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Research Note

Critique of NEH Code of Ethics

William Oandasan

What follows is a Code of Ethics for research adopted recently by the National Endowment for the Humanities as a model and principle for awarding research grants relevant to Native American fields of cultural study, as well as the fields of other indigenous peoples. The Code of Ethics is based on the Indian Religious Freedom Act (Public Law 95-561, 1978), the National Historic Preservation Act (Public Law 96-515 and its 1980 amendments), and other pertinent federal laws. The Code, for Native Americans, is the first to be so culturally encompassing. The logical, clear and concise presentation of the Code will stimulate improved relations and productive understanding between the scholars and the Native American tribes and people, given the understanding that no party has an inalienable right to "knowledge" possessed by the indigenous peoples or otherwise.

The Code will expand the channels of communication between the scholars and the tribal governments and their memberships, as well as invite more participation from the tribes and their members in research involving their lives and communities. Under the Code Native Americans will be informed of the purpose of any cultural project or research involving them; and any results of a research or project, which will be released for public presentation, must first be submitted for approval by a representative body of the tribal political and traditionalist communities. The individual Native American participants and subjects of any research will be protected for providing informational materials and the materials are retained by the tribal communities; the confidentiality, and preferences

for methods of recording data, of the tribal subjects and participants will be respected; and proper acknowledgements and suitable compensation will be reserved for the tribal members—if they choose. The Code will, hopefully, dispose of misunderstandings regarding what rights the tribes and their members can expect when working with scholars and what responsibilities the scholars have to the tribes and their communities.

The burden of the Code seems to rest, justifiably or otherwise, on the professional ethics of the scholars. The scholars must make sure the tribes and their members are informed of all rights and the rights are not abused, plus make assurances in detailed terms that the research will not draw adverse impacts upon the tribal governments, communities or people. In addition the scholars are expected to align their researches with relevant federal laws. However, should any of the rights be transgressed, the tribal governments, not the tribal participants or subjects, seem to be the parties that must address any grievances pertaining to any scholar's alleged misconduct, especially when tribal autonomy is drawn into question. To whom or what body of representation the tribal government must address a charge or allegation is not altogether apparent. Nor is it apparent by what means or authority that unreliable scholars, participants, subjects or tribes will be brought into alignment with the Code, or by what standards will just compensation be measured for actions of the irresponsible parties. It is only suggested that federal laws and courts will enforce the Code. The Code is also unclear regarding the difference between library and field research.

The Code may not be a panacea for the problems affecting all relationships between the Native American communities and the scholars, but it is definitely a step in a positive direction. Its adoption by all governmental, and independent, agencies involved in Native American communities and culture is a matter that remains open to action and response. At any rate the Code of Ethics is a significant marker attesting to the expansion in the realm of humanitarian consciousness accorded to indigenous culture in the U.S. by Washington at this point in the twentieth century.

CODE OF ETHICS

The following is a Code of Ethics to be followed by NEH grantees whose projects relate to American Indian, Aleut, Eskimo or Native Hawaiian peoples. Researchers and scholars should be aware of the following:

(1) While the body of law and custom on which the Code is based is rooted in relations with the Native peoples of North America, you are urged to follow it whenever living cultures and peoples are involved; and

(2) The Code is based on the Endowment's adherence to Public Law 95-561, the Indian Religious Freedom Act; Public Law 96-515, the National Historic Preservation Act amendments of 1980; and other relevant public laws governing relations with Native peoples of North America, and is constructed to conform to the principles of these laws.

Researchers should familiarize themselves with these laws so that adherence to Federal statutes will accompany compliance with this Code. Please sign the following statement, thereby assuring the Endowment that work funded by this grant will adhere to the following provisions:

(a) Every effort should be made in advance of project design and execution to engage the agreement, advice and cooperation of members of the Native community in planning and execution of the project and in the disposition of results from the project. This means that the aims of the investigation, exhibition, or project should be communicated to the Native community and the anticipated consequences and results of research or data-gathering should be explained as fully as possible to the individuals and groups likely to be affected.

(b) Where research or exhibition of materials involves the acquisition of material (objects and documents) and transfer of information on the assumption of trust between persons, the rights, expressed interests and sensitivities of those originating the material must be safeguarded.

(c) There is an obligation on the part of the scholar/researcher/principal investigator to reflect on the foreseeable repercussions of research and publication on the participant population and to inform them of probable impact.

(d) Native community consultants have the right to remain anonymous or be specifically named and given credit if they so choose. This right should be respected where it has been

explicitly promised. Where there is no clear understanding to the contrary, sources should be kept confidential. Because funded proposals, grant reports and other written material in the Endowment's possession are available to the public, no identifications contrary to the wishes of community consultants should appear.

(e) Investigators using recording devices such as cameras or tape recorders or the technique of oral interviewing are also subject to the above criteria. Subjects under study should understand the capacities of such machines and should be free to accept or reject their use.

(f) Individuals or group community consultants should be fairly compensated (through reciprocal exchange or monetary payment) for their services/information and there may be no exploitation of subjects under study. Scholars should make every attempt to guarantee appropriate credit (in the form of co-authorship, co-curatorship or co-investigatorship) and the distribution of financial rewards where appropriate for products resulting from projects.

(g) Any report or work considered for publication (and where applicable and possible, films or exhibitions) should be deposited with the Native community's political body (the Business Committee or Council) and with representatives of the elders and traditional leaders of the community. Every effort should be made to see that such a representational body has an opportunity to view the films or exhibitions which result from work undertaken in the community.

(h) This Code should not interfere with or preclude any formal agreements made between researchers and Native peoples for the course of research undertaken with Federal funds. Further, the Code does not preclude or supercede ethical codes, subscribed to and endorsed by various professional associations, but rather, intends only to make clear the standards expected of those receiving Endowment funds.