others were engaging in racism by supporting colonial policies that racialize Blackfeet identity, dehumanize the Blackfeet, and will lead to the genocide of the Blackfeet nation. Both sides' arguments that the other's stance is a racist practice that will perpetuate colonialism illustrate attempts to constitute their identities outside the racial logics of settler coloniality.

Supporters of BEAR argued that using blood quantum to determine Blackfeet identity and enrollment is racist because quantum laws limit the understanding of Blackfeet identity to one embedded within race science, a largely Western endeavor that is built upon and has propagated settler colonial racial logics. One Blackfeet argued, "Blood Quantum was created by Scientific Racism" (Juneau, 2015a). Pointing out that blood quantum regulations have their origins in racist scientific practices that have and still do support settler colonialism, other members are encouraged to avoid reproducing settler colonial racism. Another evoked this strategy of avoiding racism when he stated,

> We (the Blackfeet descendants) are literally living in a caste system, people with certain genetic qualities who are denied access to resources because of their racial

> makeup. If any other group in America was advocating this type of racial purity, they would be condemned as racists. (Murray, 2016a)

This strategy reminded others that blood quantum supports contemporary settler colonialism, where certain people "are denied access to resources because of their racial makeup." This has resulted in blood being used to fix Blackfeet identity as a racial category constructed by settler colonialism that operates to achieve a certain "type of racial purity" that is detrimental to the tribe's sovereignty and continued existence. This rhetorical strategy presented ways to discuss and challenge settler colonial problems by avoiding practices of racism that create division within the nation and the dispossession of Blackfeet lands. When supporters of BEAR used this strategy, they sought to exercise their tribal sovereignty to remove blood quantum and constitute Blackfeet identity in ways that they viewed as wholly Blackfeet. This strategy of survivance argued removing blood quantum as the best way to decolonize by supporting the tribe's continued existence and sovereignty.

Harkening back to settler expansion, supporters of blood quantum and BAOE utilized the strategy of avoiding racism by arguing the "real racist threat" is the potential invasion of non-enrolled Blackfeet into the nation. Blood quantum supporters suggested the "real racist threat to the Blackfeet people is the tidal wave of descendants who would lay claim to tribal membership if lineal descent is adopted" (Murray, 2016a). For BAOE, to retain blood quantum is a true act of Native American sovereignty and survivance because it defends the Blackfeet nation from continued colonial invasion from a "tidal wave of descendants" that would "lay claim" to Blackfeet membership. This strategy of survivance sought to protect the nation from further colonization by working to decolonize their identities from further assimilation into non-Blackfeet culture and settler colonial logics. This decolonial strategy of survivance sought to ensure the survival of the Blackfeet by protecting Blackfeet identity, resources, and citizenship from further colonization. Blood quantum advocates reasoned that

retaining one-quarter blood quantum rules is an act of Blackfeet sovereignty and survivance that ensures the material survival of the Blackfeet. BAOE's strategic call to avoid "the real racist threat," sought to decolonize by avoiding the reproduction of settler colonial logics that assimilate Blackfeet into white culture. One Blackfeet argued, "BEAR's campaign to eliminate the blood quantum is nothing more than a racist attempt to assimilate the Blackfeet people into white culture" (Murray, 2016a). Reasoning that attempts to eradicate blood quantum "is nothing more than a racist attempt to assimilate the Blackfeet people," blood quantum proponents argued that BEAR are really the ones who are not acting in the best interest of the nation's survival by supporting settler colonialism and its racist logics. Through this strategy, blood quantum supporters argued that the best way for Blackfeet to define themselves is to retain blood quantum and prevent further cultural assimilation of the tribe.

Overall, this anti-racist strategy used by advocates for both lineal descent and blood quantum attempted to decolonize the Blackfeet from settler coloniality by ensuring that others avoid perpetuating settler colonial constructions of race and racism by either mathematically eliminating or assimilating the nation into white culture. This message of survivance sought to provide ways to constitute Blackfeet identity in a way that avoided reproducing settler coloniality by entrenching biological ideas of race or allowing for the further assimilation of the Blackfeet.

Avoid Perpetuating Settler Colonialism

Second, supporters of both blood quantum and lineal descent invoked a strategy that encouraged other Blackfeet to avoid perpetuating settler colonialism. This rhetorical strategy urged other Blackfeet to act in the best interest of the nation by ensuring Blackfeet survival by avoiding the perpetuation of settler colonialism and settler colonial logics. Both sides—for

or against blood quantum—argued that their position on the issue was the best way to decolonize by navigating the pitfalls of contemporary settler colonialism.

When supporters of lineal descent engaged in this strategy of survivance they sought to promote the nation's sovereignty and continued existence by arguing: If one does not want to support settler colonialism and avoid critiques for perpetuating the colonization of the Blackfeet, then one should vote for lineal descent. One way this strategy was utilized was by pointing out that Blackfeet would want to make sure that they would be on the right side of history by not being complicit in the demise of the nation.

> The Enrolled Blackfeet who have not yet signed the B.E.A.R Petition have a [sic] opportunity that does not come along often in the History of a Tribal Nation. If you asked most people today who count themselves as Patriotic Americans' do they wish they had an ancestor that had been a signer of The Declaration of Independence. The answer would be yes…So neutrality only brings safety to those who had no belief in that cause in the first place while it does bring regret to those who did when the danger has passed and they did nothing to support it. (Juneau, 2015b)

This strategy put pressure on both supporters of blood quantum and those sitting off to the side to avoid being on the wrong side of history by supporting a colonial instrument that has long caused division and the reduction of Blackfeet members and lands. This decolonial appeal to avoid further perpetuating colonization of the Blackfeet is made evident when BEAR argued, "To punish people for who they fall in love with is just beyond me. To throw your children out – I can't even fathom it" (Murray, 2016a). This strategy asked supporters of blood quantum to honor the sovereignty of their fellow Blackfeet by not excluding them and their descendants for their "diluted blood" and for falling in love with someone who is not Blackfeet. To "punish people for who they fall in love with" or for the blood they are born

with is to perpetuate colonial practices that divide Native American nations, communities, and families.

Further, the risk of resentment for dividing Blackfeet against themselves is serious because Blackfeet recognize "divide and conquer" is a settler colonial tactic for exterminating them. As one Blackfeet posted to Facebook, "Is anyone familiar with the tactic, 'Divide and Conquer?' As we speak Blackfeet people are divided. It makes no difference if you're enrolled or not enrolled. We as a Native people need to stand together if we want to survive" (Whitright, 2012). By pointing out that blood quantum results in Blackfeet people being "divided" and that Blackfeet "need to stand together if we want to survive" proponents of lineal descent presented a decolonial strategy of survivance that engaged in Blackfeet resistance to settler colonialism. This strategy worked to decolonize tribal enrollment by asking Blackfeet members to avoid perpetuating further colonization through the continued embrace of blood quantum. This strategy claimed to resist the contemporary colonization of the Blackfeet by honoring fellow Blackfeet that fall in love "outside the tribe," combating division caused by blood quantum and settler colonialism.

Blood quantum supporters also invoked the strategy of avoiding the perpetuation of settler colonialism when they advocated that embracing lineal descent would allow for the further colonization and assimilation of the Blackfeet. BAOE reasoned: if one wants to protect the Blackfeet from further colonial incursion, and avoid critiques of colonizing their fellow Blackfeet, then one should vote to retain blood quantum. For instance, blood quantum advocates argued, "there's such a large number that they [non-enrolled Blackfeet] would take over the thinking and the way they view things, bringing in their values that they have. Everything that the Blackfeet stood for—that would change with the large enrollment number" (Redman, 2013). In claiming they "would take over the thinking and the way they view things, bringing in their values," BAOE argued they were acting in the best interest of

the Blackfeet by accusing non-enrolled Blackfeet of acting in the fashion of the colonizers by coming into the reservation and changing the Blackfeet way of life. This rhetorical move sought to navigate contemporary colonization and decolonize by retaining blood quantum as a barrier to ensure the nation's survivance by preventing the further assimilation and appropriation of Blackfeet identity and culture by colonizers. This strategy of survivance called to avoid "bringing in their values" and "their way of thinking" demonstrated blood quantum supporters' attempt to ensure the material and cultural survival of the Blackfeet by exercising their sovereign right to retain blood quantum.

The goal of protecting Blackfeet culture, values, and identity from being colonized further was a key one for supporters of blood quantum. For instance:

> Most of you are evading who you are, turning a blind eye, acting like European know-it-alls. Militant toward your own people, being smarties, smart alecs, don't want to listen to anyone, disrespecting your elders, neglecting your families, being predatory, culturally lost community leaders, or being Tribal Councilmen predatory leaders. (Vielle, 2012)

This strategy encouraged others to avoid perpetuating settler colonialism and settler coloniality by not "acting like European know-it-alls" and "militant toward your own people." In this way, this strategy of survivance sought to decolonize Blackfeet from settler coloniality by avoiding "disrespecting" family and elders and "being predatory." By doing so, this strategy sought to protect Blackfeet from further colonization, and in the process exercising Blackfeet sovereignty to decide for themselves what the nation's enrollment should be.

Further, one blood quantum supporter argued, "When we go back through history, Indians have fought assimilation and we have won – and we're still winning today. But, if we open enrollment, they have won. Then we are a defeated people" (Associated Press, 2012).

This strategy of survivance attempted to decolonize Blackfeet identity and culture by fighting assimilation and "still winning today" by retaining blood quantum and not removing it, otherwise Blackfeet "are a defeated people." Blood quantum supporters argued that blood quantum allows the Blackfeet nation to decolonize and resist assimilation. This strategy also challenged supporters of lineal descent to avoid perpetuating colonization when it is argued, "we have fought assimilation…But, if we open enrollment, they have won." This strategy reminds others that the battle against settler colonialism continues, and therefore it is imperative that other Blackfeet act in the best interest of the nation by ensuring the continued survival and sovereignty of the Blackfeet. Otherwise, one will face criticism for perpetuating colonization by removing blood quantum and allowing the tribe to be overrun by outsiders. Overall, both sides' usage of the strategy for avoiding further colonization of the Blackfeet attempted to decolonize Blackfeet identity and culture by retaining their sovereignty to decide for themselves who they are and what their enrollment criteria are.

Ensure Blackfeet Survivance

Third, advocates for both blood quantum and lineal descent argued "that what is at stake is the ultimate survival of the Blackfeet Nation" (Redman, 2013). This strategy of survivance provided avenues to talk about Blackfeet identity that attempted to navigate contemporary settler colonialism and decolonize by attempting to protect Blackfeet lands, culture, and identity. Regardless of retaining blood quantum or moving toward lineal descent, both sides argued that ensuring the continued survival of the Blackfeet was a key decolonial strategy to resisting the elimination of the nation. By acting in the best interest of the Blackfeet's survivance and sovereignty, both sides attempted to decolonize by either allowing more descendants to become officially enrolled or maintain the tribe's status as being federally recognized by retaining blood quantum.

Advocates for lineal descent argued blood quantum will result in the eventual mathematical demise of the nation, as blood quantum slowly filters out the number of Blackfeet who can meet the one-fourth requirement. Therefore, eliminating blood quantum is in the best interests for Blackfeet survivance. They argued,

> once fractionated, you can never become whole. This means that as time passes, the Blackfeet people will continue to have decreasing numbers of members with higher blood quantum and increasing numbers of people with lower blood quantum. Eventually, although not today or tomorrow, there will likely be one enrolled member left. (Murray, 2016a).

This strategy made explicit the attempt to decolonize from blood quantum and ensure Blackfeet survivance, as it sought to avoid the future scenario where "there will likely be one enrolled member left." This illustrated the importance to decolonize Blackfeet identity from blood quantum and settler coloniality by constituting Blackfeet identity and tribal enrollment in ways that honor Blackfeet sovereignty and culture. Further, BEAR argued moving to lineal descent will help to preserve Blackfeet by exercising their sovereignty to define themselves on their own terms. They argued, "I'd like to see it so the Blackfeet reservation will always be here. I think that if they don't do something about the blood, it's going to disappear. The fractions are going to get smaller and smaller and smaller" (Redman, 2013). In utilizing this decolonial strategy of survivance, BEAR advocates reasoned: If one wants to ensure the survival of the Blackfeet nation, then one needs to support lineal descent and remove blood quantum, otherwise settler colonialism's eliminatory logics and mechanisms will truly result in the demise of the Blackfeet. BEAR's utilization of this strategy of survivance enacted not only Blackfeet rhetorical sovereignty, but also decolonial messages that attempted to protect Blackfeet culture and identity from being eliminated by settler coloniality.

Meanwhile BAOE supporters invoked this strategy of survivance, because if one wants to ensure the survival of the Blackfeet and resist settler colonialism, then one will support further use of blood quantum to prevent further colonial incursion from outsiders. This strategy made explicit how strategies of survivance work to decolonize because blood quantum supporters argued for Blackfeet survival by protecting Blackfeet culture from further colonial assimilation and appropriation: "the cultural and ethnic characteristics that make the Blackfeet people unique would soon be lost in a sea of white blood" (Redman, 2013). By keeping "Blackfeet people unique" from "a sea of white blood" BAOE utilized this strategy of survivance to argue that retaining blood quantum is in the best interest of the nation. Additionally, it is argued, "We're unique, we want to maintain that uniqueness…We want to keep Blackfeet going forever" (Redman, 2013). Because blood quantum prevents those with less than one-fourth Blackfeet blood from becoming official Blackfeet citizens, BAOE advocates argued that blood quantum is necessary for protecting the tribe from assimilation and ensuring future Blackfeet survivance. In doing so, blood quantum supporters argued they were acting in the best interest of the Blackfeet, exercising their sovereignty to choose for themselves their nation's membership criteria and what constitutes Blackfeet identity.

To a degree, it seems that for BAOE blood quantum allowed for the possibility of honoring Blackfeet sovereignty and decolonizing because the one-fourth criterion operates as a protective barrier from a "sea of white blood." This is emphasized routinely as it is argued, "We're fighting to stop things like this, and to try and preserve our land, to preserve our culture, preserve what we are, and if they open the rolls, that's what's going to happen. We're going to cease. You'll just read about us in a book" (Redman, 2013). For this strategy, Blackfeet survivance is enacted by retaining blood quantum, because it is argued as necessary to prevent further colonial dispossession of Blackfeet lands/resources and the cooption of

Blackfeet identity, and to prevent the settler colonial elimination of the nation so we don't "just read about us [them] in a book."

Part of this rhetorical strategy of survivance, blood quantum advocates claimed Blackfeet members marrying outside of the tribe is a detriment to the survival of the Blackfeet. They made this explicit when they claimed, "if BEAR members are so concerned about the birth rate, they should encourage their children to marry within the tribe" (Redman, 2013). With this strategy of survivance, blood quantum advocates reasoned other Blackfeet should avoid marriages outside of the Blackfeet nation to ensure there are future Blackfeet members that meet the one-fourth blood quantum rule. For example, BAOE argued that some BEAR advocates are petitioning for lineal descent because it is in their personal best interest and not in the overall best interest of the Blackfeet nation:

> His argument is, 'I grew up on the reservation. I went to school in Browning. I grew up with all the natives,' so what did he choose to do? If he grew up Blackfeet, why did he not choose to marry a Blackfeet? Because our skin is not the right color. He's married to a white woman now, and he's one that's belly-aching about opening up the rolls. (Redman, 2013)

This strategy makes evident how those advocating for lineal descent are perceived as not working for the best overall interest of the nation and ensuring survivance because they are "belly-aching about opening up the rolls." This strategy worked to decolonize from the assimilation of Blackfeet identity and culture by protecting the nation from "a sea of white blood" by "opening up the rolls." With this strategy, BAOE advocates made clear that the best way to honor and protect Blackfeet, and to decolonize, is to ensure the survival of the Blackfeet by marrying Blackfeet. Overall, the strategy to ensure Blackfeet survivance utilized by both supporters of blood quantum and lineal descent provided decolonial strategies of survivance that not only advocated for other Blackfeet to retain or remove blood quantum,

but also protect their Blackfeet nation, culture, and identities from further colonization. This interchanging of decolonial desires demonstrates how the very terms of the Blackfeet blood quantum debate are embedded within settler coloniality, as both sides are debating how to best honor Blackfeet sovereignty, what is Blackfeet, and how to best decolonize.

Support Blackfeet Self-Determination

Fourth, advocates for lineal descent utilized a strategy that argued for protecting the Blackfeet right for self-determination. This decolonial strategy of Blackfeet survivance sought to honor Blackfeet sovereignty by respecting the Blackfeet right to decide for themselves who to marry and what is in their best interest instead of letting an outside entity and settler colonial standard determine their identity, citizenship criteria, and who or not to love. This strategy argued that Blackfeet cannot critique the sovereign right of other Blackfeet to decide for themselves what is their identity, who they fall in love with, and the like without inadvertently perpetuating settler coloniality. BEAR proponents argued: “They say don’t marry for love. They say marry some lady because she’s got an enrollment number. Marry for rights. Well, that’s pretty unfair in this day and age to have to breed human being like you would breed quarter horses” (Redman, 2013). This strategy points out how blood quantum supporters are perpetuating colonialism when they challenge other Blackfeet members’ rights for self-determination when they say, “don’t marry for love” and instead marry someone because they “got an enrollment number.” This is a decolonial strategy of Blackfeet survivance that attempts to navigate the settler colonial problems of blood quantum by highlighting it is the right of every Blackfeet to determine for themselves not only who they love, but also what is in the best interest in maintaining the sovereignty of the nation.

Further, another BEAR advocate argued, “I was at MSU pursuing my education and I met somebody who was non-Indian and fell in love. Am I supposed to be punished for falling in love? Are my kids to be punished for falling in love?” (Redman, 2013). For BEAR

supporters, removing blood quantum is the decolonial strategy that allows for Blackfeet members to exercise their full rights for self-determination, instead of being constrained by the settler coloniality of blood quantum. Further, another supporter of lineal descent argued, "In order to be truly sovereign a tribe must define for itself what criteria to use for its membership. Nations do not decide for other Nations what the content for their membership criteria should be. Only the colonized have their membership criteria decided for them by an outside power" (Juneau, 2015a). This strategy made abundantly evident that the desire to decolonize and decide for themselves what Blackfeet membership criteria should be was at the center of the blood quantum discussion. A "sovereign tribe" defines for itself "what criteria to use for membership" and "only the colonized" have their membership determined for them. This a decolonial message of Blackfeet survivance that pressured other Blackfeet to remove blood quantum, or otherwise risk criticism for perpetuating settler coloniality and not honoring the sovereign right of Blackfeet to decide for themselves who they are and who gets to count as Blackfeet.

For supporters of lineal descent, blood quantum prevents those Blackfeet who do not meet the one-fourth requirement from exercising their full sovereign rights for self-determination. For instance, one advocate argued, "We should be able to vote in elections, and we should be able to have a say about what happens to land that we inherit, and we should be able to pass our trust land that we inherit from our Indian parents to our Indian kids, and all of that has been taken away from us" (Redman, 2013). Blood quantum limits individual Blackfeet rights to self-determination, and because of this, supporters of blood quantum also risk criticism for perpetuating settler colonialism and eliminating other Blackfeet sovereign rights. This strategy argued that it is every Blackfeet's sovereign right to decide for themselves who they love and how best to ensure the survival of the Blackfeet nation.

Conclusions

In this chapter I have argued that when debating the merits of blood quantum and possibly changing Blackfeet enrollment criteria, both advocates for keeping one-quarter blood quantum or moving toward third generation lineal descent engaged in multiple strategies of survivance that claimed to be in the best interest of the Blackfeet nation because they protected the nation from further harm from settler colonialism. Both advocates for lineal descent and blood quantum used strategies of survivance to challenge settler colonialism, honoring Blackfeet sovereignty by arguing either blood quantum or lineal descent is a buttress for colonization. Both positions' usage of these strategies of survivance sought to honor Blackfeet sovereignty and decolonize while navigating contemporary settler colonial pitfalls. Because the racial constitution of the Blackfeet via one-quarter blood quantum was seen as advantageous for protecting the Blackfeet nation from further assimilation, race provided the talking points from which the Blackfeet attempted to decolonize. The blood-speak of the Blackfeet can be viewed as a Native American nation in the twenty-first century attempting to define for themselves their own membership criteria and what it means to be Blackfeet, constituting their identity outside settler coloniality and enacting survivance while using the rhetorical options available to them.

I posit these conclusions bring to the fore two implications. First, the transformation of settler colonial rhetorics is complex and has distinct material concerns; and second, to avoid the reinforcement of settler coloniality, it is important to listen to the nuances present in these rhetorics. First, this chapter demonstrates that mitigating colonial injustice and ensuring the material survival of the nation requires the rhetorical navigation of numerous settler colonial mechanisms designed to eliminate Indigenous peoples. Blackfeet for and against enrollment reform attended to this complexity when they attempted to define their identity and enact their nation's sovereignty, advocating for a decision that they believed best ensured

their continued existence. When navigating settler colonial problems, the Blackfeet recognized literal grounds of community in shared land, scarce resources, and facing each other. These Blackfeet strategies illustrate an important factor motivating Blackfeet enrollment discussions: the mutually shared interest in preserving scarce land and material resources available to them. Blackfeet land and culture are talked about as scarce resources, and their strategies reflect a recognition that the issue of tribal enrollment directly affects the literal ground Blackfeet live upon. Researchers who ask questions about communicating to mitigate colonial injustice would do well to reflect on the practices of people who have been resisting material injustices for centuries, and how such concerns for material resources and existence influence strategies of survivance and decolonial thought. In this way we can continue to unglue the ways "settler colonialism leverages rhetoric to facilitate the material arrangement of ideological power on lands and bodies" (Lechuga, 2020, p. 378).

Second, blood quantum's rhetorical operations seem to be a damned-if-you-do and damned-if-you-don't scenario. One choice leads to the mathematical elimination of the nation, and the other choice leads to the loss of recognition of Blackfeet sovereignty from the U.S. federal government. It seems that choosing one option over the other falls short in truly avoiding the reproduction of settler coloniality. The Blackfeet nation is sovereign, and like other Indigenous people, Blackfeet act and interact "across the boundaries and through the gaps of colonial imposition . . . where indigenous political life fights to claim its modern status on its own terms" (Bruyneel, 2007, p. 124). But to do so, the Blackfeet "speak against and across the boundaries of colonial rule by articulating and fighting" for a third space of sovereignty; a type of sovereignty that is "inassimilable" and exists outside of the "imperial binary" of choosing between either assimilation or secession from the settler nation-state (Bruyneel, 2007, p. 217). The blood-speak of the Blackfeet reveals how they rhetorically positioned themselves into a third space of sovereignty that provided the grounds for them to

constitute themselves on their own terms in ways that they believed would ensure the continued survivance of the nation. In debating their nation's enrollment, the Blackfeet displayed the nuances of untying settler coloniality, demonstrating untangling settler colonial rhetorics is not a straightforward "black and white" operation. The blood-speak of the Blackfeet enrollment debate revealed how peoples confronting settler colonial problems weigh, debate, and implement several strategies when enacting survivance and their sovereignty. In the future, it is important to pay attention to the multiple rhetorical strategies people use to decide how to decolonize and constitute their own "modern status" on their own terms.

This chapter illustrates that it is important for rhetoric and communication studies scholars to attend to these rhetorical nuances by avoiding the reinforcement of settler colonial binaries. Blood quantum and tribal enrollment clearly is a divisive issue, as both sides in the Blackfeet debate believed their approach was in the best interest in the continued survival of the nation. Despite not agreeing, both sides viewed the debate as a moment where their actions, words, and decisions were enacting Blackfeet survivance and resisting settler colonialism. This chapter could have easily been a critique of one type of rhetoric as colonial because it supports blood quantum rules that eliminate the nation or also a critique of rhetoric supporting lineal descent because it also could eliminate the nation. This type of rhetorical analysis only reinforces the legitimacy of the settler colonial binaries that have created so many colonial harms. Coming to this sort of colonial/not-colonial, settler/native, inside/outside conclusion reinforces the legitimacy of the idea of the settler-colonial state and the dominance of settler colonial sovereignty that limits Native American nations and tribes to choose between blood quantum and other forms of enrollment in the first place. Future scholars can work to answer Daniel Endres' (2015) call to challenge the heteroglossia surrounding the analysis of Native American and Indigenous rhetorics by avoiding analyzing

and discussing Native American and Indigenous rhetorics in ways that reinforce and the perpetuate the legitimacy of settler colonial sovereignty.

Therefore, rhetoric and communication scholars should work to recognize that when it comes to challenging settler coloniality there is often a refusal "to become wedded to one tactic" when "pressing for complete independence from federal domination while retaining the maximum federal protection of the land base and services" (Deloria Jr., 1970/2007, pp. 46, 60). The blood-speak of the Blackfeet illustrated how scholars must attend to these rhetorical nuances when navigating settler colonial problems, showing that rhetorical strategies must change and adapt when working toward the goal of maintaining the sovereignty and existence of the tribe. Such rhetorical nuances for upholding Native American sovereignty become even more evident in the controversy surrounding the Kennewick human remains analyzed in subsequent chapters.

Chapter 3 - Skulls, Bones, and Anthropology: The Settler Colonial Machine and the Scientific Investigation of the Kennewick Remains

In July 1996, when a set of over-9,000-year-old human remains were found emerging from the banks of the Columbia River in Kennewick, Washington, it seemed clear that the remains would be found culturally affiliated with local Native American tribes and repatriated. The 1990 Native American Graves Protection and Repatriation Act (NAGPRA) stipulates that human remains and/or objects unearthed must be repatriated to their closest affiliated Native American tribes or families if the remains or objects are determined to be Native American. Based on the age of the ancient remains and where they were found, the United States Army Corps of Engineers determined the remains were Native American and intended to dispose the remains to local Native American tribes claiming the remains as their ancestor. However, repatriating the remains, today known as Kennewick Man or the Ancient One, would not be straightforward.

Early on, forensic anthropologist James Chatters noted, “I was immediately struck by its long, narrow shape and the marked constriction of the forehead behind a well-developed brow ridge…My first thought was that this skull belonged to someone of European descent” (2001, p. 20). The Kennewick human remains are one of the oldest and most complete ancient human skeletons found in North America. Douglas Owsley and Richard Jantz (2014a) wrote, the “skeleton represents an invaluable source of information,” and “Most remains of comparable antiquity are incomplete with poor bone preservation—making the relatively complete and well-preserved skeleton of Kennewick Man that much more exceptional” (p. 5). For anthropologists and others, the extreme age and near completeness of the skeleton made it extremely valuable for contributing further knowledge about who were some of the earliest inhabitants of North America.

For these reasons, repatriating the Kennewick remains was not desirable for anthropologists like James Chatters, Douglas Owsley, Richard Jantz, and others. To them the

features of the skeleton seemed to resemble Caucasoid and Polynesian skeletal forms more closely, not Native American ones. Because the skeleton did not look like other Native American skeletons, some felt the remains may not be a long-dead Native American ancestor and therefore NAGPRA and repatriation did not apply. Subsequently, the enactment of NAGPRA was paused when eight prominent anthropologists and archaeologists filed legal challenges for the right to study the skeleton. In an interview with *The New York Times* James Chatters repeatedly hypothesized the remains might have been Caucasian and questioned if the remains were Native American (Egan, 1996). During an interview with CBS *60 Minutes* Douglas Owsley also questioned whether the remains were Native American (Finkelstein & Columbia Broadcasting System, 2002). And once the anthropologists' skepticism about the Kennewick remains' connection to Native Americans became public, the battle over possession of the skeleton took place in both the legal and public arenas.

Repatriation was halted because the remains' skeletal features "seemed to be those of a non-Indian and were more like those of a European" (Chatters, 2001, p. 30), highlighting how anthropology, race, and the machine of settler colonialism are interwoven. Tiara Na'puti (2019) argued settler colonialism should be understood "as an enduring phenomenon of colonial violence and as a power structure" (p. 497). Similarly, la paperson (2017) suggested to understand settler colonialism as machine of elimination. Doing so enables understanding settler colonialism as "inherently eliminatory" (Wolfe, 2006, p. 387), as a shape-shifting machine comprised of various structures, mechanisms, and logics that work to acquire land and eliminate Indigenous populations on cultural, epistemological, and material planes. It makes evident how the anthropological collection, study, and display of Native American remains and cultural objects has long supported Indigenous elimination in the U.S. For instance, by the existence of NAGPRA in 1990, "the Smithsonian alone had amassed roughly 33,000 individual sets of human remains—of which about 19,520 were identified as Native

American" (Redman, 2016, p. 279). The scientific collection, display, and study of Indigenous bodies, remains, and objects has long operated as a settler colonial mechanism that justifies the pursuit of scientific knowledge in ways that marginalize, exclude, attack, and violate Indigenous bodies and knowledges.

Previous rhetoric of science research has examined the role science communication plays in topics pertaining to race and eugenics (Condit, 1996; Crenshaw & Roskos-Ewoldsen, 1999; Hasian Jr. & Croasmun, 1992; Hasian Jr., 1996; Muller, 2017), anthropology (Maxwell, 2012; Roellinghoff, 2020), disability and the human body (Dolmage, 2018; Larson, 1991; Wheeler, 2017), intellectual property (Greaves, 1995; Palmer, 2000), and DNA (Condit & Condit, 2001; Condit et al., 2002; Lynch, 2009; Ramsey et al, 2001). What this research has demonstrated is the statistical data scientists use to measure and describe humans are not purely objective and unbiased; and that scientific practice, research, and rhetoric can perpetuate scientific racism. Examining *Crania Americana* Daniel Cole (2015) argued, "A rhetorical analysis of *Crania Americana* itself from the standpoint of *kairos* brings to light ways in which it used numerical rigor and an appearance of empirical detachment to mask what essentially was a compendium of longstanding assumptions and misapprehensions" (p. 32). Additionally, Stephanie Grey (1999) noted the scientific utilization of statistics and empirical measurements, particularly when used to measure ethnic and racial groups, often results in "making racial differences and current class disparities appear natural" (p. 307).

Furthermore, previous research has specifically analyzed the Kennewick remains controversy (Coleman, 2013; Coleman & Dysart, 2005; Nelson, 2013). Generally, these studies have investigated the controversy by examining larger cultural and media discourses. For instance, Coleman and Dysart (2005) highlighted how the case was framed by the media as scientists and Native Americans in opposition to one another. This framework utilized

discourse that relegated Native Americans "to a preserved past in which their values are considered quaint, outmoded, and scientifically irrelevant. Indians stand in the way of progress and, in the case of Kennewick Man, scientific progress" (2005, p. 20). Such media framing and cultural discourses have "effectively exterminated the authenticity of Kennewick Man," and "When issues such as the discovery of Kennewick Man unfold in media contexts, claims of truth, objectivity, and authenticity assume these biopolitical dimensions" (Coleman, 2013, pp. 65, 66). Generally, the rhetoric and communication scholarship pertaining to the Kennewick controversy has demonstrated how scientific discourses delegitimize Native American knowledges in order to support the pursuit of scientific knowledge.

Prior scholarship has routinely pointed out that scientific investigations and their subsequent rhetorics do not occur in an isolated echo chamber, and that when treated and viewed as such, "the effacement of their inherent rhetoricity" and failure to recognize the overlaying of science with ideology and power can occur (Grey, 1999, p. 304; see also Haraway, 1991). However, what is missing from extant scholarship is the explicit investigation of how the anthropologic study of Native American skeletons undergirds settler colonialism and its eliminatory logics and operations. Given the extensive history of grave robbing, collecting, and displaying human remains, and studying Native American skeletons by anthropologists and others, the rhetoric surrounding anthropology and Native American skeletal remains warrants further attention.

In this chapter I analyze anthropological studies published because of the scientific investigation of the Kennewick skeleton, and specifically studies published in the 699-page edited volume titled, *Kennewick Man: The Scientific Investigation of An Ancient American Skeleton*. Editor Douglas Owsley stated, "This volume presents the results of the comprehensive study of Kennewick Man" (Owsley, 2014, p. 1). The volume is comprised of 32 chapters from 52 contributing authors, including topics such as the context surrounding

Kennewick Man, various scientific studies of the skeleton, and comparing the skeleton to human skeletal population databases to determine affiliation. Despite being comprised of many highly technical and complex anthropological and bioarcheological scientific research articles, Owsley stressed that "the information, collected by experienced investigators in their fields is structured in hopes of also reaching the interested, informed public" (2014, p. 1). The volume comprehensively argues the Kennewick skeleton has distinct morphological features that do not align with modern Native American skeletons, and therefore NAGPRA does not apply, and further study of the Kennewick remains and other human remains is warranted.

Therefore, I ask, "How do the scientists talk about the Kennewick Man skeleton, and with what implications?" Analyzing the *Kennewick Man* volume is necessary for answering this query because, first, it contains numerous scientific investigations of ancient human remains that are directly immersed in a legal and cultural conflict surrounding NAGPRA and repatriation between members of the anthropological community, the federal government, and Native American tribes. Throughout the volume, various contributors provide a defense of the scientific study of skeletons and why NAGPRA has been improperly applied in the Kennewick case. The scientists contributing to *Kennewick Man* are directly responding to the context surrounding the Kennewick remains: a debate about the ethics of studying ancient human remains and who were the first people to live on the continent.

Second, the volume contains highly complex statistical analyses of the ancient remains. When these analyses are described, they often utilize racial categories when comparing the skeleton's similarities or dissimilarities to other human groups from existing skeletal databases. These racial categories and skeletal databases exist as a direct result of settler colonialism; they are products of the early anthropological drive to collect and measure Native American and other skeletons. Despite stating that "we have gained a greater appreciation for the different connotations and symbolic meanings one skeleton can have for

present-day people" (Owsley, 2014, p. 4), the investigations in the *Kennewick Man* volume fail to acknowledge their scientific studies are imbricated within settler colonial power structures. As David Thomas and Clark Larsen (2015) argued, *Kennewick Man* is "grounded in the nineteenth- and twentieth-century practice of tasking non-Indian anthropologists with articulating indigenous views" (p. 783).

Thus, I argue *Kennewick Man's* scientific descriptions of the ancient remains operate from universalized settler colonial assumptions about what skeletal features are Native American. This "*a priori* and paradigmatic Indianness" that defines Native American skeletal remains stems from the scientific constructions of race that have roots in the collection, display, and study of Native American bodies and skeletons (Byrd, 2011, p. 27). What the scientists understand as Native American identity and the Native American skeletal form is constituted by and perpetuates settler colonialism. Operating from a universalized epistemic center, where the scientific "modern" Native American skeletal form is treated as the norm, the features of the Kennewick human remains do not fit neatly within the settler colonial skeletal category of Native American. *Kennewick Man's* utilization of "paradigmatic Indianness" describes the Kennewick remains as atypical and therefore the ancestor to a human population *other* than Native Americans. Doing so reifies the settler colonial racial category of "Native American" in ways that subtracts Indigeneity from the ancient remains and challenges present-day Native American sovereignty.

The scientific settler colonial machine described in this analysis operates through three rhetorical parts: 1) the volume's operationalization of settler colonial racial categories produces a racially orientated rhetoric that excludes the remains from being considered Native American; 2) talking about the Kennewick remains in statistical terms constitutes a "paradigmatic Indianness" that works to eliminate the remains from being considered Native American; 3) discussions about ancient human bones provides the grounds for questioning

who were the original inhabitants to the land. These rhetorical parts are manipulated to cement the racial category of Native American as a universalized center and destabilize the remains' connections to present-day Native Americans, questioning ideas that Native American peoples were the first inhabitants of the continent, challenging their sovereignty, halting the enactment of NAGPRA, and participating in the settler colonial elimination of Native American connections to the land.

In what follows, I provide an extended context for the Kennewick controversy. I then argue to understand settler colonialism as a machine, and that the scientific construction of race has long fueled this machine through the analysis of Native American remains. Afterwards, I demonstrate the scientific settler colonial machine at work in the *Kennewick Man* volume. I provide concluding remarks regarding the utilization of race to craft connections to the land and rewiring the settler colonial machine to foster Indigenous sovereignty.

The Kennewick Remains Controversy: An Extended Context

On July 28, 1996, two spectators attending hydroplane races in Kennewick, Washington accidently found a human skull emerging from the banks of the Columbia River. After reporting the skull to local police, the skull was given to the Benton County coroner to determine if the skull and the rest of the remains were connected to a crime. To answer this question, the Benton County coroner approached forensic anthropologist James Chatters to examine the remains and determine whether the remains were ancient or recent. While examining Kennewick Man or the Ancient One, Chatters took note of the skull's long-narrow cheekbones, V-shaped mandible, and protruding upper jaw of the skull, leading him to conclude the remains were likely from a middle-age Caucasoid male that was potentially "a few hundred or several thousand years old" (Burke et al., 2008, p. 25). Over the following days, Chatters sent portions of the over 350-piece skeleton to Kennewick General Hospital

and Central Washington University to be X-rayed and CAT-scanned. On August 5, 1996, with approval from the Benton County coroner, Chatters sent a fragment of the metacarpal to the University of California, Riverside for radiocarbon (^{14}C) dating and DNA testing (Hawkinson, 2014). Twenty-one days later on August 21, 1996, the laboratory at the University of California, Riverside announced that ^{14}C dating placed the skeleton as approximately 9,200 calendar years old, making the ancient remains one of the oldest and most complete skeletons found in North America. As a result of these findings, the United States Army Corps of Engineers (USACE) enacted its jurisdiction to claim the ancient remains, citing the remains were likely Native American and therefore subject to NAGPRA. And on August 30, 1996, the USACE ordered the remains to be removed from Chatters' laboratory and transferred to the USACE (Hawkinson, 2014, p. 116).

Following NAGPRA's rules for repatriation, the USACE planned to return the remains to a coalition of five Native American tribes that claimed affiliation to the remains through an official NAGPRA claim: the Confederated Tribes of the Colville Reservation; the Confederated Tribes and Bands of the Yakama Nation; the Confederated Tribes of the Umatilla Reservation; the Nez Perce Tribe; and the Wanapum Band. After the USACE filing of its second official notice of repatriation to the five claimant tribes—and action required by NAGPRA—on October 16, 1996, eight anthropologists and archaeologists (Robson Bonnichsen, C. Loring Brace, George W. Gill, C. Vance Haynes, Jr., Richard L. Jantz, Douglas Owsley, Dennis J. Stanford, and D. Gentry Steele) filed a suit with the U.S. Magistrate's Court in Portland, Oregon, to allow for further scientific study of the remains and to prevent repatriation (Geranios, 2000), starting a legal battle and cultural controversy over control of the skeleton that would last for over a decade. In the meantime, the ancient remains would be housed for storage in the Burke Museum in Seattle, Washington and

visited periodically by representatives from both the Native American coalition and the plaintiff scientists.

After approximately eight years of legal battle and public debate, on August 30, 2002, U.S. Magistrate judge John Jelderks in Portland, Oregon ruled the group of plaintiff scientists be granted access to the remains for study. However, official scientific study would not begin until December 2004 when an official study plan was approved and Native American appeals to Jelderks' ruling were formally denied by the Ninth Circuit Court of Appeals. Between 2004 – 2006 various taphonomic, anthropological, archaeological, morphological, and bioarcheological studies were conducted on the remains at the Burke Museum in Seattle. Results of these studies were published in 2014, when Douglas Owsley and Richard Jantz released the edited volume *Kennewick Man: The Scientific Investigation of an Ancient American Skeleton*. The 669-page volume argues the remains are likely from a traveler to the Pacific Northwest, they are too old to be defined as Native American, and that ultimately, the skeleton is closer morphologically to ancient Polynesians.

The plaintiff scientists' studies took place between 2004 – 2006, and for the next six years the remains would continue to be stored in the Burke Museum. Importantly, the conclusions in *Kennewick Man* were reported before any DNA testing of the ancient remains could take place. This was due to the fact that when DNA tests were attempted earlier, the bones were so mineralized that it was nearly impossible to extract DNA from the remains without seriously harming the skeleton. In 2012, DNA sampling technology had improved enough to allow DNA to be taken safely. In that same year, the USACE sent a fingertip to the University of Copenhagen in Denmark for DNA testing. Additionally, the Confederated Tribes of the Colville Indian Reservation successfully petitioned Danish geneticist Eske Willerslev from the Centre for GeoGenetics in Copenhagen to test and compare the Ancient One's DNA with their own. Overall, twenty-two members of the Colville volunteered to

submit samples of their DNA to compare to the sample drawn from the Ancient One. On July 23, 2015, the results were published in the journal *Nature*. The results indicated that the "autosomal DNA, mitochondrial DNA and Y chromosome data all consistently show that the Ancient One is directly related to contemporary Native Americans," particularly to the Confederated Tribes of the Colville Reservation (Rasmussen et al., 2015, p. 458). After these DNA results were validated by researchers at the University of Chicago (Novembre et al., 2016), the Ancient One was repatriated to the coalition tribes and reburied in 2017 at an undisclosed location by members from the Native American coalition tribes. This context of the Kennewick controversy illustrates is that there are numerous interlocking components and parts that constitute and fuel the settler colonial machine.

Settler Colonialism: A Machine of Elimination

Within the United States the study of Indigenous bodies and remains has long been a settler colonial apparatus that has solidified ideas of race and has been the source of many colonial harms. What makes settler colonialism distinct is that "The colonizers come to stay—invasion is a structure not an event" (Wolfe, 1999, p. 2). Settler colonialism is a machine of elimination that is all about the land. la paperson (2017) noted that "Land is the prime concern of settler colonialism, contexts in which the colonizer comes to a 'new' place not only to seize and exploit but to stay" (p. 2). For settler colonialism the acquisition of land is the primary driver of its eliminatory logics and parts.

Gaining land for settlers and settler-states necessitates the articulation of various mechanisms and logics of elimination toward Indigenous populations and their knowledges. Patrick Wolfe (2016) argued the elimination of Indigenous peoples is "the core feature" fueling the settler colonial machine (p. 201). To acquire land, "Settler colonialism destroys" Indigenous peoples and their knowledges and connection with the land in order "to replace" them with settlers (Wolfe, 2006, p. 388). Fundamentally, the settler colonial machine is wired

to destroy to replace. And as Michael Roellinghoff (2020) argued, the unearthing, collection, study, and display of Indigenous remains are "tied to the question of territorial sovereignty" and central to colonization (p. 296).

Settler colonialism should be thought of as not only a structure but also a machine comprised of many changing and moving parts. It is for this reason I follow la paperson (2017) in understanding and treating settler colonialism "as a set of technologies" (p. 5). Understanding settler colonialism as a machine composed of various parts, structures, mechanisms, logics, and operations, permits us to approach settler colonialism as a constantly reassembling and moving machine of violence and land acquisition. Doing so allows us to recognize how settler colonialism is constructed and maintained by numerous political, legal, cultural, and epistemological parts. Treating settler colonialism as a machine demonstrates that settler colonialism's eliminatory mechanisms and logics continue to exist and operate in the twenty-first century and in arenas where overt corporeal violence against Indigenous bodies may not occur. It allows us to comprehend that "settler colonialism is an inclusive, land-centered project that coordinates a comprehensive range of agencies" (2017, p. 10).

Importantly, it is Indigenous lands and bodies through which these settler colonial technologies move. In *Transit of Empire* Jodi Byrd argued that settler colonialism should be understood as continually moving, in transit, and "made to move" (2011, p. xv). Byrd noted that it is "Indianness [that] becomes a site through which U.S. empire orients and replicates itself," since through multiple logics, operations, and parts the "United States deploys a paradigmatic Indianness to facilitate its imperial desires" (2011, pp. xix, xxi). When viewed as reorganizing patterns and structures of power constantly in transit manifesting multiple articulations of eliminatory logics across time and space, we can see settler colonialism as "involving a commute of technologies and a translation of ideologies and logics—a moving cross hair" (2011, p. 12). It allows us to see not only the 'why' behind settler colonialism

(land dispossession and Indigenous elimination), but also the 'how' (the various technologies and mechanisms of colonial violence).

There are a number of morphing technologies that enforce settler supremacy, operating across many cultural, political, material, and epistemological contexts and arenas. The articulations of settler colonial technologies (both past and present) are highly contextualized and unique to their situation. Yet the eliminatory logics and desires that fuel these settler colonial engines remains the same. Taiaiake Alfred and Jeff Corntassel (2005) argued that settler colonial powers are continually shape-shifting because "the instruments of domination are evolving and inventing new methods to erase Indigenous histories and senses of place" (p. 601). Tracking the machine of settler colonialism "involves charting the continuities, discontinuities, adjustments, and departures whereby a logic that initially informed frontier killing transmutes into different modalities, discourses and institutional formations" (Wolfe, 2006, p. 402). Approaching settler colonialism as a machine allows us to see and understand settler colonial violence toward Indigenous peoples that has transmuted into academic contexts (i.e., the anthropological examination of Indigenous skeletons).

Race is a part in settler colonialism that was/is made by settlers to specifically target non-settler populations. It is for this reason that Patrick Wolfe argued that settler colonialism employs and organizes itself around a "grammar of race" (Wolfe, 2006, p. 387). For instance, "Indigenous North Americans were not killed, driven away, romanticized, assimilated, fenced in, bred White, and otherwise eliminated as the original owners of the land but *as Indians*" (2006, p. 388, emphasis in original). The racial category of "Native American" has been constructed from settler colonialism's scientific parts. This settler colonial mechanism operates by 1) enforcing biological definitions of race that subtract Indigenous peoples from being considered Native American; and 2) enacting constructions of "Native American" that

place Indigenous peoples and their knowledges as stuck in the past, premodern, and uncivilized.

First, race operates to make Native American peoples appear "less and less native" (la paperson, 2017, p. 12). "Native American" is a settler colonial racial category that works to subtract Indigenousness from Indigenous peoples. This often takes place through the empirically based anthropological analyses of Indigenous bones from both past and present. Stephanie Grey (1999) argued scientific studies often utilize empirical concepts and statistics, such as means, standard deviation, and bell curves. These empirical measures are organized around a median which "serves as a referential point from which authority can be exercised." And while this seems objective, these scientific methods can "cluster individuals into discreet social categories" (Grey, 1999, p. 312). By operationalizing racial categories, even seemingly objective scientific measurements of human skeletons and subsequent comparisons between different human groups fuel the settler colonial machine.

This occurs when certain categories or units of measurement deviate from the accepted norm. These categories or units are then judged as different, ranked, and ordered (Grey, 1999, p. 312); or in the case of the Kennewick remains, described as a highly distinctive skeleton that is too far from the accepted category of "Native American." Paradigmatic definitions, standards, and measurements for what is a Native American skeleton are grounded firmly in Western science and anthropology, and therefore function as the "ground through which U.S. settler colonialism enacts itself" (Byrd, 2011, p. xix). On the surface empirical scientific measurements of human remains may appear as just that, measurements of bones. However, "Native American" constitutes a "paradigmatic Indianness" that operates as a specter in the settler colonial machine "that enables the founding of U.S. empire" (2011, p. xxii).

Second, race is a settler colonial part that views and treats Indigenous peoples as a "site of exception for that which and those who are written as premodern, primitive," a target that is "naturally' eligible for 'primitive accumulation'" (la paperson, 2017, p. 10). The paradigmatic category of "Native American" freezes the definition of what are Native American bones to a specific time and place. For many, the skeletal features that comprise the Native American skeletal form are fixed and unchanging from the original study and collection of Indigenous remains that came with European colonization of the Americas. Settler colonial conceptions of paradigmatic Indianness are then operationalized in the study of newly collected and unearthed ancient remains to describe these ancient human skeletons as atypical to the Native American skeletal form. It is the operationalization of "Native American" that limits Indigenous peoples "from having any recognizable laws or rights that matter" (2017, p. 10). The scientific construction of race reveals the study of Native American bones as a largely colonial endeavor.

Viewed mechanistically we can see settler colonialism reassembling itself, continuously in transit, eliminating Indigenous peoples through epistemological, cultural, and material planes, such as the unearthing, collection, and scientific study of Native American remains. A machine-like approach to settler colonialism allows us to fully contextualize and understand the Kennewick controversy as yet another appendage of the monstrous settler colonial machine. The anthropological rhetorics in *Kennewick Man* are a settler colonial component that not only reifies outdated racial categories and the racialization of Native American bodies, but also attempt to eliminate ancestral Native American connections to the continent, destabilizing their inherent sovereignty and subsequent claims to the land. The Kennewick controversy was more than a fight over ancient remains or the pursuit of scientific knowledge; rather, it was a conflict over race and the scientific study of ancient human history, and their function as parts in the settler colonial machine.

The Scientific Construction of Race & Indigenous Critiques of Anthropology

Anthropology and other disciplines have long excavated and studied the skeletons of Native American people to discover the so-called racial origins and divisions between the various human races. With roots in Enlightenment thinking, race has long been used by various disciplines as a means of classifying and ranking human populations. Importantly, race has been an ideological framework and classificatory system "developed by western Europeans following their global expansion beginning in the 1400s" that has been used for organizing and ranking human populations (Sanjek, 1994, p. 1). Race is a construct implemented by colonizers to justify the exploitation of "new" lands and the extermination of Indigenous peoples. Aníbal Quijano (2007) argued, "the social category of 'race' is the key element of the social classification of the colonized and the colonizers" (p. 171). Race, a simultaneous linkage of colonial hierarchies with physical characteristics, is a "specifically European (or Eurocolonial) invention" (Wolfe, 2016, p. 5). As a settler colonial mechanism, race has been implemented in anthropological thought and discourses since the eighteenth century.

The settler colonial mechanism of race heavily influenced the early origins of anthropology and early white American identity. The search for the different races that marked the start of anthropology and other disciplines would be built upon "collecting, studying, and displaying nonwhite human remains," and in doing so, "reinforced existing and emerging colonial power dynamics veiled as scientific and social progress" (Redman, 2016, p. 6). Philip Deloria (1998) wrote, "Americans wanted to feel a natural affinity with the continent, and it was Indians who could teach them such aboriginal closeness. Yet, in order to control the landscape they had to destroy the original inhabitants" (p. 5). The destruction of the Indigenous inhabitants would involve the uncovering and the excavation of both new and

old Native American dead, helping early American scientific thought racialize and sort out American and Native American identities.

Devon Mihesuah (2000) noted, “Desecration of Indian remains and sacred objects began with the European invasion of the Western Hemisphere” (p. 2). By coming up with histories that sought out the former existence of lost tribes and ancient Moundbuilders as the first real Americans before the Native Americans, white “Euroamericans established themselves in their new homeland” (Thomas, 2000, p. xxix). For instance, at Plymouth Rock in 1620 Pilgrims unearthed the grave of an Indigenous man and child “out of curiosity” (Colwell, 2017, p. 5). Later, Thomas Jefferson’s *Notes on the State of Virginia* laid the groundwork for the discipline of anthropology, elevating “white America’s study of the past from a speculative, armchair pastime to an inquiry built on scientific fieldwork and empirical protocols” (Colwell, 2017, p. 34). And after the nineteenth century the study of Native American bodies was remodeled in the twentieth century to support the settler colonial quest to ascertain the “true” origins of Native American peoples.

The settler colonial collection and scientific study of Native American and Indigenous bodies has been regularly criticized by Native American and Indigenous scholars (Atalay, 2006; Echo-Hawk, 1994; Fish, 2006; Mihesuah, 2000; Riding In, 1992; Tsosie, 1999). As scientific objects, Native American human remains were endowed with the ability to provide insights into who were the true first inhabitants in racial terms, even when those racial terms were considered pseudoscientific. Vine Deloria Jr. (1970/2007) argued, “Indians were hardly on their reservations before government employees began robbing graves at night to sever skulls from freshly buried bodies for eastern scientists” (p. 6). Anthropology and other disciplines were constructed and existed upon vast networks which removed Native American dead and erased “markers of past settlement and helped open the land for

American farmers and town builders" (Fabian, 2010, p. 220). This process also opened pathways for questioning who were really the first inhabitants on the continent.

In *Custer Dies for Your Sins*, Vine Deloria Jr. argued, "The fundamental thesis of the anthropologist is that people are objects for observation, people are then considered objects for experimentation, for manipulation, and for eventual extinction" (1969/1988, p. 81). In the same vein, Linda Smith (2012) argued, "anthropology is the one most closely associated with the study of the Other and with defining primitivism" (p. 70). These critiques importantly remind us that scientific disciplines, such as anthropology, are in their foundations implicated in settler colonialism and the elimination of Native peoples. They are mechanisms in the settler colonial machine that provide rationalizations for social, political, material, and cultural hierarchies that describe and place Native American bodies, cultures, and knowledges as "backward" or "savage," while Western ones are "modern" or "civilized." This is no more evident than in today's ongoing study of ancient human remains found in the Americas and holding of thousands of Indigenous remains and cultural artifacts in museums and governmental agencies throughout the world.

Kim TallBear (2013) noted, "In the nineteenth and early twentieth centuries, the American School of Anthropology rose to worldwide prominence through the physical inspection of Native American bones and skulls plucked from battlefields or from recent gravesites by grave robbers-cum-contract workers for scientists" (p. 2). The collection, archival, display, and scientific study of Native American bones was not only a driver of early anthropology, but it was also United States national policy (Colwell, 2017, p. 85). Two justifications are typically provided by scientists for the study of Native American remains. First, because "Indians were seen as doomed to vanish," the scientific study of their bodies and collection of cultural artifacts was and is necessary (Thomas, 2000, p. xxx). Second, the knowledge gained from the study of Native American skeletons will provide public benefits

through contributing to the well of scientific knowledge. Rebecca Tsosie (2012) noted, "This argument is akin to the arguments 'craniologists' made in the nineteenth century. The 'craniologists' argued that the measurement and dissection of human heads could lead to the important knowledge about the fundamental capacity of the different races" (p. 1150). Contributors to the *Kennewick Man* volume make similar arguments when they posit that the study of ancient skeletons can provide insight into ancient human migration and the colonization of the Americas (Jantz & Spradley, 2014, p. 472). However, the information anthropologists *gain* from the study of Native American and Indigenous skeletons often supports the settler colonial questioning if peoples *other* than Native Americans lived on the ancient continent. It is necessary that we understand and recognize that anthropology does not and has not taken place free from ideology, politics, or agenda. Anthropology, at its very foundations and throughout history has been a part in the settler colonial machine working toward the elimination of Native American and Indigenous peoples.

Analysis

Scientific studies fuel settler colonialism when they work to destabilize Native American connections to ancient human remains found in the land, and in doing so, challenge contemporary Indigenous sovereignty. The scientific measurement of the Kennewick skeleton and subsequent comparisons to other human skeletons describe and position the Kennewick remains as deviating from the settler colonial definition of what is a Native American skeleton. "Paradigmatic Indianness" fuels the scientific settler colonial machine. The studies in the *Kennewick Man* volume manipulate three different but interlocking rhetorical parts that turn settler colonialism's eliminatory mechanisms. Part one attempts to place the Kennewick remains into settler colonial racial categories which produces racially orientated rhetoric that excludes the remains from being considered Native American. Part two works to eliminate the remains' potential Native Americanness and connections to

present-day Native American tribes by talking about the bones in statistical terms. Part three utilizes the "facts" from parts one and two to ground conclusions that Native Americans weren't the first humans on the land. From constituting race to statistical analysis to broader implications, settler colonialism is at work in physical anthropology and entails not recognizing Native American peoples' sovereignty, eliminating peoples and connections to land, using peoples and land as sites of resource extraction, and more.

Part One

A goal for the *Kennewick Man* volume was to determine what contemporary human population the ancient Kennewick remains were most similar to in the hopes of establishing cultural affiliation. A fundamental act of sovereignty is the constitution of identity, and the anthropological enterprise has been challenging Indigenous sovereignty for centuries by constructing definitions of what is a Native American through the analysis of their bones. The communication module of the scientific settler colonial machine is built by Western European settlers, so the science generated by this mechanism is going to reproduce that logic. Because the mechanism of physical anthropology is built around settler colonial racial categories, what part one produces is a racially orientated rhetoric that rationalizes fitting the Kennewick remains into the pre-determined racial categories. Attempting to place the Kennewick remains into settler colonial racial categories produces rhetoric that works to exclude the remains from the racial category of Native American and instead constitutes the remains as most likely Polynesian. Part one operates as a closed circuit, where the physical anthropological analysis of human skeletal shape and form reproduces settler colonial racial categories by constituting the ancient Kennewick remains as being morphologically similar or dissimilar to present-day racial units.

The Kennewick remains are composed of morphological features that differentiate them from most other human groups because "Kennewick Man's skull is typified by a lack of

many of the commonly occurring discrete cranial traits" (Gill, 2014, p. 508). The volume noted, "the interorbital projection values for Kennewick Man [. . .] are borderline between those for American Whites and those for American Indians (and also for African Americans)" (Gill, 2014, p. 505-506). Furthermore,

> The palatine suture is likewise unusual in that it shows a jagged expression on the left side, as seen among Europeans and American Whites, and a nearly straight form on the right side, similar to that seen on crania of late prehistoric and modern American Indians. Such mixed patterns are not uncommon among Polynesians. (Gill, 2014, 506)

Like trying to fit a square cog into a triangle-shaped hole, the Kennewick remains do not fit neatly into the *a priori* settler colonial racial categories used to understand and organize human skeletons. But, when forced into the triangle-like category, the Kennewick remains are determined to fit within the category of Polynesian.

For example, the jawbone "reveals a very square, prominent, bilateral chin, indistinguishable from the chin form of most European male mandibles" (Gill, 2014, p. 506). Designed to see and determine race evident in our very bones, these studies of ancient human remains assign settler colonial racial categories to some of the oldest human remains found on the continent. Doing so allows the scientists to move the Kennewick remains away from the settler colonial category of Native American by noting, "This chin form is in stark contrast to the rounded, nonprominent, median chin of the vast majority of American Indian mandibles" (Gill, 2014, p. 506). Again,

> Another remarkable feature is the very thin inferior margin of the horizontal ramus of the jaw. This too places the jawbone within the range of most European mandibles and stands in complete contrast to the condition found among the vast majority of American Indian mandibles. (Gill, 2014, p. 507).

Designed to see human remains through settler colonial racial categories, part one works to eliminate the Kennewick remains' potential connections to present-day Native Americans by moving the skeletal form "within the range of most European mandibles."

Distancing the remains from the category of Native American involves placing the Kennewick remains into the category of Polynesian. As stated, "the distal aspect of the nasal bones is prominent while the rest of the nasal bridge is much less projecting. This is the classic Polynesian condition" (Gill, 2014, p. 507). This settler colonial mechanism operates a racially orientated rhetoric that assigns the remains into a racial group, simultaneously reinforcing settler colonial logics that construct paradigmatic definitions of Native Americans and Polynesians that operate to eliminate Indigenous connections to ancient skeletons.

Part one invariably produces racially oriented scientific rhetoric that distances the Kennewick remains from modern Native Americans by describing the bones as atypical. For instance, one researcher argues:

> The lack of similarity of Kennewick Man to late prehistoric and modern American Indians is striking. The features that most typify late American Indian populations, such as platymeric femora and cranial features like wide heavy cheekbones, heavy mandibles with blunt rounded chins, strongly elliptic palates with straight palatine sutures, medium noses with medium nasal spines and sills, numerous accessory cranial foramina and extra sutural bones, are simply not to be found on Kennewick Man's cranium. This so-called Mongoloid skeletal trait complex, well-developed on late prehistoric American Indians, and even more so on late prehistoric and modern East Asians, appears to be almost totally lacking on Kennewick Man's skeleton. Morphological parallels between Kennewick Man and Europeans and other Caucasoids are much closer than they are with the so-called Mongoloid peoples. (Gill, 2014, p. 515)

Features that construct the settler colonial skeletal definition of Native American such as "platymeric femora" and "wide heavy cheekbones, heavy mandibles with blunt rounded chins" and others seem "to be almost totally lacking" from the Kennewick remains. The Kennewick skeleton does not match the "Mongoloid skeletal trait complex" and therefore does not fit within the settler colonial racial category of Native American.

When analyzing the Kennewick skeleton settler colonial racial categories are reinforced and doing so moves the remains away from being affiliated with Native Americans by arguing the remains are potentially Polynesian. Built from settler colonial logics and structures, these analyses operate in a closed circuit of elimination, where the study of human remains inevitably assigns and reinforces racial categories while simultaneously working to eliminate the ancient remains' connections to contemporary Native American peoples. Taught to see specific anthropological racial skeletal forms, part one of the scientific settler colonial machine rhetorically constructs the remains as atypical and not Native American.

Part Two

Part two turns the settler colonial machine by talking about the Kennewick skeleton in empirical and statistical terms. While these statistical and empirical anthropological analyses may appear to be an objective way of discussing ancient humans, the scientific examination of human bones operates as part of the settler colonial machine. Part two is built from the accumulation of scientific measurements taken from Indigenous bodies in pursuit of the anthropological study of Native Americans and the identification of the so-called different races. These measurements, gathered through the collection, display, storage, and study of Indigenous bodies construct an anthropological settler colonial definition of what is the modern Native American skeletal form. This "paradigmatic Indianness" is set up as the standard to and by which the Kennewick skeleton is compared and evaluated to determine

whether the remains are like present-day Native Americans. Empirically based comparisons to this "paradigmatic Indianness" work to eliminate the connections between Kennewick Man and Native American skeletons by describing the remains as atypical and originating elsewhere, and as most like human groups outside the U.S.

The *Kennewick Man* volume provides statistical analyses of the Kennewick remains, comparing the measurements of the remains' skull and other bones to the skeletal measurements of human populations throughout the globe. These studies operate from the assumption that "cranial morphology behaves according to neutral expectations" and that the study and measurement of ancient remains can provide insight into prehistoric human migrations and provide a clearer picture as to who were the first inhabitants to the Americas (Owsley & Jantz, 2014b, p. 459). The studies attempt to do so by using metric data from skeletal elements to compare the Kennewick remains to other human measurements from various databases of human skeletal measurements. The very existence of these databases is directly tied to European imperialism, United States settler colonialism, and the scientific collection and study of human bodies. These statistical comparisons provide two mechanisms for elimination. First, when compared to modern groups the Kennewick skull is most similar to Polynesian populations. And second, when compared to ancient populations the Kennewick skull is similar to the Paleoamerican group, and Paleoamericans are believed to have skeletal measurements statistically different from modern Native Americans.

Initially, studies measuring the Kennewick skull operate from the premise that previous investigations of ancient human skulls have "demonstrated that early crania differ systematically and significantly from modern Native Americans" (Jantz & Spradley, 2014, p. 472). The anthropological empirical constitution of "paradigmatic Indianness" allows the scientists to "make it clear that Kennewick Man is atypical among modern human crania" (Jantz & Spradley, 2014, p. 477). Researchers assert, "Kennewick Man is more atypical than

all but about ten of the 3,163 crania in Cranid's database," and, "Despite being on the extreme outer limits of modern human variation, Kennewick Man would be a less extreme member of the Polynesian Moriori than any other human group in Cranid's database" (Jantz & Spradley, 2014, p. 477). Basing the degree of similarity and difference between different human groups and the Kennewick remains from "under normal curve assumptions," the scientists emphasize that "Kennewick man is more atypical" and the remains lay "on the extreme outer limits of modern human variation" (Jantz & Spradley, 2014, p. 477). The unique nature of the remains supports the scientists' arguments to exclude the Kennewick remains from the category of Native American. This occurs when they state that despite Kennewick Man being extremely atypical when compared to modern human skeletons the remains "would be a less extreme member of the Polynesian Moriori than any other human group."

Later the researchers argue that "All Polynesian groups have lower distances with Kennewick Man than do any of the Native American groups," and that "Typicality probabilities show that he would be an extremely atypical member of any Native American group used in this analysis" (Jantz & Spradley, 2014, p. 479). Statistical discussions provide rhetorical parts that eliminate Kennewick Man's potential connections to modern Native American groups. They are eliminated because "typical probabilities show" that the remains would "be an extremely atypical member of any Native American group." Furthermore, arguing the Kennewick skeleton is most like human groups outside the continent opens the door for questioning who were in fact the first humans to arrive to the continent.

Second, part two inserts the Kennewick skull as fitting within the Paleoamerican group. Researchers argue that "Paleoamericans have a craniofacial morphology different from recent Native Americans" based on interlandmark distances (Spradley et al., 2014, p. 493). This component allows for questioning who were in fact the first inhabitants to the

continent. This sort of questioning is key for the continued settler colonial dispossession of Indigenous lands, opening the possibility for peoples other than Native Americans to have lived on the land in the ancient past.

Researchers argued that Paleoamericans "have large crania compared to later Native Americans, and indeed relative to other modern populations except for Polynesians" (Jantz & Spradley, 2014, p. 480). Additionally, "Paleoamericans tend to have long cranial vaults with shorter, narrower faces, while modern Native Americans typically exhibit shorter cranial vaults with taller, wider faces" (Spradley et al., 2014, p. 492). The measuring and categorizing of skull size has long been a controversial issue, and yet it is the size of the skull which separates both Paleoamericans and Kennewick Man from Native Americans. For instance, "The individual values for several early Holocene crania (see Table 25.8) are completely outside the range of modern Native Americans" (Jantz & Spradley, 2014, p. 481). The measuring and statistical analysis of human skulls operates to disconnect ancient Paleoamerican remains from modern Native American crania, destabilizing Native American claims to their connection to early Holocene remains. Furthermore, "The only modern groups with comparable cranial capacities are those from Polynesia, which exceed other modern groups by 85 to 145 cubic centimeters. Paleoamerican skull sizes and cranial capacities exceed those of modern Native Americans and most modern populations" (Jantz & Spradley, 2014, p. 481). Like craniologists in the nineteenth century, skull size and capacity are measured to categorize, analyze, and rank the Kennewick skeleton. And in doing so, the scientists distance the Kennewick remains from present-day Native Americans. This occurs because "Paleoamerican skull sizes and cranial capacities exceed those of modern Native Americans." Larger skulls separate Paleoamericans, and by extension the Kennewick skeleton, from Native Americans.

When comparing the measurements of the Kennewick skull with cranial measurements from both Paleoamerican and modern human remains, part two concludes that ancient human skeletons differ from present day Native Americans and that the Kennewick cranium is most like ancient Paleoamericans and modern Polynesians. Because the empirical measurement and statistical analysis of Indigenous remains is built from and still operates within settler colonialism, inevitably these anthropological arms of the settler colonial machine destabilize the Kennewick remains' potential connections to Native Americans by entrenching "paradigmatic Indianness" in ways that produce the Kennewick skeleton as atypical and distant from present-day Native Americans. Further, part two produces rhetorical challenges to Native Americans claiming to be the earliest inhabitants of the land.

Part Three

Part three provides rhetorical operations that discuss the bones in ways that construct scenarios where peoples different from Native Americans lived on the continent before Native Americans. Part three rhetorically operates as an anthropological questioning of Native American sovereignty and whether the Kennewick skeleton is a representative of earlier peoples who were possibly conquered or assimilated by ancestors of Native Americans. Part three produces rhetoric that supports settler colonial claims to land by questioning Native American peoples as the first inhabitants. Part three utilizes two rhetorical mechanisms: First, the presence of traumatic injuries on the Kennewick skeleton indicates the possibility of interpersonal violence and therefore Native Americans could have been the victors of early instances of colonization; Second, the modern Native American skeletal form varies widely, which to the investigators demonstrates that multiple waves of immigration of various different peoples took place.

The Kennewick individual had suffered several injuries throughout his life, and this is evident on the bones. For instance, "Kennewick Man sustained some type of direct blow to

the right anterior third of the chest that fractured at least five ribs," "A projectile point is embedded in the right posterior ilium," and several minor injuries are present on the cranium (Owsley et al., 2014, pp. 168, 171). These injuries "testify to interpersonal conflict," and indicate that "interpersonal conflict remains an equally plausible explanation for the regional pattern of the cranial injury" (Chatters, 2014, pp. 290, 305). Skeletal evidence of traumatic injuries leads the investigators to conclude that "The lives of Paleoamericans were at times harsh" and "Interpersonal violence appears to have been more common among Paleoamericans than expected" (Lepper, 2014, p. 21). For these reasons, part three is a rhetorical mechanism that posits "interpersonal violence clearly was part of the life experience of many Paleoamericans" (Lepper, 2014, p. 18).

Arguing that ancient human life on the continent was violent is a rhetorical mechanism that questions Native Americans as the original inhabitants on the continent by describing Native Americans as the survivors of ancient instances of interpersonal violence. For instance, "early Americans left Asia bearing a more generalized morphology," and Native American morphology "resulted from subsequent movement of people from Asia bearing morphology more typical of East Asians" (Jantz & Spradley, 2014, p. 486). This rhetorical mechanism engages in a sort of settler colonial imagining where "These later migrants may have displaced the earlier ones, or more likely assimilated some, which would help explain the high variability among recent Native Americans" (Jantz & Spradley, 2014, p. 486). By discussing evidence of interpersonal violence left behind on the Kennewick bones, the studies in the *Kennewick Man* volume fuel the settler colonial machine by constructing the Kennewick remains as one of many living in the region and therefore evidence that ancient peoples other than Native Americans were living on the continent in the early Holocene.

The second component of part three provides grounds for challenging Native American ancestral claims to the land by arguing variability in Native American skeletal remains indicates multiple waves of immigration from many geographic areas. This is a settler colonial operation that works to eliminate Native American knowledges that speak to their presence on the land since the beginning of time. For instance,

> Native Americans contain greater variability than populations from the entire world …Such high levels of variability do not support derivation of the current population from a single migration unless there was a mechanism allowing Native Americans to generate more variability in less time than populations in other regions of the world. (Jantz & Spradley, 2014, p. 483).

Through comparisons of the Kennewick bones with the measurements taken previously from Native American remains, the contributors operate rhetorical appendages that provide discussions of human bones that work to challenge Native American sovereignty as being first and original peoples on the land.

Additionally, modern Native American variability is talked about in ways that challenge their connections to Paleoamerican and early Holocene skeletons. Researchers argue:

> Ongoing immigration from Asia also likely contributed to variation of both early and recent Americans. Brace et al. (2004) report high diversity among prehistoric inhabitants of the Americas, going back to Archaic times. They also found that Archaic, Woodland, and even some Late Prehistoric samples display affinities to Old World populations, such as the Ainu-Jōmon and Polynesians. This demonstrates that the Polynesians affinities of early Holocene crania, especially Kennewick Man, are not anomalous findings, but rather part of a widespread pattern that persisted for some time and, in some areas, until rather recently. (Jantz & Spradley, 2014, p. 487)

It is “ongoing immigration” that is argued to have contributed to “variation of both early and recent Americans.” This morphological diversity is attributed to “high diversity among prehistoric inhabitants” that “display affinities to Old World populations” and are “part of a widespread pattern that persisted for some time.” By attempting to explain ancient and modern skeletal diversity through ongoing human immigration by prehistoric humans, the *Kennewick Man* volume crafts rhetorics that describe constant waves of humans coming to the land.

Because of these multiple waves of immigration to the land that occurred for some time, researchers imply that Native American migrants may have displaced or assimilated earlier peoples, which in part may also explain the highly diverse Native American form. For instance, “These later migrants may have displaced the earlier ones, or more likely assimilated some, which would help explain the high variability among recent Native Americans” (Jantz & Spradley, 2014, p. 487). Part three of the settler colonial machine engages in rhetorical mechanisms that talk about the bones in ways that challenge Native American sovereignty by engaging in settler colonial questioning and imagining of other ancient human beings living on and immigrating to the Americas.

Conclusions

In this chapter I have demonstrated that the anthropological discussion of the bones in the *Kennewick Man* volume provides rhetorical mechanisms that continue to fuel the material, cultural, and epistemological settler colonial elimination of Indigenous peoples by producing Western knowledges and rhetorics that universalize scientific assumptions about human skeletal form and ancient human migrations to the detriment of Native American sovereignty and their claims to ancient human remains found in the land. The scientific settler colonial machine’s interlocking parts work in tandem to produce talk about the Kennewick human remains that eliminates the remains’ connections from present-day Native Americans

and from being considered Native American. They do so by positioning the remains as atypical, universalizing "paradigmatic Indianness" to justify further study of the remains and prevent repatriation. The volume challenged Native American sovereignty by disassociating ancient human remains found in the land from present-day Native American peoples, putting in place contemporary settler colonial mechanisms that erase ancient Native American connections to and presence on the land.

In the *Kennewick Man* volume, race is used to generate the remains' identity through potential affiliation to modern human groups. And it is not just Native Americans who are racialized but everybody, including Polynesians and others who—like Native Americans—have that identity foisted on them by Europeans. From this lens, race provides scientific rationalizations for settler colonial elimination by specifying who gets counted as Native American in the twenty-first century. This is an encroachment on Native American sovereignty and fosters a key colonizing mechanism: the production of colonizing rhetorics that craft narratives of ancient connections to the land for settlers through the anthropological analysis of Native American bones. It is important that future rhetoric and communication scholars continue to investigate how pursuits of discovering a person or group's ancestral home through discourses of DNA and biology work to support settler colonialism by crafting narratives that produce connections to the land for settlers to the detriment of Native American connections to the land since time immemorial.

On October 11, 2012, Douglas Owsley in an interview stated, "There is not any clear genetic relationship to Native American peoples. I do not look at him as Native American" (Associated Press, 2012). Eventually the Kennewick remains would undergo DNA testing that proved members of the Confederated Tribes of the Colville Reservation are related to the ancient skeleton. This led to the repatriation and reburial of the Kennewick remains. The use of DNA analysis to correct the anthropologic studies in the *Kennewick Man* volume

demonstrates that science and settler colonialism, like any machine, can be rewired and rebuilt to support Native American sovereignty and decolonizing desires. NAGPRA is designed to honor human remains and cultural objects by facilitating the return of currently held or yet to be discovered Native American and Native Hawaiian remains and cultural objects back to their affiliated tribes and families. This desire meant to redress many colonial harms was eventually fulfilled in the Kennewick case, but not before over a decade of cultural and legal conflict over the ancient remains and eventual continuation of the anthropological tradition of studying the bones of Indigenous peoples. The next chapter will continue to explore the Kennewick controversy by investigating the legal rhetoric from *Bonnichsen v. United States* (2002/2004) that challenged the implementation of NAGRPA and debated what is "Native American."

Chapter 4 – NAGPRA and *Bonnichsen v. United States*: The Logics of Settler Colonial Recognition and the Refusal of Repatriation.

On November 16, 1990, George H. W. Bush signed the Native American Graves Protection and Repatriation Act (NAGPRA) into law. The objectives of NAGPRA are twofold: first, Native American tribes or Native Hawaiian organizations must be consulted when "Native American human remains, funerary objects, sacred objects and objects of cultural patrimony" are unearthed, removed, or found—whether purposefully or incidentally—on federal or tribal lands; and second, "Within 5 years of enactment, all Federal agencies and all museums which receive federal funds, which have possession of, or control over, any Native American human remains or associated funerary objects…are to compile an inventory of such remains or objects" (NAGPRA, 1990). Afterwards the tribes or families lineally and/or culturally affiliated with the remains or objects must be contacted, and the objects or remains are to be repatriated. According to Rebecca Tsosie (2012), "Repatriation is intended to redress the harms of a traumatic past in which Native human bodies and burial sites were desecrated with impunity by citizens and government officials alike"; and NAGPRA is "significant because Congress actually took responsibility for the historic injustice to Native peoples caused by federal policies" (pp. 1181, 1182). Chip Colwell (2017) noted that since NAGPRA's passage, "Hundreds of tribes have confronted 1,500 museums over the fate of more than 200,000 Native American skeletons and 1 million grave goods and sacred objects" (p. 4). NAGPRA is designed to honor Indigenous human remains and cultural objects by facilitating the return of currently held or yet to be discovered Native American and Native Hawaiian remains and cultural objects to their tribes or families.

NAGPRA's process of repatriation can mitigate many colonial harms stemming from the numerous years of grave robbing, collecting, display, and scientific study of Native American skeletons conducted by museums, scientists, and others. However, in 1996, when ancient human remains roughly 9,200 years old were accidently found emerging from the

banks of the Columbia River near Kennewick, Washington, repatriating the remains known as Kennewick Man or the Ancient One to local Native American tribes would quickly turn into nearly a two-decade-long controversy. To halt the United States Army Corps of Engineers (USACE) from repatriating the remains to five local Native American tribes (Confederated Tribes of the Colville Reservation, Confederated Tribes of the Umatilla Reservation, Yakama Nation, Nez Perce, Wanapum band), eight anthropologists and archaeologists (Robson Bonnichsen, C. Loring Brace, George W. Gill, C. Vance Haynes, Jr., Richard L. Jantz, Douglas Owsley, Dennis J. Stanford, and D. Gentry Steele) filed a suit with the U.S. District Court in Portland, Oregon, to stop the enaction of NAGPRA so scientific study of the remains could take place (Geranios, 2000).

Bonnichsen v. United States would be one of the first major repatriation cases to test NAGPRA. On August 30, 2002, Magistrate Judge John Jelderks announced his decision in the *Bonnichsen v. United States* case. Jelderks ruled that the Department of Interior's (DOI) decision that the remains were affiliated with the five claimant Native American tribes was "arbitrary" and "capricious." He argued that the remains did not fit within the definition of "Native American" provided by NAGPRA, the remains should not be repatriated, and the plaintiff scientists should be allowed to study the remains (*Bonnichsen v. United States*, 2002). This decision would be appealed to the 9th Circuit Court of Appeals which affirmed Jelderks' ruling. These decisions were reached despite the inclusion of Native American oral traditions that provided evidence that the human remains were their ancestor. NAGPRA stipulates oral traditions should be part of the preponderance of evidence used to determine cultural affiliation when fulfilling repatriation (NAGPRA, 1990).

Communication studies scholars have discussed the Kennewick remains by examining the interplay between culture and the media in their framing of the discourse surrounding the nearly two-decade controversy (Coleman & Dysart, 2005). They have

demonstrated how the public discourse from the Kennewick controversy "has been delivered in a biopolitical vein" (Coleman, 2013, p. 66). These studies have pointed out how public communication surrounding the Kennewick remains controversy demonstrated that "American mainstream and American Indian societies have different cultural element priorities," and these can be "used to identify dominance and subjugation" (Nelson, 2013, p. 100). Analyzing communication ranging from James Chatters' book *Ancient Encounters* (2001) to the larger media discourses covering the controversy, these scholars have noted the Kennewick remains controversy brought to bear contemporary "biopolitical 'management,' asking whether the bones should be 'gifted' to scientists for their studies or given to sovereign tribes who claimed the remains as an ancient relative" (Coleman, 2013, p. 67). Yet, to my knowledge, the legal rhetoric from the *Bonnichsen v. United States* case has not been critically examined.

Rhetorical scholars have analyzed rhetoric from legal cases and contexts pertinent to the topics of gender and political asylum (Burgess, 2015; McKinnon, 2011), religion and free speech (Bruner & Balter-Reitz, 2013), queer rhetorical futures (Campbell, 2012), suffrage rhetoric (Ray & Richards, 2007), race and affirmative action (Hasian Jr., 1997; Kearl, 2017), and child pornography legislation (Rand, 2019). Aside from Primack (2020) who used Lacanian psychoanalytic theory to analyze organizing signifiers in *Adoptive Couple v. Baby Girl*, much of the scholarship focused on legal rhetoric has not analyzed major Native American court cases. And to my knowledge, none has examined *Bonnichsen v. United States*. As Sara McKinnon (2016) has argued, "we must also consider the geopolitical and economic forces" that shape "the broader political, cultural, social, and economic dynamics" for rhetorical arguments voiced in legal contexts (p. 216). It is important to critically analyze the rhetoric used to reinterpret and circumvent an important piece of human rights legislation designed to return Native American relatives and sacred objects back to their families and

communities. By rhetorically reinterpreting the definition of "Native American" in NAGPRA, as well as the standard for "reliable" evidence stipulated by the Act, these decisions allowed for the continuation of the settler colonial scientific study of Native American human remains in the twenty-first century. Therefore, it is important to analyze the arguments made against the sovereign right of Native Americans to reclaim the remains of their ancestors and ensure that their deceased loved ones are treated humanely. By doing so we can view legal rhetoric as not only "a representative site" where we see "the larger politics of recognition play out" (Burgess, 2015, p. 517), but also, we should read legal rhetoric as structured by and structuring settler colonialism (e.g., Dennison, 2014).

Scholars outside communication studies and rhetoric have discussed *Bonnichsen v. United States* and the controversy over NAGPRA (Fish, 2006; Harding, 2005; McKeown, 2012; Mihesuah, 2000; Ripley, 2005). These researchers have examined the legal arguments made during the *Bonnichsen* case regarding NAGPRA, including arguments about what is the definition of "Native American" and who ought to possess the Kennewick skeleton. Some have noted *Bonnichsen v. United States* was pivotal because the decisions from the courts demonstrated that "NAGRPA should be directed by science, which defeats the purpose of NAGRPA itself" (Jones & Stapp, 2008, p. 63). Others have argued "the *Bonnichsen* case represents an example of epistemic injustice for the five claimant tribes" (Tsosie, 2012, p. 1185), and have described the decision as "the most lethal attack on Native American identity in recent American jurisprudence" (Young, 2006, p. 31). While largely critical of the courts' reinterpretation of NAGPRA and decision to grant the scientists access to the skeleton for study, prior scholarship has not rhetorically analyzed how the courts' arguments interlock, combine, and function rhetorically to fuel the logics of settler colonialism. Before the *Bonnichsen* rulings in 2002 and 2004, Rebecca Tsosie (1999) argued, "the ultimate disposition of Kennewick Man will say a great deal about the status of Native peoples in this

country" (p. 677). This chapter builds upon the critical reception of the *Bonnichsen* decisions by highlighting how the rhetoric within the case speaks to "the status of Native peoples in this country" by turning legal mechanisms that privilege the pursuit of Western science and knowledge production to the detriment of Native American peoples and their sovereignty.

To do so, I investigate the rhetoric of the Jelderks' District Court ruling from 2002 and the Gould appellant ruling from 2004. *Bonnichsen v. United States* (2002/2004) brings to bear the intersections of law, science, human rights, and Native American sovereignty in the United States, and how legal mechanisms turn the settler colonial machine. As of 2007, there have been fewer than 20 NAGPRA cases (Koehler, 2007), with *Bonnichsen v. United States* being one of only 16 NAGPRA cases filed in federal court in the Act's first 12 years of existence (McKeown & Hunt, 2003). The decisions stemming from *Bonnichsen* demonstrate the law reinterpreting NAGPRA in ways contradictory to the purposes of the Act by privileging science and scientific knowledge about culture and ancient human history and ignoring Native American claims to the remains of their ancestors. It is important to look at these decisions because they impact contemporary human rights legislation and demonstrate the importance of exploring "the function of rhetoric in perpetuating" settler colonial dichotomies (i.e., past/present, reliable/unreliable, settler/Native American) that maintain the political and legal domination of Native American peoples (McKinnon, 2011, p. 180). Young (2006) argued, "Both the court's ultimate conclusion and the language and method of its analysis reflect the white-majority society's norms that have dominated the law for centuries" (p. 31). The *Bonnichsen* decisions represent another instance in a long history of U.S. courts defining what is a "Native American" and "Native American" culture for Native American peoples, instead of listening to Native American peoples when they rhetorically exercise their sovereign right to constitute themselves and claim their ancestors.

In this chapter I argue that by not listening to the Native American coalition's appeals to their oral traditions that speak to their ancestral connections to the land and cultural affiliation with the Kennewick human remains, the *Bonnichsen v. United States* (2002/2004) decisions universalized settler colonial definitions for what is legally a "Native American." This performed a few key rhetorical operations that worked to dissociate the Kennewick remains from being considered culturally affiliated with the Native American claimants. First, the courts' redefinition of "Native American" rhetorically enforced colonial time, temporally fixing what is legally considered "Native American" to the settler colonial present. In the settler colonial present Native Americans have limited political and legal agency to exercise their sovereignty to reclaim loved ones and to define themselves. By rhetorically cementing the legal definition of "Native American" to the modern day, the arguments in *Bonnichsen* fix settler colonialism as the beginning and end point for the legal existence of "Native Americans." Second, the settler colonial definition of "Native American" prioritized material evidence from Western scientists over the oral traditions provided by the Native American claimants. The prioritization of material evidence reinterpreted NAGPRA's definition of "Native American" by stressing that ancient human remains must be materially and/or biologically connected with *present-day* Native American tribes. In all, the *Bonnichsen* court decisions rhetorically manifested key settler colonial moves of epistemic dominance, continuing the long settler colonial tradition of racializing Indigenous bodies through biological definitions of "Native American" operationalized through legal mechanisms. They also continued the classic colonial move: ignoring Native American oral traditions while prioritizing Western knowledges when deciding what is a Native American and whether an ancient skeleton is indeed the ancestor of Native American peoples. The rhetoric from the court cases can be understood as settlers not only defining what is knowledge, but also defining what is Native American identity; speaking *for* Native

Americans about themselves, and in the process, violating Native American sovereignty to rhetorically constitute themselves and their ancestors.

In what follows, I review the legal context and timeline of the *Bonnichsen v. United States* case. I then discuss colonial time and Native American oral traditions. In the analysis I demonstrate that the rhetorical implementation of colonial time allowed the courts to distance the remains from being "Native American" by questioning the reliability of Native American oral traditions. Last, I provide brief conclusions regarding the rhetorical and legal recognition of Native American sovereignty and implications for the study of legal rhetoric.

Bonnichsen v. United States **Context & Timeline**

When a nearly complete set of over 9,000-year-old human remains were accidently found emerging from the banks of the Columbia River near Kennewick, Washington in July 1996, local forensic anthropologist James Chatters was called to the site. During a press conference to local media at Kennewick City Hall, Chatters (2001) publicly described the bones as having seemingly European characteristics (p. 63). Not long after, in a September 1996 interview with *The New York Times*, Chatters would recount thinking that when he first saw the remains' skeletal features, "I've got a white guy with a stone point in him…I thought we had a pioneer" (Egan, 1996). Chatters would later say in an interview with CBS *60 Minutes* that he thought the remains "looked like he was probably a white settler, a European settler" (Finkelstein & Columbia Broadcasting System, 2002). Trained experts like Chatters openly questioning if the ancient human remains were possibly a "white guy" and not Native American set the stage for the impending legal and cultural battle between Native American groups and scientists over possession of the remains, who were the "first" on the continent, and the issue of repatriating Native American remains and objects back to their families and communities.

NAGPRA requires that Native American tribes and federal agencies must be consulted when human remains or objects are found on tribal or federal land. NAGPRA also stipulates that an Archaeological Resources Protection Act (ARPA) permit must be granted and acquired *before* the remains are excavated or studied (NAGPRA, 1990). The embankment on the Columbia River where the ancient bones were found is federal land managed by the USACE (Spellmon, 2016). The Kennewick human remains were found on July 28, 1996. However, it would not be until two days after Chatters had excavated the remains, had them X-rayed at the local hospital, sent pieces to be radiocarbon dated, and brought them to his at-home laboratory that Chatters would *retroactively* file for an ARPA permit on July 30, 1996 (Chatters, 2001, p. 36; see also *Bonnichsen v. United States*, 2002). Because Chatters believed the remains to be an important scientific discovery that could shed light on who were some of the oldest people to have lived on the continent, Chatters arranged with Douglas Owsley of the Smithsonian to send the remains to Washington D.C. to be studied further (Chatters, 2001; Finkelstein & Columbia Broadcasting System, 2002). When a laboratory at the University of California-Riverside announced that radiocarbon dating placed the bones as approximately 9,200 calendar years old, sending the remains to the Smithsonian was cancelled because the USACE claimed the remains under the jurisdiction of NAGPRA and removed them from Chatters' possession on August 30, 1996 (Chatters, 2001).

Because of the antiquity of the remains and where they were found, the USACE fully intended to repatriate the remains to five Native American tribes that claimed the ancient human remains as their ancestor through an official NAGPRA claim. Repatriation was paused on October 16, 1996, when a group of anthropologists and archaeologists filed suit to stop the enaction of NAGPRA and to allow for further scientific study of the remains. The *Bonnichsen v. United States* case would first be heard before United States District Court for the District of Oregon on October 23, 1996. In the initial hearing, Judge Jelderks would find

that the USACE decision that the remains were likely "Native American" and to repatriate them was "flawed" and "premature" (*Bonnichsen v. United States*, *Dep't of the Army*, 1997). The USACE was then ordered to investigate the remains further and gather additional evidence about the remains' potential affiliations. In March 1998, the USACE and the Department of the Interior (DOI) would enter an inter-agency agreement that delegated the responsibility for determining if the remains were "Native American" and their disposition to the DOI (Boxberger & Rasmus, 2000).

Between December 1999 and March 2000, the DOI assigned various experts in anthropology, archeology, cultural and historical topics relevant to determining affiliation, as well as consulted with members of the claimant Native American tribes to provide evidence and investigate if the remains were culturally affiliated with the claimant Native American tribes (Babbitt, 2000; McManamon et al., 2000). In conducting their "Cultural Affiliation Report" the DOI examined a preponderance of evidence, including evidence from archaeology, physical and cultural anthropology, linguistics, oral traditions, and others (DOI, 2000a). Looking at several types of evidence, including Native American oral traditions, is a requirement by NAGPRA when determining cultural affiliation once objects/remains are determined to be "Native American" (NAGPRA, 1990). In January 2000 the DOI announced the remains were "Native American" (DOI, 2000b), and in September 2000 the DOI announced they should be repatriated to the claimant tribes (DOI, 2000c). The DOI's "Cultural Affiliation Report" would be included as part of the record of official evidence in the *Bonnichsen v. United States* (2002/2004) case.

After the announcement of the DOI's decision to repatriate the remains, the plaintiff scientists vying for possession of the ancient remains continued their litigation. The *Bonnichsen v. United States* (2002) case would be heard before United States District Court by U.S. Magistrate Judge John Jelderks. On August 30, 2002, Jelderks ruled that DOI's

conclusions be set aside and that the plaintiff scientists be allowed to study the remains. The tribal claimants would appeal this decision, and the case would be heard before the 9th Circuit Court of Appeals (*Bonnichsen v. United States*, 2004). On February 4, 2004, Judge Ronald Gould would affirm Jelderks' decision. These decisions from the *Bonnichsen v. United States* case would not be undone until 2015 when DNA testing results proved members of the Confederated Tribes of the Colville Reservation to be genetic descendants of the Kennewick remains (Rasmussen et al., 2015). The Kennewick remains would eventually be repatriated and reburied in 2017 (Wessel, 2017).

Rhetorical Sovereignty, Colonial Time, & Oral Tradition

Defining who you and your ancestors are is a key act of rhetorical sovereignty (Lyons, 2000; see also Cisneros, 2014; Flores, 1996). Rhetorical sovereignty is "the inherent right and ability of *peoples* to determine their own communicative needs and desires" (Lyons, 2000, p. 449, emphasis in original). Settler colonialism violates Native American rhetorical sovereignty by speaking for Native American peoples when defining what is "Native American." Settler colonialism also violates Native American rhetorical sovereignty by ignoring and/or delegitimizing Native American knowledges and oral traditions by prioritizing material evidence produced by Western science when determining cultural affiliation in legal settings. In *Bonnichsen v. United States*, the decisions by Judges Jelderks (2002) and Gould (2004) violated Native American rhetorical sovereignty when they valued Western scientific evidence over evidence from Native American sources, and when they argued the remains are too old to be legally considered "Native American." In doing so, they continued a settler colonial tradition of epistemic violence in the United States when they "marginalized oral traditions" by describing the testimony provided by tribal claimants as myth or religious doctrine (Fish, 2006, p. 78). It seems that even with the existence of NAGPRA, the burden of proof lies with Native American claimants, and this results in

Native American groups having to "prove" their knowledges and evidence as reliable to settler courts when exercising their sovereign right to reclaim the remains of their ancestors.

The rhetoric from the *Bonnichsen v. United States* (2002/2004) decisions attacked Native American oral traditions and sovereignty through the strategies of 1) enacting and enforcing colonial time; and 2) attacking Native American oral traditions as "highly problematic" evidence for determining cultural affiliation. These two strategies were instrumental for the reversal of the DOI's determination that the Kennewick human remains were culturally affiliated with the tribal claimants. Largely, these two strategies demonstrated contemporary settler colonial legal mechanisms and their operations of "epistemic injustice" rhetorically manifested by U.S. courts when hearing Native American coalition's claims for repatriation (Tsosie, 2012).

Colonial Time

Individuals and groups rhetorically "constitute themselves along temporal dimensions" (Lake, 1991, p. 124). In telling and investigating history, settler colonial rhetorics and institutions render "Native Americans relics of the past, thus absent from (and logically, silent in) the present and irrelevant to the future" (Lake, 1991, pp. 124-125; see also Chevrette & Hess, 2015; Kelly & Black, 2018; Schmitt, 2015). In the Jelderks and Gould decisions, "colonial time" (Bruyneel, 2007) rhetorically operated to define what is or is not "Native American," and determined what is or is not "reliable" evidence when enforcing NAGPRA. The rhetorical constitution and enforcement of colonial time illustrates that the settler colonial machine turns its engines by confining Native American agency and identity to the past, limiting "the ability of indigenous people to define their own identity and develop economically and politically on their own terms" (Bruyneel, 2007, p. xvii). A rhetorically constructed temporal prison, colonial time "shackle[s] indigenous identity to an archaic form" (Bruyneel, 2007, p. 3), thereby making it difficult for present-day Native American groups to

claim ancient human remains as their ancestors in modern legal courts. This produces contexts in colonial modernity where Indigenous and Native American peoples have minimal to no political and legal agency or rights, where the non-modern past is severed from the modern present (Lake, 1991, p. 126; see also la paperson, 2017). Colonial time allows settlers and settler institutions, like the courts, to rhetorically construct the historical timeline and narrative for when and where "Native Americans" originated, and where their rights and sovereignty legally begin and end.

Colonial time enforces limitations on the capacity of Native American peoples "to express meaningful agency and autonomy, especially in the modern context" (Bruyneel, 2007, p. 2). The rhetorical constitution of colonial time frames "settler-state sovereignty as legitimate and indigenous people's sovereignty as illegitimate" (Bruyneel, 2007, p. 8). The strategic rhetorical imposition of colonial time in both Jelderks' and Gould's decisions provided temporal restrictions for what is or is not "Native American," highlighting a rhetorical mechanism of the settler colonial machine speaking for Indigenous peoples. By arguing the Kennewick remains are too old to be legally considered "Native American," the *Bonnichsen* decisions demonstrated how colonial time rhetorically severs present-day Native American peoples from ancient human remains found in the continent. The rhetorical operation of colonial time by the courts defined for the tribes what is "Native American," ignoring their oral traditions that defined their own identity and the identity of their ancestors. The decisions' rhetorical emphasis on the extreme age of the Kennewick remains allowed the courts to ignore "the fact that Native Americans have always had their own history" (Ripley, 2005, p. 160), a fact too often left unrecognized and unheard. The enforcement of colonial time violated present-day Native American rhetorical sovereignty by operationalizing a definition of "Native American" (constructed by settlers) that marked 1492 as start of what

can be considered "Native American," and any remains older than that point could potentially be something else.

Oral Tradition Treated as "Highly Problematic"

As sources of knowledge, culture, wisdom, and moral teaching, Native American oral traditions are vital for the constitution of identity and culture for Native American tribes and Nations. For instance, "Oral traditions establish a moral, economic or political law and/or describe the presence or absence of a geological or biological phenomenon" (Boxberger & Rasmus, 2000). Wilson (1996) argued that oral traditions "teach the young and remind the old what appropriate and inappropriate behavior is in our cultures; they provide a sense of identity and belonging, situating community members within their lineage" (p. 4). In their report, the DOI noted that, "There is no question of the sincerity with which the tribal people believe in their oral traditions. Nor is there any question here that the oral traditions" perform an important role in tribal culture (DOI, 2000a). Within Native American communities and cultures, oral traditions are viewed and treated as legitimate sources of knowledge. Though each tribe's oral traditions are unique and specific to that particular tribe, often Native American oral traditions speak to their importance for conveying knowledge and culture across generations. These are some of the reasons why the DOI consulted with the claimant tribes to listen to their oral traditions that speak to not only their presence on the land since the beginning of time, but also their shared cultural identity with the Kennewick human remains.

In consulting with the DOI, "Most of the tribes also provided written information related to cultural affiliation and other issues raised during the consultation meetings" (DOI, 2000a). As Armand Minthorn (Umatilla) mentioned in a statement before Congress, "we have submitted evidence which, under prevailing archaeological theories and NAGPRA, should be sufficient to indicate cultural affiliation to our ancestor" (Minthorn, 2000). The five

Native American tribal claimants in *Bonnichsen v. United States* (2002/2004) provided oral evidence that voiced: 1) their oral traditions are perceived as legitimate sources of knowledge; 2) they have lived on the land since time immemorial; 3) the oral traditions show no evidence of cultural change due to different peoples moving into the area; and 4) the oral traditions demonstrate no evidence of the tribes migrating to the area from elsewhere. The DOI noted,

> For the Native people of the Plateau oral traditions are true histories. They link their existence to the beginning of the appearance of human beings on the Plateau and they relate their continued existence on the Plateau to that distant past. Unlike many Native peoples in North America the Plateau people do not have origin myths that explain their placement by migrations to the area or by creation. (Boxberger & Rasmus, 2000)

The DOI also highlighted that the oral traditions from the region are "relatively uniform," and that "This knowledge comes from thousands of years of occupation within the same territory" (Boxberger & Rasmus, 2000).

Furthermore, members of the claimant tribes voiced the importance of their oral traditions speaking to the fact that they have ancient connections to the land and to those that have lived there. Barbara Friedlander Aripa (Colville) stated, "Since time immemorial, aboriginal Native American Indians' inherent spiritual ties to the land for food gathering (fishing, hunting, root gathering) have been perpetual. Tribes have ancient prayers handed down for each and every part of their life" (2008, p. 147). Connie Johnston (Colville) mentioned, "We have a cultural affiliation or relationship with Kennewick Man because he existed and died in the land where we were placed as caretakers by the Creator" (2008, p. 224). Additionally, Armand Minthorn (Umatilla) described that, "From our oral histories, we know that our people have been part of this land since the beginning of time. We do not

believe that our people migrated here from another continent, as the scientists do" (2008, p. 43).

The courts' dismissal of the coalition tribes' oral traditions in favor of a more material cultural connection to the remains is another rhetorical manifestation of the settler colonial machine. Built from components that value reasoning and deduction firmly entrenched in the Western epistemological tradition, legal contexts often prioritize material evidence produced by scientific experts over evidence from other sources of knowledge. Rebecca Tsosie argued, "science often receives privileged treatment" in both the court room and in policymaking (1999, p. 617; see also Mihesuah, 2000, p. 7). This results in scientific evidence being valued over evidence from Native American groups. In *Bonnichsen v. United States*, this takes place through the prioritization of material evidence—produced by physical anthropology and archaeology—that speaks to connection with the Kennewick remains when determining cultural affiliation. This was also made evident by the court's refusal to repatriate the remains until evidence from DNA analysis "proved" the remains to be an ancestor to members of the Confederated Tribes of the Colville Reservation.

In the *Bonnichsen v. United States* decisions, culture and cultural affiliation are defined by material evidence produced by archaeologists and anthropologists. Oral tradition "was not 'scientific' by the court's standards" (Young, 2006, p. 33; see also Kakaliouras, 2012). For example, Jelderks argued the tribes' reliance on oral traditions as evidence for cultural affiliation was "highly problematic" (*Bonnichsen v. United States*, 2002). The treatment of evidence produced from Western science and scientists as reliable rhetorically functioned to the detriment of the Native American oral traditions that speak to being connected to the remains. As a result, "The testimony of the tribal claimants is entirely disregarded as 'mythology' and 'religious ideology,' while the scientific data represented by genetic testing is understood to have the capacity to tell us the 'truth' about human origins

and identity" (Tsosie, 2012, p. 1185). Organized and run by settlers, the settler colonial machine's legal operations worked to destabilize their connection to ancient remains and subsequently the land by ignoring Native American oral traditions while simultaneously universalizing Western science.

Analysis

This analysis demonstrates that the extreme age of the remains allowed the courts to question whether they are indeed "Native American." In the decisions, colonial time was rhetorically enacted to mark the cut-off point for what is legally "Native American" at 1492 and after. Anything older than 1492 had to be "proven" to be "Native American." Additionally, settler colonial logics not only define what is "Native American," they also limit what is acceptable evidence for determining cultural affiliation when following NAGPRA. Fundamentally, the courts argued that there is lack of evidence that proves the remains to be culturally affiliated with the tribal claimants, despite the DOI concluding otherwise and NAGPRA's stipulation that Native American oral traditions must be considered. When Jelderks said evidence in the case must be a type of "recognized" evidence or claims, Jelderks brought to bear settler colonial paternalism by defining "acceptable" evidence as evidence produced by Western science, delegitimizing Native American oral traditions.

The Rhetorical and Legal Enforcement of "Colonial Time"

The settler colonial definition of Native American enforces a colonial time that limits the remains from being thought of as Native American. Colonial time entrenches settler modernity as the beginning and end point, the universal center or cut-off point from which Native Americans can and cannot be traced throughout time and space. Walter Mignolo argued, "there is no modernity without coloniality" (2012, p. 24), so when the decisions in *Bonnichsen* rhetorically enforce colonial time by arguing the Kennewick remains must be

proven culturally affiliated with *modern* Native American tribes, the courts provide a redefinition of "Native American" that starts and ends with settler colonialism. The fixing of what is "Native American," as defined by Western settlers and scientists, operated through two rhetorical components: first, "Native Americans" legally don't exist until 1492 and the arrival of Europeans; and second, fixing the legal existence of "Native Americans" to the present-day reduces the ability to determine affiliation to only Native American tribes currently recognized by the U.S. courts as presently existing.

The Settler Colonial Temporal Constitution of "Native Americans." First, the definition of what can be considered "Native American" remains is limited to only human remains found in the United States after first European contact in 1492. Colonial time fixes the definition of "Native American" exclusively to the mark of European colonization in the Americas. This prevents remains of extreme antiquity like Kennewick from being considered Native American. For the courts, any remains older than 1492 make it difficult to determine if they are truly "Native American" and not remains from a different cultural group. Both decisions entrench colonial time for defining "Native American" by arguing that the DOI's definition is too encompassing, and therefore does not align with the intentions of NAGPRA. For instance, in their "Cultural Affiliation Report," the DOI defined "Native American" as

> human remains and cultural items relating to tribes, peoples, or cultures that resided within the area now encompassed by the United States prior to the historically documented arrival of European explorers, irrespective of when a particular group may have begun to reside in this area, and, irrespective of whether some or all of these groups were or were not culturally affiliated or biologically related to present-day Indian tribes. (McManamon et al., 2000)

For the courts, this definition is too broad, potentially making all prehistoric remains "Native American" just because of their age and having been found in the United States. To reinscribe colonial time Jelderks argued,

> Under this definition, regardless of their origins or history, all remains and other cultural items found in the United States that are now more than 510 years old are deemed 'Native American' for the purposes of NAGPRA, even if they have no relationship to a present-day 'tribe, people or culture.' (*Bonnichsen v. United States*, 2002)

It is 1492 that delineates when human remains can be considered "Native American" by the courts. It is the temporal mark of European colonization and arrival in the Americas that allows the courts to limit what remains can be defined as "Native American." Entrenching this definition of "Native American" not only limits what can and cannot be defined as "Native American," but also operationalizes settler colonialism through legal channels.

Additionally, Judge Gould asserted that the DOI's redefinition of "Native American" was "an extreme interpretation." Gould argued,

> all graves and remains of persons, predating European settlers, that are found in the United States would be 'Native American,' in the sense that they presumptively would be viewed as remains of a deceased from a tribe 'indigenous' to the United States, even if the tribe had ceased to exist thousands of years before the remains were found, and even if there was no showing of any relationship of the remains to some existing tribe indigenous to the United States. (*Bonnichsen v. United States*, 2004)

By identifying the DOI's definition as an "extreme interpretation" that views human remains "predating European settlers" found in the United States as "Native American" and "indigenous," Gould pushes back on the temporal expansion for what is "Native American." In doing so, colonial time is utilized to mark settler colonialism as the beginning and end

point for the presence of "Native Americans" on the continent. This is because assuming that "Native Americans" lived on the continent "predating European settlers" would be "presumptive." The rhetorical enaction of colonial time separates tribes that "had ceased to exist thousands of years before the remains were found" from "Native Americans" because the courts cannot be certain they have some relationship to an "existing tribe."

Furthermore, Jelderks reinforced colonial time and the Western drive for scientific study of human remains when he argued,

> All pre-Columbian people, no matter what group they belonged to, where they came from, how long they or their group survived, or how greatly they differed from the ancestors of present-day American Indians, would be arbitrarily classified as 'Native American,' and their remains and artifacts could be placed totally off-limits to scientific study. (*Bonnichsen v. United States*, 2002, emphasis in original)

By stating "All pre-Columbian people…would be arbitrarily classified as 'Native American,'" Jelderks enforces colonial time as the determining factor for what can or cannot be "Native American." It is "pre-Columbian" that stamps the start and end of the legal category of "Native American." This is a prime settler colonial rhetorical move, settlers defining *for* Native American peoples who they are and where they come from. Again, Jelderks argued,

> the Kennewick remains are so old, and information as to his era so limited, that it is impossible to say whether the Kennewick Man is related to the present-day Tribal Claimants, or whether there is a shared group identity between his group and any of the Tribal Claimants. (*Bonnichsen v. United States*, 2002, emphasis in original)

Prehistoric time, a time before colonial time, allows for separating the remains from being "related to the present-day Tribal Claimants" or from even saying "there is a shared group identity" between them. The rhetorical manifestation of colonial time allowed for the

construction of temporal distance between the Native American coalition tribes and the remains, as well as shifting the ancient remains away from the settler colonial category of "Native American."

Emphasizing the remains' extreme age not only created distance between the remains and present-day Native Americans, but also rhetorically continued the settler colonial tradition of "primitivizing" Native Americans. This rhetorically reinforced the harmful settler colonial dichotomies of past/present, primitive/civilized, and nonmodern/modern. For instance, at the very beginning of his decision, Gould argued,

> This is a case about the ancient human remains of a man who hunted and lived, or at least journeyed, in the Columbia Plateau an estimated 8340 to 9200 years ago, a time predating all recorded history from any place in the world, a time before the oldest cities of our world had been founded, a time so ancient that the pristine and untouched land and the primitive cultures that may have lived on it are not deeply understood by even the most well-informed men and women of our age. (*Bonnichsen v. United States*, 2004)

Again, colonial time is rhetorically manifested to place the remains in "a time predating all recorded history." Echo-Hawk (2000) argued that terms like "prehistory" question the validity of oral traditions because they presume "an absence of applicable records" (p. 285). Judge Gould echoed this settler colonial logic when he placed the remains in a time "before the oldest cities of our world," a time where "primitive cultures" are not "deeply understood." In this faraway time and place that is not recorded (at least by Western history), "a time before the oldest cities of our world had been founded," the "primitive cultures" may have lived in the Columbia Plateau. Settler colonialism sets the defining line for the temporal zone of the remains, as they existed in "a time before the oldest cities of our world had been founded."

Colonial Time Confining "Native Americans" to the Present. Second, colonial time confines the legal existence of "Native Americans" to settler colonial modernity. This occurs when it is argued the remains must have a certifiable connection to a *present-day* modern Native American tribe or group. The only way the courts will recognize a "Native American" following the provisions of NAGPRA is that they must be affiliated with a present-day Native American tribe that is recognized by the federal government.

One way the decisions did this was through emphasizing NAGPRA's use of present-tense in its own definition of "Native American." NAGPRA officially defined "Native American" as "of, or relating to, a tribe, people, or culture that is indigenous to the United States" (NAGRPA, 1990). In his decision, Gould stated, "the statute unambiguously requires that human remains bear some relationship to a *presently existing* tribe, people, or culture to be considered Native American" (*Bonnichsen v. United States*, 2004, emphasis added). Furthermore, Jelderks argued, "Given the 'plain language' of this provision its ordinary meaning, use of the words 'is' and 'relating' in the present tense requires a relationship to a presently existing tribe, people, or culture" (*Bonnichsen v. United States*, 2002). These arguments demonstrate the use of colonial time to fix the definition of "Native American" to settler colonial present. The emphasis on present tense is important, because then the courts can limit who is legally considered "Native American" to only those who are recognized as a "presently existing tribe, people, or culture" by the dominant legal and political powers in the United States. This limits who/what can be legally recognized as "Native American" to those existing in the present and no older than 1492. Only recognizing "Native Americans" that exist in settler colonial modernity impinges on Native American peoples' sovereignty to define and constitute themselves.

NAGPRA defines "cultural affiliation" as "a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day Indian

tribe or Native Hawaiian organization and an identifiable earlier group" (1990). The decisions argued that the DOI's "Cultural Affiliation Report" and the evidence provided by tribal claimants do not sufficiently prove cultural affiliation. For instance, Jelderks argued,

> The term 'Native American' requires, at a minimum, a cultural relationship between remains or other cultural items and a present-day tribe, people, or culture indigenous to the United States. A thorough review of the 22,000-page administrative record does not reveal the existence of evidence from which that relationship may be established in this case. (*Bonnichsen v. United States*, 2002)

This argument demonstrates that time and space— "present-day tribe, people, or culture indigenous to the United States"—is interpreted by the court to require cultural affiliation to align with the settler colonial present. Evidence presented by the DOI and the tribal claimants and included in "the 22,000-page administrative record" that does support cultural affiliation that "can be reasonably traced historically or prehistorically" (i.e., oral tradition) is disregarded, as this material "does not reveal the existence of evidence" where cultural affiliation can be established. As Gould argued, "Congress's use of the present tense is significant…We conclude that Congress was referring to *presently existing* Indian tribes when it referred to 'a tribe, people, or culture *that is* indigenous to the United States" (*Bonnichsen v. United States*, 2004, emphasis in original).

In this section I have argued that the rhetorical articulation of colonial time allowed the courts to separate the Kennewick remains from cultural affiliation with the present-day Native American claimants by describing the remains as so old that it is impossible to know much about them. The manifestation of colonial time also allowed the courts to constitute "Native Americans" as only existing after the arrival of Europeans to the Americas in 1492. The interpretation of NAGPRA's use of present tense enabled the courts to argue that the Kennewick remains do not fit within the Act's definition of "Native American." These

decisions demonstrated U.S. law rhetorically constituting "Native Americans" for Native Americans, and that the legal and rhetorical constitution of "Native Americans" is firmly grounded in settler colonialism. What is legally defined as "Native American" is tethered to the colonial/modern present where settlers and settler governments can define, manipulate, speak for, and impinge upon Native American bodies and sovereignty on settler terms and in settler courts. And as will be discussed next, these decisions silenced and ignored the tribal claimants' knowledges and rhetorics that speak otherwise.

Native American Oral Traditions as "Highly Problematic"

NAGPRA explicitly includes folklore and oral traditions as acceptable evidence for determining cultural affiliation when enacting repatriation. NAGPRA states,

> Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, *folkloric*, *oral traditional*, historical, or other relevant information or expert opinion. (1990, emphasis added)

Both decisions argued that the DOI's decision "does not meet this standard" for establishing a preponderance of evidence (*Bonnichsen v. United States*, 2002); and "Because the record shows no relationship of Kennewick Man to the Tribal Claimants, the district court was correct in holding that NAGPRA has no application" (*Bonnichsen v. United States*, 2004). Given that NAGPRA includes Native American oral traditions as qualified pieces of evidence when collecting a "preponderance of evidence" to determine cultural affiliation, how do both judges argue there is no evidence proving affiliation between the claimant Native American tribes and the ancient remains?

In this section I argue that both decisions demonstrate settler colonialism's legal operations by enforcing a biologically determined understanding of culture and cultural

affiliation, where the evidence produced by Western science and scientists (i.e., biological, archaeological, and anthropological) are deemed credible and reliable, whereas evidence from Native American oral traditions are not. This results in the legal and rhetorical reduction of what is "Native American" to what can be materially tracked by scientific evidence, reinforcing the continued scientific study of Native American bones and the ignoring of Native American knowledges. This occurs through two parts: first, scientific evidence produced by Western scientists is privileged over oral traditions; and second, the court views oral tradition as "highly problematic" and unable to prove a discernable link and shared group identity between the remains and the Native American claimants.

Material Evidence is Privileged. Material evidence produced from scientists is privileged over Native American oral traditions. The apparent lack of physical connection between the Kennewick remains and present-day Native Americans indicates for the court that there is no traceable similarity between the two. For instance, "Human remains that are 8340 to 9200 years old and that bear only incidental genetic resemblance to modern-day American Indians, along with incidental genetic resemblance to other peoples, cannot be said to be the Indians' 'ancestors' within Congress's meaning" (*Bonnichsen v United States*, 2004). It is the lack of "genetic resemblance" that allows the court to distance "modern-day American Indians" from the Kennewick remains. This demonstrates how material "genetic resemblance to other peoples" is privileged by the law when determining cultural affiliation under NAGPRA. Furthermore, it is argued that "Congress enacted NAGPRA to give American Indians control over the remains of their genetic and cultural forbearers, not over the remains of people bearing no special and significant genetic or cultural relationship to some presently existing indigenous tribe, people, or culture" (2004). By arguing that no genetic evidence is present that indicates the remains are the ancestor of "modern-day

American Indians," what is legally considered "Native American" according to NAGPRA's rules of cultural affiliation is reduced to material evidence from Western science.

Furthermore, the physical differences between the remains and Native Americans allows the courts to argue that the remains may be evidence of a different population living in the region. For example, "Evidence that the Kennewick Man was morphologically distinct from present-day populations in this region lends some support to the theory that more than one population may have been present during that time period" (*Bonnichsen v. United States*, 2002). And "absent a satisfactory explanation for those differences, it does make such a relationship less likely, and suggests that the Kennewick Man might have been part of a group that did not survive or whose remaining members were integrated into another group" (2002). Because physical differences between the remains and present-day Native Americans exist, and because "a satisfactory explanation for those differences" is not provided, the court privileged material evidence from scientists when determining whether or not the Kennewick remains are "Native American." And this fuels the settler colonial machine because science—particularly the study of Native American bones—has long challenged Native American sovereignty by racializing Indigenous bodies and questioning their inherent sovereignty from having lived on the land since time immemorial.

Native American Oral Traditions are Viewed & Treated as Unreliable. Next, by privileging physical traits over oral tradition to determine cultural affiliation, the court provides a critique of Native American oral traditions where they are described and treated as unreliable evidence. These rhetorical arguments indicate settler colonial epistemic injustice by treating knowledge produced by Western scientists as the norm, universalizing scientific evidence as the standard to which all other non-Western pieces of evidence must be compared. Jelderks argued,

> though narratives can provide information relevant to a cultural affiliation determination in appropriate circumstances, the narratives cited in the record here do not provide a substantial basis for concluding that the Tribal Claimants have established a cultural affiliation between themselves and an earlier group of which the Kennewick Man was a member. If…the oral traditions help to establish a 'cultural continuity...extending into the prehistoric past,' the narratives do not help to establish how far into the 'prehistoric past' such continuity extends. The 9,000 years between the life of the Kennewick Man and the present is an extraordinary length of time to bridge with evidence of oral traditions. Even if they could be relied upon to establish that the ancestors of the Tribal Claimants have resided in this region for more than 9,000 years, the narratives cited by the Secretary do not establish a relationship of shared group identity between those ancestors and the Kennewick Man's unidentified group. (*Bonnichsen v. United States*, 2002)

Though the court recognized that "narratives can provide information relevant to a cultural affiliation determination," the court criticized oral traditions for not following colonial time by not establishing "how far into the 'prehistoric past'" they take place. For this reason, Jelderks argued that "9,000 years" is "an extraordinary length of time to bridge with evidence from oral tradition." This argument is indicative of settler colonial courts' continued attack on Native American oral traditions when it is stated that "even if they could be relied upon," the oral tradition cited by the tribal claimants in the record "do not provide a substantial basis" for repatriating the remains. Even though NAGPRA stipulates oral traditions are credible evidence, the decision by Jelderks still asserted that Native American oral traditions are unreliable and must "prove" themselves as reliable pieces of evidence.

Furthermore, the tribal claimants' oral traditions are questioned by the court despite these narratives speaking to their presence on and connection to the land since the beginning

of time. Gould argued, “We cannot give credence to an interpretation of NAGPRA advanced by the government and the Tribal Claimants that would apply its provisions to remains that have at most a tenuous, unknown, and unproven connection, asserted solely because of the geographical location of the find” (*Bonnichsen v. United States*, 2004). The connections to the land, and subsequently to the remains, by the tribes’ oral traditions, are described as “a tenuous, unknown, and unproven connection.” When attempting to establish the affiliation of human remains over 9,000 years old, settler colonial courts privilege material evidence produced by Western scientists, and in the process, treat and describe Native American oral traditions as unreliable and potentially a political tool. For instance, it is argued that oral traditions’ “adaptability and political utility suggest that narratives are of limited reliability in attempting to determine truly ancient events” (*Bonnichsen v. United States*, 2002). Describing Native American oral traditions as adaptable and as a political tool attacks and discredits evidence provided by the tribal claimants. Such rhetorical tactics make manifest the settler colonial legal parts that not only construct the courts, but also work to destabilize Native American oral traditions as sources of knowledge and thereby question Native American connections to the land and to the ancient remains and objects found in it.

The courts argue that because Native American oral traditions cannot produce a discernable and reasonable link between the remains and an identifiable earlier group (at least according to Western standards) then it cannot be assumed the remains are Native American. As operating mechanisms in the settler colonial machine, U.S. courts require Native American peoples to prove their knowledges and oral traditions as “true,” “reliable,” or “reasonable” according to Western standards. Echo-Hawk (2000) argued that many “resent the message that their oral traditions must be substantiated by science” before they can be considered legitimate sources of knowledge instead of listening to, understanding, and honoring Native American knowledges as legitimate ways of knowing about the world and

living in it (p. 287). This takes place when the oral traditions presented during *Bonnichsen v. United States* are criticized for being pliable. Gould argued,

> evidence in the record demonstrates that oral histories change relatively quickly, that oral histories may be based on later observation of geological features and deduction (rather than on the first teller's witnessing ancient events), and that these oral histories might be from a culture or group other than the one to which Kennewick Man belonged. (*Bonnichsen v. United States*, 2004)

For U.S. courts, oral traditions are too unstable because they "change relatively quickly" and that they "might be from a culture or group other than the one" the Kennewick remains belonged to. It is for these reasons that Gould argued the oral traditions provided do not support the DOI's conclusion that the remains are an ancestor of the tribal claimants. Criticizing Native American oral traditions because they do not meet Western standards of reliability and authenticity is the settler colonial machine manifesting itself by privileging Western knowledges over other ways of knowing.

Even with NAGPRA, the burden of proof falls on the Native American claimants to "prove" their lineal and/or cultural affiliation with human remains or objects to settler eyes and ears. Judge Gould stated,

> *these accounts are just not specific enough or reliable enough or relevant enough* to show a significant relationship of the Tribal Claimants with Kennewick Man. Because oral accounts have 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. As the district court observed, 8340 to 9200 years between the life of Kennewick Man and the present is too long a time to bridge merely with evidence of oral traditions. (*Bonnichsen v. United States*, 2004, emphasis added)

Jason Black (2012) argued, "the pursuit of authenticity" is problematic because it "denies a Native oral tradition that puts stock in" Native American knowledges (p. 636). The courts argued the tribal claimants' oral traditions do not "show the required significant relationship." To the eyes and ears of settler courts, the claimants' oral traditions are "just not specific enough, or reliable enough, or relevant." And oral traditions "cannot be considered as if factual histories" because they are "limited by concerns of authenticity, reliability, and accuracy." It seems that the only way the court is willing to authenticate a relationship that is "8340 to 9200" years old between the Kennewick remains and Native Americans is through evidence produced by Western science and scientists, and not "merely with evidence of oral traditions." This rhetorical move to require Native American oral traditions to "prove" themselves as accurate according to settler standards is an example of the settler colonial machine manifesting its eliminatory operations that favor Western science and logic to the detriment of Native American oral traditions and their claims to inherent sovereignty.

Furthermore, it is argued that oral traditions do not speak accurately enough to the tribes' relationship to the remains, and therefore "we can only speculate as to the possible group affiliation of the Kennewick Man" (*Bonnichsen v. United States*, 2002). This is a clear example of a mechanism in the settler colonial machine working to erase Native American oral traditions that speak to their status as conveyors of knowledge and as having lived on the continent since time immemorial. The tribal claimants' oral histories are attacked further when it is stated that,

> The administrative record contains no evidence--let alone substantial evidence--that Kennewick Man's remains are connected by some special or significant genetic or

> cultural relationship to any presently existing indigenous tribe, people, or culture…No cognizable link exists between Kennewick Man and modern Columbia Plateau Indians. (*Bonnichsen v. United States*, 2004)

The courts engage in a rhetorical policing of what is or is not "substantial evidence." This settler colonial operation conflates cultural affiliation with a "significant genetic" relationship between the ancient human remains and contemporary Native Americans. And because "no cognizable link exists" (at least to the courts' eyes and ears) this rhetorical operation engages in the settler colonial silencing of Native American oral traditions by favoring evidence produced by science when determining cultural affiliation when enacting NAGRPA. Native American knowledges are attacked because to settler colonial eyes and ears they appear to be too pliable and political, and therefore "highly problematic," which results in the courts ignoring the stipulations of NAGPRA by privileging scientific material evidence and discrediting oral traditions as evidence when determining the cultural affiliation of the Kennewick human remains.

Conclusions

Lyons (2000) argued that the exercise and recognition of rhetorical sovereignty is the "affirmation of peoplehood" (p. 456). In this chapter I have argued the *Bonnichsen v. United States* (2002/2004) decisions demonstrated settler colonialism's legal operations by rhetorically reinterpreting NAGPRA in ways that universalized settler colonial definitions for what is legally a "Native American." This produced rhetorical operations that enforced colonial time and challenged Native American oral traditions as "reliable" sources of evidence. By arguing the Kennewick human remains are too old to be considered "Native American," and that the tribal claimants' oral traditions are "highly problematic" forms of evidence, the *Bonnichsen v. United States* (2002/2004) decisions ignore the "peoplehood" of the tribal claimants by not recognizing the tribal claimants' inherent right to define for

themselves who they are and who are their ancestors. This not only defined "Native American," culture, and cultural affiliation through Western science, but also illustrated an instance of settler colonial epistemic violence that prioritized evidence produced by scientists over oral traditions provided by the tribal claimants. As human rights legislation, NAGPRA opens rhetorical gateways for Native American peoples to exercise their rhetorical sovereignty in the court of law. However, this chapter has illustrated the law functions as a site of settler colonial recognition, where for peoples—either long dead or currently living—to be recognized as "Native American" they must fit within the definition of "Native American" rhetorically constituted by settler colonial logics and governance. This results in Native American sovereignty and political agency being limited in the twenty-first century by being confined to avenues formally recognized by settler colonial structures. In all, the law was and still is built from U.S. settler logics and institutions, requiring Native American peoples and knowledges to rhetorically prove themselves to settler eyes, ears, and minds.

These conclusions bring to bear implications pertinent to the study of legal rhetoric and political recognition, and for the discipline of rhetoric and communication. First, for the study of legal rhetoric, particularly for the study of legal rhetoric dealing with Native American peoples and the rhetorical recognition of Indigenous sovereignty, it is necessary to unravel the ways rhetoric and the law interlock with settler colonial mechanisms of elimination and epistemic violence. Rhetorical sovereignty has always carried "with it a sense of locatable and recognizable power," yet that power "has depended upon the crucial act of recognition" (Lyons, 2000, p. 450). And throughout history and into today, the legal and rhetorical recognition of Native American sovereignty is dependent on settler colonial logics and institutions, mechanisms that seem to be only willing to recognize Native American sovereignty if it capitulates in some way to the authority of the settler state or goes away entirely. Rhetorical recognition in legal contexts seems to operate in support of settler

colonial logics and processes of elimination. In this way, this chapter illustrates how rhetoricians cannot leave "uninterrogated colonialism's deep-seated structural features" when investigating the intersections of Native American sovereignty and legal rhetoric (Coulthard, 2014, p. 35).

And while the Kennewick remains controversy did end with the remains being repatriated and reburied by its descendants, this result did not take place until genetic evidence "proved" the material connection between the claimant tribes and the ancient human remains. *Bonnichsen v. United States* illustrated how settler colonial logics favor not only settler colonial forms of evidence, but that what the courts understood as "legitimate" was couched in Western forms of reasoning and knowledge production. Like the courts, academic institutions, contexts, and disciplines—like rhetoric and communication studies—can easily trace their roots to the "West" and colonialism. Therefore, it is crucial that communication scholars interrogate these processes occurring in legal contexts, but also as Na'puti (2019) argued, we must attend to Indigeneity, Indigenous rhetorics, and Indigenous ways of knowing to transform the "system of knowledge that has overwhelmingly perpetuated erasure and effacement of Indigenous work" throughout rhetoric's intellectual history (p. 496). This means that we must be perpetually aware of how our disciplinary norms and research practices ignore and/or assimilate the sovereignty and rhetorical contributions of Indigenous peoples. One path toward being a more diverse and inclusive intellectual discipline is by honoring Indigenous sovereignty and rhetorics by listening to what they have to say on their own terms.

Regardless of its good intentions, NAGPRA requires Native American nations and communities to look to settlers and settler institutions for recognition that their claims to their cultural objects and remains of ancestors are "legitimate." True recognition of Native American rhetorical sovereignty—legally and rhetorically—will see Native American

peoples themselves as the creators of the terms, values, and knowledges by which they themselves desire.

Chapter 5 – Conclusions, Limitations, & Implications

In this dissertation I sought to trace the settler colonial rhetorical and racial constitution of Native American and Indigenous identities. The construction of the racial category of "Native American" seems to be a core rhetorical operation that fuels the settler colonial machine's eliminatory logics and mechanisms. One operation requires that Native American and Indigenous peoples define themselves according to settler colonial standards that racialize their identities and make it harder for descendants to be recognized as "Native American." Another entails refusing these settler colonial racial standards, but then running the risk of no longer being considered "Native American." Choosing one option over the other seems to add more fuel to the settler colonial machine, as it seems that either choice risks the very existence of the nation and tribe. Answering the question of how the Blackfeet and the Native American coalition from the Kennewick remains controversy rhetorically attempt to resist and/or appropriate the racial constitution of their identities through multiple operations and mechanisms to exercise their sovereignty and constitute their own identities and decolonize is the overarching goal of this dissertation. In this concluding chapter I will provide a review of the dissertation and the key arguments made. I will then provide summaries for each of the analysis chapters, and then elaborate on some areas of discussion stemming from these chapters. I will conclude by noting some limitations before finally discussing implications and directions for future research.

Summary of Dissertation

In the *Wretched of the Earth*, Frantz Fanon argued that "The colonist and the colonized are old acquaintances. And consequently, the colonist is right when he says he 'knows' them. It is the colonist who *fabricated* and continues to *fabricate* the colonized subject" (1961/2004, p. 2, emphasis in original). In this dissertation I have argued that the biological construction of race and scientific racism has built paradigmatic definitions of

"Native American" that work to eliminate Indigenous peoples from being recognized as "Native American." Through rhetorics of blood quantum, ancient human skeletons, and the law, settler colonialism's rhetorical appendages constitute "Native American" identity in ways that make it difficult for Indigenous people to be recognized as "Native American," disconnect ancient human remains from present-day Indigenous peoples, and ignore oral traditions as sources of knowledge and culture. These rhetorical mechanisms eliminate Indigenous peoples both materially and rhetorically from the land by defining what is "Native American" in ways that open the land for settlers and challenge Indigenous sovereignty. Biologically constructed definitions of what is "Native American" that are imposed through the various rhetorical parts of the settler colonial machine described in this dissertation make it difficult for Indigenous bodies to "count" as Native American, because over time Indigenous descendants will have less and less "Indian blood," or their bones will not look the same as Native American bones from the 18th and 19th centuries, or their oral traditions are not "valid" enough to "prove" their ancestral connections to the land. Paradigmatic definitions of "Native American" limit the legal recognition of Native American and Indigenous identity and sovereignty to settler modernity, where settler colonialism is the beginning and end point for when the law and other forms of settler colonial governance are willing to recognize Native American and Indigenous sovereignty and presence on the land. The settler colonial machine's rhetorical constitutions of "Native American" identity through blood, bones, and the law all work to produce the elimination of Indigenous bodies and presence from the land, the core feature of the settler colonial machine.

Yet, in necessary and vital ways, Native American and Indigenous peoples have always and still "talk back" to settler colonialism (Black, 2009), enacting strategies of survivance to challenge the settler colonial constitution and racialization of their identities and nations. I also argue that both the Blackfeet and the Kennewick remains cases

demonstrate peoples rhetorically navigating the settler colonial imposition of their identities by attempting to define themselves through discourses of blood quantum, DNA, and their oral traditions. Race is a settler colonial mechanism that seems to allow for the honoring of Indigenous rhetorical sovereignty and continuation of survivance by being utilized in different ways to decolonize. These seemingly settler colonial mechanisms (blood quantum and science) allowed the Blackfeet nation and the coalition of Native American tribes in the Kennewick controversy to exercise their rhetorical sovereignty by constituting themselves on their own terms, to decolonize and enact survivance. Blood quantum was talked about in ways that allowed the Blackfeet to constitute themselves in ways they thought best defined themselves on their own terms and protected the material survival of the Blackfeet nation and culture. The scientific study of Indigenous bodies has long been used to eliminate Indigenous bodies and construct race, but DNA analysis allowed the Confederated Tribes of the Colville Reservation to "prove" the genetic connection between them and the Kennewick remains. These cases illustrate how circuits of elimination can be rewired to support Native American sovereignty and efforts toward decolonization. They also show that peoples challenging settler coloniality and ensuring their survivance utilize wide-ranging and sometimes conflicting strategies that exist and cross numerous colonial boundaries and spaces to enact their sovereignty and decolonize. Sometimes the settlers' tools are right for the job of rebuilding the settler colonial machine to produce rhetorics that ensure and maintain Native American sovereignty and continued survivance.

Review of Chapter Two

The biological constitution of "Native American" through the logics and rhetoric of blood quantum limits the formal recognition of Native American sovereignty to tribes and nations that utilize blood quantum for their membership. The logic of blood quantum and the rhetorics of blood-speak work to reduce Native American membership by making it harder

for descendants to become enrolled members of a Native American tribe or nation. Blood quantum is clearly a part that turns settler colonialism's eliminatory operations; however, blood quantum may be useful for protecting Native American identity and nations from further assimilation. This is the settler colonial operation the Blackfeet nation attempted to adjust when debating whether to retain blood quantum or transition their enrollment to third-generation lineal descent. In this chapter I argued that advocates for both blood quantum and lineal descent engaged in multiple rhetorical strategies of survivance that claimed to be in the best interest of the Blackfeet nation because they resisted contemporary settler coloniality and colonization. In discussing their nation's enrollment, Blackfeet used these strategies: 1) avoid engaging in racism, 2) avoid perpetuating colonization, 3) ensure Blackfeet survivance, and 4) support Blackfeet rights to self-determination. Because these strategies claimed to resist both blood quantum and lineal descent as a buttress for colonization, they can be described as decolonial strategies of survivance that attempted to navigate settler colonialism by promoting the Blackfeet nation's sovereignty and continued existence.

I argue these conclusions demonstrate that ensuring the material survival of peoples that have suffered countless colonial injustices means attending to the complexity in preserving scarce land and resources. Their blood-speak centered around race and talked about land and culture as scarce resources, and their rhetorical strategies reflected a recognition that tribal enrollment directly affects the future of the Blackfeet's collective existence. These material concerns illustrate how rhetorical tools and constructs not of Blackfeet origin (blood quantum) can be talked about as a continued strategy of survivance that maintains the nation's resources and culture. They showed that race is not limited to just being a lever of settler colonial elimination, but also race can be used to the advantage of the Blackfeet to protect their cultural and material resources and sovereignty. It seems that the goal of ensuring the nation's continued existence and sovereignty seems to justify the means

taken to do so. The blood-speak from the Blackfeet attempted to define for themselves their own membership criteria and what it means to be Blackfeet, constituting their own identity outside settler coloniality while exercising multiple rhetorical options that existed in and across multiple settler colonial boundaries.

Review of Chapter Three

The anthropological study of human remains has supported the scientific construction of race and scientific racism and has helped fuel the settler colonial machine's eliminatory operations by removing Indigenous bodies from the land and disconnecting ancient human skeletons from present-day Native American peoples. Some physical anthropologists believe that the study of skulls and skeletons can help explain human difference and provide insights into ancient human life and migration. Investigating these topics centered the scientific investigations of the ancient Kennewick human remains. In this chapter I analyzed the anthropological investigations published in *Kennewick Man: The Scientific Investigation of An Ancient Human Skeleton*. I argue that scientific descriptions of the ancient skeleton in the volume utilize "paradigmatic Indianness" to disconnect the ancient human skeleton from the Native American tribes claiming the remains as their ancestor by arguing the Kennewick remains do not fit within the paradigmatic category of "Native American." The volume operationalizes and centers settler colonial assumptions about human skeletons and race to argue that the skeleton is perhaps evidence of an ancient human group other than Native Americans living on the continent. The scientific operations described in this chapter articulated three rhetorical parts that manipulated the settler colonial machine: 1) the operationalization of settler colonial racial categories produces a racially orientated rhetoric that excludes the remains from being considered Native American; 2) talking about the Kennewick remains in statistical terms constitutes "paradigmatic Indianness" that works to eliminate the remains from being considered Native American; and 3) discussions about

ancient human bones provides the grounds for questioning who were the original inhabitants to the land and challenging Native American sovereignty. These rhetorical parts reified the settler colonial racial category of "Native American" in ways that eliminated the remains from being recognized as Indigenous and challenged present-day Native American sovereignty.

In this chapter I explained how scientific analyses of ancient human bones produces Western knowledges and rhetorics that universalize settler colonial assumptions about human skeletal form and ancient human migrations to the detriment of Native American sovereignty and their claims to human remains found in the land. In the *Kennewick Man* volume, race is generated through the study of ancient human remains to potentially identify the human group the remains are affiliated with. This quest to determine the affiliation of the remains through race illustrates that the logics and mechanisms of settler colonialism racialize not just Native Americans, but everybody (e.g., Polynesians, African Americans, Mongolians, Asians, and others) has their identity foisted upon them by settlers and the racial logics of settler coloniality. Race is key in the construction of colonizing rhetorics that craft narratives of ancient connections to the land for settlers through the anthropological analysis of ancient human bones. I further posit that this chapter illustrated that the settler colonial mechanisms of science can be rewired to support Native American and Indigenous claims to their ancient ancestors and honor their sovereignty. The eventual DNA connection between the Kennewick remains and members of the Colville lead to the repatriation and eventual reburial of the ancient skeleton. This shows how tools long interlocked with the settler colonial machine (the scientific analysis of Indigenous bodies) can be rewired toward decolonizing operations that delink from the rhetorics of settler coloniality used to justify the further scientific study of the remains and the questioning of Native American sovereignty. It demonstrated how Native American peoples can and do work across multiple settler colonial boundaries, binaries, and

spaces to explore their decolonial options that foster their sovereignty and continued survivance.

Review of Chapter Four

The Native American Graves Protection and Repatriation Act (NAGPRA) has facilitated the return of numerous Native American human remains and cultural objects. The Act importantly addresses the hundreds of years of grave robbing, study, collection, and display of Native American bodies and objects by scientists, medical professionals, museums, and others. However, as this chapter explored, the implementation of NAGPRA has not come without push-back. The *Bonnichsen v. United States* court case presented one of the first pieces of litigation to test NAGPRA and its jurisdiction. *Bonnichsen v. United States* brought to bear the intersections of law, science, human rights, and Native American sovereignty by highlighting how legal rhetoric can manipulate settler colonialism's levers to privilege the pursuit of Western science and knowledge production to the detriment of the Native American coalition and their sovereignty. I argue the *Bonnichsen v. United States* decisions universalized settler colonial definitions for what is legally a "Native American." These definitions disconnected the Kennewick remains from the Native American claimants by 1) rhetorically enforcing colonial time, and 2) privileging evidence from Western scientists over the Native American claimants' oral traditions. Colonial time rhetorically cemented the legal constitution of "Native American" to the modern day, marking settler colonialism as the start and end point for the legal existence of "Native Americans" and their sovereignty. The prioritization of material evidence from Western scientists stressed the Kennewick remains must be connected biologically with present-day Native American tribes. *Bonnichsen v. United States* argued that the Kennewick human remains are too old to be recognized as "Native American" and that the tribal claimants' oral traditions are problematic forms of evidence. *Bonnichsen v. United States* reinterpreted NAGPRA in ways that privilege science

and settler coloniality and ignored the sovereignty of the Native American claimants by not recognizing the claimants' inherent right to define for themselves who they are and who are their ancestors. Therefore, the rhetoric from the court cases can be understood as settlers not only defining what is knowledge, but also defining what is Native American identity; speaking for Native Americans about themselves, violating Native American sovereignty to rhetorically constitute themselves and their ancestors.

This chapter illustrated how the law functions as a site of settler colonial recognition, where for peoples to be recognized as "Native American" they must fit within the definition of "Native American" rhetorically constituted by settler coloniality and settler governance. This results in Native American political agency and sovereignty being confined by the formal recognition of settler colonial structures. I posit this chapter's analysis of the rhetoric from the *Bonnichsen v. United States* decisions indicates the payoffs and importance of explaining the workings of settler colonialism in law. The legal and rhetorical recognition of Native Americans is dependent on settler colonial logics and mechanisms that seem only willing to recognize Native American sovereignty if it capitulates in some way to the authority of the settler state or goes away entirely. Future scholars cannot leave these deep-seated features of settler colonialism uninterrogated when investigating the intersections of Native American sovereignty and legal rhetoric. Furthermore, the decisions from *Bonnichsen v. United States* refused to recognize the Native American claimants' oral traditions as "legitimate" until DNA evidence "proved" the biological connection between the remains and the claimants. This demonstrates how the courts, as well as other settler colonial institutions, favor settler colonial forms of evidence that are embedded in Western forms of knowledge production and reasoning. Like other settler colonial appendages, rhetoric and communication studies has its epistemological origins in the "West" and colonialism. Future scholars must be aware of how our disciplinary norms and research practices ignore and/or

assimilate the sovereignty and rhetorical contributions of Indigenous peoples. I posit that one path toward being a more diverse and inclusive intellectual discipline is by honoring Indigenous sovereignty and rhetorics by listening to what they have to say on their own terms.

Discussion

Furthering the Dynamics of Blood-Speak

By examining online debates about the illegitimacy of Ward Churchill's claim to Native American ancestry, Casey Kelly argued that blood-speak advances racialized conceptions of Native American and Indigenous identity that create barriers to coalitional politics and community building. This is because those without Native American ancestry are perceived to lack the "organic authority" to participate and make claims in the community (Kelly, 2011, p. 252). Kelly argued, "exclusive definitions of Indian identity may cast out well-intentioned allies, and even race-traitors who may potentially advance American Indian causes" (p. 258). Kelly's discussion of blood-speak is rightfully a critique of how blood-speak racializes Native American identity and constructs barriers between perceived "authentic" and "inauthentic" individuals. Yet, what is missing from Kelly's description of blood-speak is that Native American culture and identity are viewed and treated as scarce resources, which is why for some, the barriers of blood quantum and blood-speak are viewed as advantageous for their own protection. This chapter advances Kelly (2011) because the blood-speak by the Blackfeet centers not only around race and cultural authenticity, but also protecting the material resources of the nation and its continued survivance. Blackfeet land and culture are talked about as scarce resources, and their blood-speak reflects a recognition that the issue of tribal enrollment directly affects the literal ground Blackfeet live upon. Their blood-speak illustrated that the desire to protect material resources from being stolen by

"wannabes" who have no connection to the Blackfeet was very much the starting point for discussing their enrollment in the first place.

This chapter advances Kelly's (2011) blood-speak typology as more than a way to enforce cultural authenticity and tribal identity, but as an exercise in political autonomy and sovereignty by deciding what membership criteria is best for their own nation. There is a key element of exercising and honoring Blackfeet sovereignty in their blood-speak. Despite its ills and complicity in settler coloniality, blood-speak may be pragmatically necessary for continued survivance. Having to decide between using blood quantum or not for enrollment is a choice imposed upon Native American nations and tribes by the federal government. But as Scott Lyons argued, "it is still a decision" and in making that decision there is sometimes "Native assent to things (concepts, policies, technologies, ideas) that, while not necessarily traditional in origin, can sometimes turn out all right" (2010, p. 3).

Chapter two could have easily been a critique of one type of rhetoric as colonial because it supports blood quantum rules that eliminate the nation or also a critique of rhetoric supporting lineal descent because it also could eliminate the nation. Similarly, this chapter could have easily been a critique of the Blackfeet's continued support of blood quantum as being complicit with settler coloniality because blood quantum is a barrier to coalition politics and produces exclusion. However, this sort of approach to race, and the racial constitution of peoples falls short in attuning to the ways race may be advantageous for the continued survivance and material existence of a Native American tribe or nation. This desire to protect the Blackfeet material resources was discussed as vital for the continued existence of the Blackfeet, something that needs to be considered by scholars investigating blood-speak in the future.

Rhetoric of Science, Race, & Settler Colonialism

As I argued in chapter three, previous rhetoric of science research has demonstrated that the statistical procedures scientists use to measure and describe humans are not objective, and that scientific practice and rhetoric can perpetuate scientific racism. By measuring the volume and capacity of the skulls across the so-called human species, Samuel Morton's *Crania Americana*, first released in 1839, provided some of the earliest empirical evidence and justifications for settler colonial hierarchies and the removal of Indigenous peoples. Daniel Cole (2015) argued that at the time *Crania Americana* was published, political and social leaders "were looking for scientific evidence of Indian deficiency, and Morton supplied it" (p. 32). By "proving" that skulls of white European men were larger and therefore the smartest and most civilized, Morton prescribed a racial hierarchy that "provided a scientific rationale for oppressive ideologies, policies, and cultural representations" (Cole, 2015, p. 34). Cole (2015) shows us how the measurement of human skulls and bones interconnects with ideology and constitutes race and perpetuates scientific racism. I add to and further Cole's insights by demonstrating that the scientific analysis and discussion of ancient human skeletons works to fuel the biological construction of race and settler coloniality. By making evident that the analysis of human bones are settler colonial operations that easily produces scientific racism that explains human difference by way of our bones, I show this scientific settler colonial mechanism is still occurring in the twenty-first century. The analysis and measurement of human bones are not purely objective scientific processes. Rather they are processes that involve interpretation. In the future, as more ancient human remains are unearthed, scholars investigating the rhetoric of science should continue to scrutinize how discussions about human skeletons are used to engage in Indigenous erasure and constitute race.

Additionally, this chapter furthers the study of the rhetoric of science by engaging in an extended analysis of how the scientific construction of race and scientific racism

interlocks and combines with mechanisms of settler colonialism. This chapter shows that race is still an organizing logic for the scientific investigation of human bodies. Previous rhetoric of science research has investigated popular scientific studies' engagement in scientific racism. Ramsey et al. argued that books like *The Bell Curve* indicate "a sustained pattern of racist constructions" that is present in science and across mediums (2001, p. 3). While this importantly deconstructs how scientific studies can perpetuate racist ideas about human intelligence and genetics, there is a dearth of research about the dynamics between Indigenous peoples, race, science, and settler colonialism. Considering that science has been instrumental in the rise of settler colonial modernity, I advance previous rhetoric of science scholarship examining race and scientific racism by describing how contemporary practices of anthropology not only construct race through analysis of bones, but also use race to limit the number of skeletons recognized as "Native American." Stephanie Grey argued "the social sciences [have] endorsed methodologies that naturalized roles and defined *modern* identity" (1999, p. 303, emphasis added), and "The statistical depiction of society has played an especially profound role in the constitution of *modern* identity" (1999, p. 306, emphasis added). Given that modernity cannot have risen without settler coloniality, I contribute to this body of research by describing how the scientific constitution of the racial category of "Native American" plays its part as a cog in the settler colonial erasure of Indigenous presence from and on the land. Scientific empirical analyses with their statistical predictions are not just "a means for enforcing obedience" but also rhetorical mechanisms that subtract Indigenous bodies from being recognized as "Native American" and fueling their elimination (Grey, 1999, p. 322). I add to this research by describing how the present-day scientific measurement and analysis of ancient human remains fuels the settler colonial machine, and how such rhetorical mechanisms entrench settler colonial constructions of "Native American" that support their elimination. I add to these discussions of biological race and scientific

racism because I demonstrate how these settler colonial operations are still taking place in the twenty-first century analysis of ancient human bones.

Rhetoric's Need to Attend to Native American Law

Chapter four investigated the legal rhetorics from *Bonnichsen v. United States* that universalized a settler colonial legal definition of "Native American" that confined the legal recognition of "Native Americans" to settler colonial modernity and as being constituted by material evidence from Western scientists. I posit that in this chapter I expand the scope of legal rhetoric by analyzing a contemporary piece of litigation that reinterpreted the meaning and purpose of NAGPRA, an important piece of human rights legislation in the U.S. I advance the study of legal rhetoric in the discipline by examining an important piece of Native American law, an area to my knowledge vastly understudied by scholars of legal rhetoric. Federal Indian law is a major area of legal scholarship, theory, and practice. Yet, to my knowledge, it seems that only Primack (2020) has analyzed a major case of federal Indian law. This is curious given that U.S. law has largely been a mechanism of enforcing settler sovereignty to the detriment of Indigenous sovereignty. Therefore, it is vital that scholars of legal rhetoric turn their critical gears toward Native American legal cases and pieces of litigation because U.S. courts hear "a relatively sizable number of federal Indian law cases annually, and each time it weaves a tangled interlacing of precedents by haphazardly instituting or discarding standards" (Primack, 2020, p. 28).

In this chapter I described how the decisions in *Bonnichsen v. United States* haphazardly reinterpreted and enforced settler colonial standards for the legal definition of "Native American" and how these rhetorical operations challenged the Native American coalition's claims to having a connection with the Kennewick human remains. McKinnon (2016) argued that scholars of legal rhetoric must grapple with "the broader political, cultural, social, and economic dynamics" that shape rhetoric voiced in legal settings (p. 216). By

analyzing the rhetoric from the *Bonnichsen v. United States* case I advance the scholarship of legal rhetoric by addressing an important area of law vastly under-investigated, highlighting that the logics and structures of settler colonialism enforce racialized definitions of "Native American" that refuse to recognize human bodies and skeletons as "Native American" unless they meet the standards of settlers and settler governance. By describing how the law in the twenty-first century operates as a lever in the settler colonial machine, I demonstrate that the ways the law rhetorically has and still does constitute settler coloniality and settler modernity requires further investigation by legal rhetoric scholars.

Limitations

This dissertation is limited by 1) my position as a rhetorical scholar embedded within the context of academia, 2) research methods and texts, and 3) scope. First, I must recognize and address my position as a non-Indigenous phenotypically white cishet male living and working in academia. I am positioned within overlapping modes of settler colonial power that have in both the past and present in some way been complicit in upholding settler coloniality by engaging in epistemic violence. It is for these reasons that I do not claim Indigenous ancestry or affiliation. I cannot fully comprehend or explain the pain and injury blood quantum and the scientific study of my ancestors' bones may have caused and still does for many Native American and Indigenous peoples. I cannot attest to feelings of loss or abandonment when denied access to rights, resources, identity, or sense of belonging as a result of my ancestry or the composition of my body. I cannot pretend to completely understand or speak for the entirety of turmoil and pain felt because of blood quantum, the study of my ancestors' bones, loss of land, and other forms of settler colonial violence.

However, understanding settler colonialism as a machine, which my position in academic contexts will always be part of, means that I can engage in the radical possibility of rewiring the machine and turning the mechanisms of settler colonial power toward

decolonizing operations. Being a cog in the machine means that myself and others can rotate our research in ways that support decolonial sensibilities. My position is a mode of power that can dismantle and transform settler colonial operations into decolonial ones. And while I have continually engaged in a decolonial commitment to hear, listen to, and speak with the Blackfeet and the Native American coalition on their own terms as they challenged the settler colonial racial constitution of their identities, I still must acknowledge that colonial power structures me as an outsider. My position as outsider researcher must always be spoken about and acknowledged to hopefully avoid perpetuating settler coloniality through my rhetorical research practices. This is a settler colonial specter that limits but does not determine how I interact and understand the decolonial strategies of survivance present within this dissertation. For reasons such as these I have worked to center the Native American and Indigenous voices described in this dissertation as much as possible, as my way of honoring their rhetorical sovereignty by listening to their public talk about how they challenge the settler colonial constitution and imposition of their identities.

Second, this research study is limited by the fact that the contributions by Native American and Indigenous voices are filtered through secondary mediums such as news publications, book contributions, testimonies to Congress, and others. While publicly available, these are still second-level sources that had to pass through some level of filtration before being available. And while being open to hearing and listening to the voices of those excluded by settler coloniality with a decolonial ethic of love can be a critical research process (Wanzer-Serrano, 2015; see also Mack & Na'puti, 2019), to further center the voices of the Blackfeet and the Native American coalition looked at in this dissertation, perhaps other research methods could have provided more primary communication as they discussed the deeper meanings of their culture and identity as they were utilized to enact survivance. Perhaps an ethnographic approach would have allowed for a more firsthand account that

would have accommodated for more directly hearing and listening to these voices as they attempt to constitute themselves and decolonize. Other communication scholars have utilized ethnographic research practices when investigating Navajo communication practices in community college classrooms or listening to how cultural practices shape discourses and understandings about the land (Braithwaite, 1997; Carbaugh, 1999; Carbaugh & Rudnick, 2006). These sorts of research practices can be worthwhile because they can allow for a more primary inclusion of Indigenous voices, providing insight into how and why people communicate the way that they do. However, these approaches need to be careful to avoid perpetuating settler coloniality through ethnographic and anthropological research practices that have the legacy of going into Native American communities, extracting knowledge and materials, and then leaving. Scholars have long believed they should control the definitions people use to describe themselves and communicate (Deloria Jr., 1998), so as communication scholars we should strive to work with Indigenous communities while at the same time being mindful to avoid problematic research practices by honoring and respecting the sovereignty of Indigenous peoples and their communities.

Third, it would be a counterproductive and colonizing move to say that the voices, opinions, and rhetorical strategies described in this dissertation are representative of all Native American peoples, let alone of all those who consider themselves Blackfeet or part of the Native American coalition that fought for the repatriation of the Kennewick remains. I argued earlier in chapter two that Native American voices and communities are not monolithic and researchers should work to avoid approaching and treating them as such. Many different and varying perspectives and opinions regarding how to best exercise their sovereignty or regain the remains of their loved ones are present in Native American and Indigenous communities. Therefore, this dissertation is limited by the scope of the communities and voices that are at the center of its investigation. The rhetorics for

challenging settler coloniality and ensuring survivance are unique and specific to the individuals, communities, and contexts from which they were produced. I am unable to and cannot generalize about all Native Americans and all the rhetorics of survivance present in the discussions examined in this dissertation. I cannot tell you or even speak for all Native Americans' perspectives about blood quantum or anthropology. Thus, what I describe in this dissertation is limited to those specific contexts, communities, and time periods and cannot serve as representative all Native American communities and perspectives regarding issues of blood quantum, anthropology, the law, and settler colonialism.

Avoiding the pitfalls of reproducing settler coloniality when engaging in research about and in Native American communities demonstrates how knowledge production in today's academic context is deeply intertwined with settler colonialism. As Darrell Wanzer-Serrano argued, "we have to grapple with the ways in which we have consented to and participated in the reproduction of colonial violence" (2015, p. 26). Perhaps one way to alleviate the issues of settler colonialism surrounding rhetorical research when investigating the communication of those challenging coloniality is through community-based participatory research practices that focus "on conducting research with—rather than on—communities" (Hoover, 2017, p. 128). We must find ways as rhetoric and communication scholars to make what we do as researchers have a positive impact for the communities we examine and publish about. This is something I will have to strive to figure out and enact as this project continues to move forward. In these ways, this dissertation is limited by the methods, scope, and texts utilized to describe how settler colonialism constitutes Blackfeet and the Native American coalition's identity and culture and how they attempted to constitute themselves on their own terms and decolonize.

Implications & Directions for Future Research

The Genetic Continuation of Settler Coloniality

Aside from talking about themselves through the language of blood, one way people have sought to prove their identity and ancestry is through genetic testing. Kim TallBear (2013) wrote, “Being able to legitimate one’s identity as Native American to the satisfaction of non-Native audiences in the cultural and political theater of U.S. life has become a necessary precondition for asserting rights to tribal self-governance and resources” (p. 177). DNA is one mechanism perceived to legitimate one’s identity, but this is a continuation of the settler colonial logics of blood quantum that racialize human bodies and identities based off the composition of their genetic code. This is because what is defined as “Native American” DNA is constituted by scientists, and the construction of “Native American” DNA is dependent on the settler colonial collection of the bodily material of Indigenous peoples. DNA also reduces the dynamics of culture and tradition that constitute identity into discrete trackable and measurable genetic entities. In these ways determining Native American identity through genetics continues to fuel the settler colonial racial constitution and recognition of Native American identity.

Like blood quantum, DNA defines culture through biology. DNA and blood both allow Indigeneity to be tracked, measured, and commodified according to the logics of settler coloniality. They also impose definitions of what is Native American that are created by settlers. Like bones and blood, discourses of genetics can be used to Other Indigenous bodies; to measure and track Indigeneity in ways that work to normalize settler colonial definitions of Indigenous bodies and identity that slowly reduce Indigenous presence on the land. Like the statistical procedures of the physical anthropologists used to compare the Kennewick skeleton to their databases of human measurements, popular genetic testing is based on algorithms that compare a person’s DNA to reference databases. These databases are used to define and categorize what is “Native American,” “German,” or “Irish” DNA. This practice not only fixes culture and ethnicity to genetic traits determined and measured by scientists,

but also rhetorically works to constitute deviance by describing genes that stray from these predetermined categories as something else, as Other.

Further the creation of these genetic databases requires the extraction of genetic material from human bodies, which are then used to constitute and define the different human populations, such as Native American, Chinese, Polynesian, or French. While many submit their DNA voluntarily to popular genetic testing services in the hopes of finding out "who they are" and "where they come from," many (but not all) Native American and Indigenous peoples refuse genetic testing because they view and have experienced settlers taking their DNA in ways that harms themselves and their communities (Bolnick et al., 2007). For instance, the well-known case of the misuse of Havasupai DNA by researchers from Arizona State University demonstrated the lack of ethical oversight, control, and accountability there is for researchers and organizations to prevent them from sharing and using participants' DNA without their consent or even knowing their bodily material is being used in ways other than what the original study stipulated. It seems that DNA and genetic testing are just another continuation of the settler colonial logics and mechanisms that constitute identity through biological discourses, which often fuel settler colonialism.

How we talk about ourselves, and our communities is an important rhetorical act. Genetic ancestry sites are a popular way for people to learn about their biological history and potentially who were their ancestors. These testing services often claim to be able to measure the categories of Native American or Indigenous as distinct categories and then tell someone their tribal identity. By doing so, most of these popular genetic testing services promote "a causal link between genetics and identity" (Carey, 2019), and show how the settler colonial logic of tracking "Indian blood" has transmuted into genetics. Future researchers should investigate how people define themselves through genetics and genetic testing, and how doing so perpetuates race and commodifies culture and identity through our genes. The

rhetorical act of defining ourselves and others through DNA is an area future researchers can investigate as people continue to work to constitute their bodies and identities through science. Additionally, submitting DNA to popular ancestry sites is commonly described as someone finding out where they came from or discovering their homeland. Future researchers can investigate how the search for a person's ancestry interlocks with the settler colonial rhetorical process of settlers crafting ancestral connections to the land, and how these types of rhetorical mechanisms work to erase Indigenous presence on the land by describing spaces as settler homelands. There is a need to think further about how through rhetoric of genetics and DNA, race frames the way we talk not only about our bodies, but about our ancestry, how our ancestors came to the land, and about how we describe our relations with the land, and how these narratives can function as settler colonial rhetorics that valorize white European immigration to the continent in ways that erase Indigenous presence in North America.

The Dynamics Between Rhetorical Strategies for Decolonization and Materiality

The rhetorics from the Blackfeet and from the five tribes and nations in the Native American coalition engaged in strategies that not only debated what actions are or are not decolonial, but also demonstrated possibilities for how to decolonize in the twenty-first century. Frantz Fanon argued that genuine efforts toward decolonization involve the violent struggle of the colonized removing the colonist. For Fanon, "Decolonization, which sets out to change the order of the world, is clearly an agenda for total disorder […] Decolonization never goes unnoticed […] Decolonization is truly the creation of new men […] In its bare reality, decolonization reeks of red-hot cannonballs and bloody knives" (1961/2004, pp. 2-3). And genuine decolonization "will have been achieved only when things, in the most materialist sense, have resumed their rightful place" (Fanon, 1952/2008, p. xv). By constituting themselves through rhetorics of blood quantum, DNA analysis, and their oral traditions, the Native American voices and peoples described in this dissertation enunciated

ways to decolonize that worked through the settler colonial channels of politics, science, and the law. Instead of dismantling the machine entirely through violent operations, their rhetorics rewired the machine to produce outcomes that honored their sovereignty and ensured their survivance. Through these appendages that have previously produced settler colonial outcomes, this dissertation has shown how instruments of settler colonialism can be tuned in different ways. They showed possibilities for decolonizing in North America that seem to avoid the violent rejection of settler colonialism. In this way, the decolonial strategies described in this dissertation illustrate how peoples resisting settler colonialism can work to decolonize and maintain their sovereignty by utilizing the decolonial mechanisms already part of the settler colonial machine.

Others, like Tuck and Yang (2012), have argued that true decolonization in the settler colonial context of North America requires the "repatriation of land simultaneous to the recognition of how land and relations to land have always already been differently understood and enacted; that is, *all* of the land, and not just symbolically" (p. 7, emphasis in original). These truly are desirable goals, but in practice seem nearly impossible. The Blackfeet retaining blood quantum for their membership and the Colville using DNA to ensure the Kennewick remains' reburial show us other ways of decolonizing that exist alongside the desire to regain land. They demonstrate ways to reject and rewire settler coloniality through rhetorical and political strategies of survivance that honor Indigenous sovereignty and retain or even gain material resources. They show how peoples can challenge settler coloniality and constitute themselves without having to engage in material violence. They show that machines of violence can be remade to produce decolonial alternatives that honor Native American sovereignty and ensure their survivance. They show how moves to decolonize do not necessitate the complete rejection of the settler colonial machine, but rather the machine can be redesigned to craft a decolonial third space that provides avenues to

maintain sovereignty, as well as protect and regain material resources like their lands, relatives, and identities.

Concerns for obtaining, maintaining, and regaining material resources seem to be at the core in both the settler colonial constitution of Native American and Indigenous identities, as well as in debates about how to decolonize. I posit this dissertation shows for rhetoric and communication scholars the importance of attending to the material concerns of those actively engaging in survivance and working to decolonize. Many rhetorics still confronting the problems produced by the settler colonial machine center around mitigating colonial injustices and ensuring their material survival. Land, water, air, bones, culture, identity, and knowledge are all talked about as material resources that need to be protected or regained. These material concerns that ground moves toward decolonization require the rhetorical navigation of numerous settler colonial mechanisms designed to produce operations of elimination. As we saw whether it is through blood quantum or the study of bones, mechanisms of settler coloniality constitute the bodies and identities of Native American peoples for Native American peoples in ways that fuel their material erasure. In appropriating and resisting these settler colonial appendages the Blackfeet and Native American coalition recognized the literal ground, resources, and community members they are fighting to preserve and protect. They were literally working to preserve and regain the land, bones, and objects of their ancestors taken from them by settlers.

These sorts of material concerns ground (literally) the decolonial strategies of survivance described throughout this dissertation's chapters. Strategies engaging in decoloniality are more than rhetorical or symbolic moves. They are designed to preserve, maintain, and even regain material resources and alleviate settler colonial injustices. These material concerns shape the communication used when discussing how to exercise sovereignty and confronting settler colonial mechanisms to protect the bodies of their

ancestors and cultural objects. Michael Lechuga (2020) argued, “settler colonialism leverages rhetoric to facilitate the material arrangement of ideological power on lands and bodies” (p. 378). Future researchers should continue to think about and unravel how material concerns for continued existence shape and drive the rhetorical practices of those working to decolonize. Rhetoric plays a constitutive role in settler colonialism’s eliminatory logics and mechanisms, arranging, collecting, studying, and removing Indigenous bodies to the pursuit of settler aims. The rhetorical constitution of Indigenous bodies and identities, through interlocking settler colonial mechanisms, and how other Native American and Indigenous peoples attempt to deconstruct and rebuild these machines differently, should drive future researchers to listen to how concerns for material resources and continued existence influence practices of decolonization. Settler colonialism is a land-centered project of Indigenous elimination, so as rhetoric and communication scholars we should continue to listen to how peoples communicate about resisting settler coloniality and their talk about ensuring their material existence by challenging material injustices.

In a perfect world, Indigenous and Native American peoples would not have to deal with transforming settler colonialism in the first place. And while ideally decolonization would involve the return of land to Indigenous peoples and the removal of settlers, in the context of the U.S., these sort of decolonial operations may not be readily available. As the discussion of blood quantum in chapter two illustrated, sometimes the complete disavowal of settler coloniality, while resisting Indigenous elimination, may also result in the demise of Indigenous and Native American tribes and nations. Future researchers interested in investigating how people communicate about mitigating social injustice should reflect upon how decolonial practices deal with resisting material injustice by trying to maintain the maximum number of rights and resources through non-violent means. Scholars should continue to explicate how people navigate concerns for how to address the decolonial desire

for the repatriation of land and the removal of settlers in ways that do not engage in the violent struggle of decolonization Fanon originally proposed. Questions related to how to best decolonize in ways that ensure the continued survivance of Native American and Indigenous peoples and nations, and how communities rhetorically navigate these sorts of settler colonial problems should continue to be listened to by scholars.

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