Many contemporary Native governments and communities are starting to assert their inherent right to land and self-government by meeting the economic, political, and cultural challenges of the twenty-first century. While resources and opportunities vary considerably among the hundreds of Native communities in North America, most Native nations are striving to gain greater responsibility over their communities through strategies of economic development, renegotiating relations between tribal and federal governments, and reintroducing Native history and culture into reservation institutions, education, and government. Native communities, generally, wish to participate in the rapidly changing and globalizing world but want to approach the future through the vehicle of their own values, culture, and history.

In many ways, the challenges of the future are both exciting and dangerous. Native communities may develop many creative ways to preserve their communities and cultures, while accommodating to the intensity and globalization of the world economy, culture, and technology. On the other hand, the forces of markets, globalized culture, technology, and information may threaten to undermine the institutions and values of Native communities.

Research, science, technology, and information are all issues that Native communities will need to confront more directly than ever before to avoid becoming victims of the new and changing world order. For example, who should have access to and financial benefit from
Natives’ traditional knowledge about the medicinal uses of plants found in their ancestral territories? Who should have access to and financial benefit from DNA information about members of Native nations, when that information might prove useful for the prevention or treatment of diseases? Who should have access to and financial benefit from research conducted on the remains of Native nations’ ancestors, research that might bear on matters of health, diet, and group history? Who should have access to and financial benefit from Native stories, songs, and ceremonies that have sacred value to their communities but also artistic or academic value to outsiders? Over the past century, Native nations have witnessed such information taken without their consent and not for their benefit. Should this experience make these communities reflexively resistant to research, science, technology, and information, placing obstacles in the way of researchers wherever possible? Such a stance will surely operate to the detriment of the outside researchers and global consumers of their work. But it will jeopardize Native nations as well.

In order to survive and persist, Native communities will need to manage technology and science and use it to their advantage. For the immediate future, the globalization process will not go away, and no community, no matter how isolated, will be able to hide away and avoid influence. The pace and intensified globalization of the twenty-first century may make the threats to Native communities even greater and more subtle than the federal policies of the last centuries. In order to not become victims of technology, which can be used by forces whose values, interests, and goals conflict with those of Native communities, Native nations will need to adopt and manage technological and informational change as a means to defend their land, rights to self-government, and cultures.

Science, technology, and globalized information present Native nation builders with the need for asserting new and non-Western interpretations of science, methods, and the ethics of research. Native communities, while wanting to live in negotiated and democratic relations with nation-states, also want to use science and information for their own cultural, political, and philosophical interests. Now many Native communities are asking how research and science can benefit their communities. How can science, research, and information be used in the process of nation building and protecting Native rights and culture? Is science compatible with Native values, interests, and philosophy? Can Native communities withhold information not considered suitable for distribution under traditional understandings? These are some of the questions that confront Native nations as they embark on contemporary nation building.

**RESEARCH ETHICS IN THE OLD WAY**

The conscious nation-building strategies emerging within Native communities belie the widespread belief among non-Indians that Natives
were acted upon rather than active in their own recent history. Generally, nation-state policy makers have believed that they would prevail to transform and detribalize Native communities and individuals, who would assimilate into the rapidly changing modern world. In recent decades, however, Native communities have been actively seeking self-sufficiency and community/cultural preservation. These Native communities face the challenges of creating more functional governments, preserving and reviving culture and language, accommodating to the demands of the market economy, and retaining and building durable community institutions in the new global environment. Science, research, and information are key elements in the new world order, and Native nations will need to address how they will manage and utilize research about Native peoples. Obtaining good information and research about Native communities will help attain many Native goals of cultural, political, and economic survival.

Research, science, utilization of technology, and distribution of information will serve Native nation-building efforts and goals. Much of the research potentially useful to Native communities will necessarily be undertaken by researchers who are not tribal members. A question arises about whether the goals and values of the nontribal members will prevail, or whether the research will in fact prove to be of value to the Native community. The general perception within the Native communities for many years has been that scientists, often anthropologists, have been exploitive about information collecting on reservations. Many individual anthropologists and other scientists have been friendly and longtime political allies to Native communities and tribal members. Nevertheless, especially during the 1930s through the 1960s, Native communities concluded that too many anthropologists and social scientists took valuable information and artifacts from them without using this material to benefit the communities themselves. Many Native communities were under considerable duress during this period, when children were sent to boarding schools, and most Native social and political institutions were under the control of the Department of the Interior. Native communities were being disassembled by assimilation policies, and the perception persisted that anthropological, historical, and social science information was used to develop theories and strategies aimed at destroying Native institutions, culture, land rights and government. Sacred objects, art, the remains of ancestors, pottery, and many other objects were collected by professionals and nonprofessionals, resulting in a massive desecration that ignored Native traditions and understandings.

During the nineteenth century, the scientific study of skulls, craniometry, phrenology, and eugenics led many army officers and Indian agents to transport the remains of Native people, often fresh from battlefields, to museums and government institutions for study. Natives were seen as objects of science and not as having any great
knowledge or understanding to contribute to science or research. One story that illustrates this point concerns the death of the Apache leader Mangas Coloradas. The Apache leader was tricked into surrendering and then executed. His skull was preserved and shipped back to Washington, D.C., because he was such a strong leader, the soldiers and officers thought his skull would be of particular interest to scientists. Few, if any, scientists now believe that the shapes of skulls tell much about the culture or character of a man or leader. Nowadays we could benefit from considerable historical and cultural knowledge had we had, instead, many in-depth interviews and consent from a man like Mangas Coloradas.5

Cultural anthropology provided some movement in the twentieth century toward greater understanding and interpretation of Native communities. Much of early American anthropology was directed toward preserving knowledge about Native cultures before they disappeared. Native communities were not seen as living or changing groups but rather as the remains of once proud and independent peoples and cultures. The effort to record as much as possible about the older traditions and histories was very valuable. However, Native communities and their political, land, and economic issues were rarely addressed by social scientists, and generally, when addressed, they were considered within the framework of U.S. policies for Indian welfare.6

Science has its own objectives. It collects data to verify or exclude arguments or theories. This process is generally considered a universal process, and the work is believed to have universal implications. By this reasoning Native communities could ultimately share in the information and knowledge generated by researchers about Native peoples and communities. It is inappropriate, we think, to say that anthropologists and other researchers have provided no information and knowledge that is valuable to Native communities. Much of the knowledge collected by the early American anthropologists is eagerly read and used by many Native communities to help reconstruct their songs, dances, and social and cultural institutions. In some cases, Native communities have been left bereft of their language, songs, dances, and religions and philosophies. Now that Native communities are consciously looking to revive their cultures, they find the information of many early anthropologists quite useful.7 For example, Indian nations today sometimes use early anthropological studies to supplement the testimony of elders in the development of common law in tribal courts8 and to support claims about the desecration of sacred, off-reservation sites.9 Many communities find the information provided by archaeologists interesting, although they would like to supplement the archaeological information with their own oral traditions and knowledge.

The work of many researchers in Indian country has focused primarily on issues of interest to science and academia. These issues
are often unrelated to the immediate situation and condition of Native communities. Researchers were not in a position, and probably not disposed, to analyze the contemporary economic, political, social, and cultural issues confronting Native peoples and communities. Native communities were considered to be dying out, and whatever interesting knowledge of value was largely extracted from elders, who were used to remember information from before the reservation period.10 Most Native communities considered the information collected by researchers to be generally valuable. The literature is rife with Native informants who are willing to preserve their information through anthropologists or other recorders. Nevertheless, while this information has proven very valuable, both to science and to the Native nations, many Native communities did not believe that research and scientists were interested in or devoted to pressing their many current issues.11

“Most Native Americans feel that they have been unbearably researched.”12 To a large extent, Vine Deloria’s well-known critique of anthropologists and their work on Indian reservations reflects the situation in which he, and other Natives, did not see direct relevance to Native life, interests, and issues.13 Floyd Westerman immortalized the feeling of many Native people in a biting ballad, “Here Come the Anthros.”14 The researchers were directed toward issues that were not of immediate daily concern within many Native communities. In what ways did the anthropologists foster the social, political, and cultural preservation of the Native communities? Natives were living in dire poverty, with little political freedom, and were losing considerable portions of their history, culture, and community institutions to U.S. government policies. Perhaps it was unfair to require that individual anthropologists bear responsibility for those policies of termination and assimilation, but many anthropologists were unconcerned with the pressing issues of Native communities and often did not consider contemporary Native peoples as interesting or worthy of study. Deloria’s very popular writings were widely read, and anthropologists were not pleased and took the criticism too seriously. This situation again may have arisen from a misunderstanding of the manner in which the criticism was offered. The difficult criticism in the form of a book tended to scare away whole generations of anthropologists from doing work in North America.

Nowadays it is often difficult to find experts on Native North American communities even in the largest anthropology departments. Most anthropologists are devoted to work in other parts of the world. But Deloria’s criticism was not meant to drive anthropologists from their work among Native North American peoples, but rather, in the tradition of Native humor, Deloria pointed out issues that should be addressed by researchers and anthropologists. Chiding, teasing, and cajoling the anthropologists, such criticism is designed to point out issues that need addressing. The teasing is designed to evoke reconsideration
but unfortunately resulted in many anthropologists and their students in abandoning the Native North American research field. Deloria and many Native leaders are not antianthropologist or antiscientific, but Native people were not seeing the relevance or benefit of research conducted in Indian country. Their criticisms were intended to make research, science, and technology more useful to Native communities, but perhaps neither Native communities nor researchers were ready for such discussion and negotiated understandings about the purpose and value of research, even as late as the 1960s and 1970s.

**Research and Native Nation Building**

Contemporary researchers are now much more sensitive to Native views and interests, and Native communities are in a much better position to defend and assert their rights. Social scientists and many other researchers, especially those in American Indian studies, have focused on Native communities as living, evolving, and changing groups. These changing research orientations have emerged in some fields owing to intellectual developments such as postmodern and postcolonial theory. Concerns about protecting human subjects of research have arisen from abuses perpetrated by Nazi scientists and doctors who used humans for experiments in death camps. Rules have been promulgated for researchers. After World War II, informed consent became a significant issue among researchers. The Nuremberg Code of 1947, the Helsinki Declaration of 1964, and the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, otherwise known as the Belmont Report, proposed ethical standards for the protection of human research subjects. The reports defined informed consent and provided criteria for assessing whether a subject was provided with enough information and knowledge to volunteer as a subject for research. Universities and research facilities have become increasingly liable for violation of human subjects rights. Some legal cases exposing extreme physical abuses in managing human subjects have cost major universities large sums of money, resulting in increased attention to human subject protection. At the same time, many Native communities where researchers were frequent and had long relations with community members, such as the Navajo, started to create research review boards to screen researchers. Most Native research review boards are willing to allow research of many sorts, but the process can be difficult if some review board members are not convinced that the research is useful to the Native community.

Much of university human-subjects review has focused on individual rights of the subjects themselves. Most human-subjects review takes place at universities that receive substantial research support from federal grants. Federal guidelines often determine the direction and
scope of human subjects review in areas where there are invasive techniques, such as experimental medical research. In many ways, the human subjects guidelines for medical research have come to dominate the way that universities approach research ethics and review. Most researchers in Indian country increasingly will pass through a human-subjects review committee. The rules for human-subject review have greatly tightened in recent years, and include students, staff, as well as faculty researchers.

The issues of risk to the individual highlighted in university human-subjects review protocols are certainly issues that are confronted while doing research in Indian country, especially where medical or psychological testing is involved. But the domination of this model of research ethics has not fit the broader needs of research in Indian country. For example, a research project that asks an elder about tribal remedies or about stories regarding sacred sites may pose no risks for the individual elder so long as that person is free to decide whether to talk with the researcher; but the disclosure of such information may present real hazards for an Indian nation that is trying to protect its cultural resources or to market them for community benefit.

University human-subject review boards may be aware that some Native communities require additional review over research conducted in their communities. However, these university boards do not expressly defer to or incorporate tribal research requirements. Rather, the university boards typically insist on tribal support for the conduct of research in accordance with the university's own human-subjects guidelines. Thus, while university researchers are often required to secure permission from tribal authorities before the university will allow the research to go forward, at least when it is carried on within a Native nation's territory, this tribal authorization is with reference to university requirements. Tribal review boards have the capability to deny research they do not consider advantageous, but the criteria and history of human subjects in Indian country are different from the forces that drive human-subject review at the universities. Importantly, the university human-subject review process does not foster any dialogue or negotiation between researchers and Native communities about these differences. In many ways, the universities have not yet confronted the issues that are often of concern to tribal review boards. The focus on protecting sovereignty, community cultural property, ancestral remains, and protecting cultural intellectual property are not issues directly addressed by the university human-subjects review boards. Rather, the university protocols tend to focus on individual concerns such as the possibility that a Native interviewee will suffer psychological injury as a result of being interviewed or may have an individual employment opportunity jeopardized. In contrast, Native communities such as the Colville expressly refer to ensuring protection
of the rights of the families of tribal members and the tribe itself, not just the rights of the individual research subject.21

Native communities are trying to build nations that preserve culture and sacred knowledge. Research should have some meaningful end or value for the Native community and should not jeopardize these pursuits. Researchers need to give something back for the information and knowledge that is given to them. In some sense, the exchange of information is like exchanging gifts. Such exchanges are symbols of unity and common purpose. This is one reason Native folks felt they were giving knowledge and information to researchers but were not given anything of direct value in return. The etiquette of ritual of exchange can create strong ties between researchers and informants, and the general blessing of the Native community. Such procedures can make research much easier and more fruitful.

University human-subjects review boards are where negotiations can begin for greater understanding of review of Native research. University review boards and university researchers need to understand that entering a Native community is entering a different cultural community that understands knowledge and information differently from academic institutions. This can be said for most subjects of research, but Native communities should be regarded as more than a population of individuals, since the communities have collective goals, shared culture, and group history. The rules of social relations should be respected by the researcher and by the research institution. University human-subject review committees should have greater familiarity with the issues that confront Native communities and researchers who wish to work on reservations or within urban Indian communities. Issues of political sovereignty, land rights, and cultural diversity should be respected. Research will go much more easily and fewer recriminations will arise.

The university review system is not well equipped to manage the collective cultural and political rights of Native communities. More formal, bilateral relations between university review boards and tribal communities, involving negotiations over permitted research, should be the goal. Respecting the sovereign powers of tribal governments, by both researcher and research institution, will provide considerable value for entry into the community and will in turn gain the respect of the Native community. In an international setting, such respect is ensured through the control that each nation-state exercises over entry into its territory and over conduct by those who have entered. Ethical researchers today would not dream of conducting their activities abroad absent compliance with the relevant foreign laws or treaties on the subject. Universities and researchers should conceive of research in Indian country in a similar fashion, anticipating that a treatylike document should be negotiated in advance of any particular applications to carry on research activities within tribal territory.
One of the discussions that emerged during the Conference on Native Research Ethics at the University of Maine in January of 2001 was the critical role that university review boards play in research and the importance of understanding Native research issues and history in granting research permission in Indian country. At one level, the universities should deal with the Native nations in a government-to-government manner. Universities should not consider Natives as a subject population that shares the same values, goals, and institutions as the researchers or the university. By negotiating memoranda of understanding between the university and each of the tribal governments, research protocols could be determined and then revised through experience and renegotiation. Native leaders and community members would see the results of the research protocols and develop a greater understanding of the protections given to individuals and to the community. Native nation building is a collective enterprise with collective goals and objectives. The preservation of sacred knowledge, sacred objects, land, and cultural and political institutions are goals for most Native communities. Any activity that endangers Native survival and cultural community is most likely to meet with disfavor in Indian country. Native communities will welcome research that they believe will enhance their well-being and cultural survival and will most likely reject research they believe is harmful or irrelevant. Researchers must be required to convince any Native community where research is conducted of the value of their work to that community.

The university must respect and honor the collective organization of the Native communities and government. Respect for Native nationality will arise in the valuing of Native collective interests and goals over university emphasis on protecting individual interests and goals of human subjects. Such respect will also arise in carrying out the protocols of consent and permission with the community’s representatives as well as with individual research subjects. Native individual rights should be respected within the context of Native culture and government. The negotiation of individual human-subject protections should only be understood and exercised through the filter of Native tribal government and collective rights. This means that universities must manage research relations on a group or collective manner, in addition to the current emphasis on protecting individual human subjects. Both collective and individual human-subject rights need to be recognized and upheld in research concerning Native peoples who are tribal members.

**INDIVIDUAL AND COLLECTIVE RIGHTS IN INDIAN COUNTRY**

Honoring Native collective rights and goals will lead to greater cooperative and mutually beneficial research among tribal communities,
researchers, and research institutions. Increasingly Native governments and communities have an interest in research that enables them to build and strengthen themselves. Research institutions have the opportunity to manage relations with tribal communities on a government-to-government basis, because tribal communities may well restrict research if they believe they have no control over the research projects and believe that some of them violate cultural rules or inhibit future nation building or cultural preservation. While only public universities are government entities, even private institutions represent the state or local government where they are located. Working through government entities would underscore Native self-government, and establish protocols for continued negotiation and revision of agreements and understanding between tribes, universities, and local governments.22

Admittedly, most research in Indian country can be justified to most tribal communities as well as to university review boards. Much of this research takes place now, but perhaps with less discussion and deference to tribal review boards and interests. Many tribal groups have the standing problem of too few resources and people to mount review boards that can thoroughly examine all the research projects that may be proposed on their reservation. Nevertheless, tribal communities have few alternatives against rogue researchers or research institutions that chronically ignore their views and interests. Their main alternative is to categorically prohibit all research or most research of certain types. Such restrictions are not in the long-term interest of the tribe or the research institution.

Difficulties over research in Indian country have arisen on many occasions. The issues of repatriation of ancestral remains and sacred objects informed passage of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA),23 providing incentives for many museums and university institutions to return such objects and ancestral remains. Researchers had often acquired sacred objects from Native custodians during times of duress or distress. Native communities lobbied for many years to obtain some measure of protection afforded under NAGPRA.24

Up to the present day, there are instances of researchers failing to respect the wishes of their host Native community and publishing information that Native communities do not wish published or otherwise revealed. The Hopi community has several such cases where individual tribal members gave information to researchers about stories or sacred locations that was not condoned by the entire community or government. Sometimes researchers argue they have the academic freedom to publish what they observe or find in the field, especially when the individual research source or informant has given consent. This view, however, does not honor Native community or government wishes.
Under prevailing law, a researcher who violates the research wishes of a Native community is relatively immune from legal or political action. Tribal codes, such as those promulgated by the Colville and Navajo, specify significant sanctions for unauthorized research, including exclusion from tribal property, withdrawal of business privileges on the reservation, assessment of actual and treble damages, prosecution under state or federal law for criminal trespass, civil penalties, and seizure of property.25 However, decisions of the United States Supreme Court rule out criminal penalties under tribal law for non-Indians26 and raise serious questions about tribal civil jurisdiction over nonmembers unless those nonmembers have entered into a formal consensual relationship with the tribe or nation.27 Usually a researcher has long left the reservation tribal territory by the time the community sees the published research; and if a tribe objects, it has relatively little recourse, beyond exposing the issues publicly. Even if the tribe succeeds in imposing a monetary judgment in the researcher’s absence, it may be difficult to enforce such a judgment in a state or federal court.28

Agreements between universities and tribal governments will help curb such incidents, because agreements and assurances of good conduct will be reviewed by both parties along agreed-upon rules. Sanctions can be written into the agreements between governments, between university and tribal governments, and with the individual researchers. Current arrangements do not require sufficient protocols to ensure that tribal interests are protected, tribal rules respected, and individual subjects protected both by the university as well as by tribal standards and understandings.

Native government sovereignty is limited, like that of federal, state, and local governments. Native governments are restricted by court decisions, treaties, and Congressional acts. There are two ways in which individual rights are preserved in Indian country over collective rights owing to federal law.29 First, as mentioned above, federal court decisions place some limits on tribal power over nonmembers, including non-Indian researchers. Second, although the U.S. Constitution’s Bill of Rights does not apply to tribal governments, the Indian Civil Rights Act of 1968 (ICRA) provides guarantees of similar rights to members and nonmembers alike, with just a few exceptions.30 For example, under ICRA, tribal members can bring suit in a tribal court for protection from the tribal government for any infringements of freedom of speech or association.31 ICRA’s restraints on tribal government power are often viewed by tribal members as infringements on their rights to self-government. Some individual tribal members, however, have argued that the rights they have come to expect as U.S. citizens are not always protected by tribal governments. Since Natives in the United States were granted citizenship in 1924, Natives have enjoyed
a status of dual citizenship, both in the United States and as members or citizens of a Native nation. Despite the limited availability of federal courts to enforce ICRA directly, that statute and other federal laws often prevail over Native laws, especially if they are expressly stated by congressional act. Consequently, tribal governments have limited control over their Native citizens, which can complicate the issues of preserving sacred tribal information, sacred objects, dances, songs, and other forms of intellectual property rights that Natives may wish to collectively retain but are not protected by federal law.

The complexities of federal law and dual citizenship are further exacerbated by the intricacies within most contemporary Native communities, where many members carry diverse religious, political, and social viewpoints. While Native communities were never entirely unified with one common viewpoint, there have arisen over the past several hundred years many individuals who speak English and have Christian or other religious training and upbringings. Native communities have become multicultural, and many American or Western worldviews and understandings are carried by members of the Native community. In many cases, individuals simply have not been well exposed to Native history or traditions and often are not in a position to understand or defend Native rights or prerogatives. In addition, sometimes individuals find themselves in social or economic duress and are willing to part with Native information or objects to secure short-term relief. Again, sometimes responsible Native individuals, believing there are few alternatives, have entrusted museums and researchers with information or property in order that they be preserved. Currently, many but not all Native nations are in a much better position politically and economically to actively preserve and maintain their cultural heritage. As tribes make more economic progress, more attention will likely be given to recovering and preserving the material and intellectual heritage of Native nations.

The multicultural diversity of Native nations combined with the regime of federal law over tribal governments creates many instances where individuals may defy tribal interests and directives, willingly or unwillingly. In the NAGPRA literature, such situations are accounted for through the term “objects of cultural patrimony,” which belong collectively to the community and are not within the authority of any individual to sell or give away. Such objects may be sacred objects, sacred and secret knowledge, and, in some communities such as the Tlingit, songs, stories, furniture, masks, cedar boxes, and other heirlooms of clan and family heritage. Among the Tlingit, property is traditionally managed by a house chief, who does not own the property but rather administers it for the collective benefit of the house and clan. The house chief does not have the right to sell either the material or intel-
lectual property of the house or clan. NAGPRA recognizes that objects of cultural patrimony should be returned to the tribe or clan.36

Individual Native citizens may provide information to researchers that the tribal community wishes to restrict, for religious or other reasons. Under current human-subjects protection law, the tribe normally does not have powers to enforce such restrictions over Native citizens who are inclined to break community religious and social norms and understandings. Indian nations are often informed that they can approve or disapprove research access in toto, but far less often are they invited to place specific restrictions on research access to particular individuals or particular information. Tribes have limited recourse to prosecute researchers who publish information or views that the tribe does not believe is correct or is based on information that they believe should be kept within the community. The Native nation can restrict the noncompliant researcher from further work within the community but will encounter legal challenges if it seeks to restrict any individual Native citizens from continuing to supply information to the banned researcher. Native citizens can appeal to the protections for free speech incorporated into ICRA and receive federal court review if the tribe subjects them to criminal sanctions. While the Native nation may assert the communal nature of the knowledge, and hence the individual’s incapacity to transfer it without tribal consent, this characterization may be more difficult for intangible intellectual property than for the “objects” covered by NAGPRA. Intellectual property protection for Native culture is notoriously difficult.37 Thus, as a practical matter, Native nations are limited in their ability to restrict the gathering and publishing of information gathered from individual Native citizens.

The major recourse for Native nations who wish to restrict and guide research in their communities has been to create review boards to look over and advise the tribe about research objectives and protocols. The Native nations who suffered the most have often been early to develop research review boards as a means of protecting individuals and the Native community from possible abuse and misinterpretation. For individual researchers, the review boards are very important places where research has to be explained, and some possible value to the Native community should be justified. Since researchers will find it very difficult to conduct many types of research without tribal government or review board approvals, for practical reasons individual researchers are compelled to seek such approvals. The tribal review committees have some power over the research process at this point but little legal recourse over the publication or distribution of research results or interpretations. Thus, some outside recognition and reliance on these review boards can greatly facilitate their effective exercise of control over Indian country research.
Because of federal laws and the diversity of Native communities, universities and researchers can extract data from Native communities with relatively little legal repercussion. Many Native communities have few resources to develop research review boards that could at least screen and discourage some of the more damaging or ill-conceived research projects.

University human-subject review boards are the primary places where federal law and academic disciplines combine to protect human subjects. Nevertheless, university and public institution human-subjects review boards have generally focused on the rights and protections of individuals and are not well equipped to manage relations with collective tribal cultures and interests. The strong emphasis on individual rather than community or groups subject rights tends to work against tribal efforts to afford protection of collective community intellectual rights and interests. The absence of legal recourse by Native communities and governments over research issues off the reservations contributes to incomplete information available to university review boards about Native collective community interests. University human-subject boards are most likely advised that no legal or real issues are at stake. Some universities insist that tribal community research review boards accept the university protocols for human subjects. These protocols may be in themselves protective of individual rights, the primary purpose of the university human-subjects review boards objectives, but they tend to ignore tribal government rights and collective cultural interests. Where university human-subject protection standards prevail over tribal requirements, Native individuals have human-subject protections, but Native tribal communities do not.

Since Native communities have few means of legal recourse for protections for intellectual property rights, Native nations can only refuse to allow research in their communities if perceived abuses continue or university research protections are not acceptable. Many years ago when there were even fewer protections and weaker tribal governments, many Native nations might have longed for such a solution. Some of the poorer and more isolated communities may still accept such a solution, at least as a temporary measure until they can seek or develop ways to ensure better protection of their interests. At the present time, while many Native nations are looking to strengthen their economies, preserve their cultures, and plan for the future, a prohibition against research on the reservation is not desirable. Native communities need research, technology, and science to build their communities, cultures, and economies. Native communities of the future will need a command of science, information, and technology and should
ensure that they are also direct beneficiaries of research and knowledge that is collected and published about their communities.

While Native peoples of the past are sometimes characterized as victims of research agendas, the Native peoples of the future will be in a better position to see that research is used to ensure their survival, cultural continuity, and well-being. Most Native communities will embrace new technologies, globalized information, and scientific and humanistic research, but they will not necessarily understand or accept them at face value. Innovations in Indian country tend to be accepted as long as they do not conflict with core values and institutions. Native attitudes toward research may be very instrumental. Research will be seen as a means to the end of community and national preservation, not as an end in itself. Native communities will most likely make an alliance with science and technology, but selectively and in ways that further their own interests and values. Researchers and research institutions must respect those interests and values if they want to contribute to the Native enterprise of cultural preservation and nation building. Such participation and acceptance of Native values and goals may well be a major ground rule for any future research in Indian country. We do not think that such criteria will place heavy burdens on research that has any academic significance. A case can be made to the Native community for the value and usefulness of most research. Researchers must justify the expenditure of funds and resources on their research, but now they should include the values and interests of Native communities within those justifications. We do not think that justifying research benefits to Native communities will restrict or impair most of the research that is conducted in Indian country.

The development of research ethics in Indian country so far has been largely a product of selected academic disciplines, university review boards, and federal law. Tribal review boards have some influence over individual researchers, but should in the future become more engaged in the rules and protocols of undertaking research in Native communities. Tribal collective rights and interests need to be addressed as well as individual human-subject protections. More understanding and negotiation among scholars, the federal government, academic disciplines and tribal communities needs to take place. All interested parties should be engaged in developing the rules and protocols of research in Indian country. As a discipline, the newly emergent field of Native American studies, or indigenous studies as it is known more internationally, should take a central and mediating role in formulating research ethics for researchers in Native communities. Native American studies is well placed to take on such a role. One of the goals of Native American studies, it can be argued, is to support the research and nation-building interests of the Native nations. Since Native American studies is uniquely focused on the study of Native peoples and their communities and cultures, it is
logical for Native American studies scholars to take the lead in developing and implementing culturally and nationally sensitive methods of research that involve respect and understanding of the values, issues, and goals of Native communities. Some Native American studies scholars have already addressed some of the research ethics issues, and there is an emerging literature on the subject. Native scholars and Native American studies scholars who are engaged with Native communities and their issues can take the lead in developing more sensitive and productive ways of conducting mutually beneficial research within indigenous communities.

Academic disciplines, universities, federal agencies, Native American studies programs, and Native nations need to negotiate common sets of rules for research in Indian country. These rules must respect Native peoples’ rights of self-government and the diversity of both traditional and contemporary Native communities and cultures. Because of specific historical experiences or cultural or institutional arrangements, each Native community may want some specific rules for the conduct of research. Such requests should be understood and accepted, and since there are more than 560 federally recognized Native communities in the United States, there may be many unique sets of rules. In addition, there are more than two hundred Native communities that do not have or will not accept federal recognition, and special rules may have to be created to provide ethical research protections for those communities and their individual members. A template of research ethics may be possible to develop that applies to Indian country generally but may have to be modified according to the specific community that will host the research. Native communities should be empowered to accept research and should share in the direct benefits of research conducted in their communities. As long as Native communities are excluded from the dialogue of research protocol they are subject to potential abuses and more likely to perceive themselves as excluded from the benefits of research.

Rules for the ethical conduct of research and protection of human subjects should be negotiated among interested parties. Native communities have only recently come to the negotiations and are increasingly empowered to assert collective self-protection and the protection of their individual members. Native nations do not have legal protections for research issues and must depend on the moral and ethical conduct of researchers and research institutions. Most research institutions and many researchers are not fully aware of the cultural and political issues and goals that Native communities carry when they agree to research projects in their communities. There are many difficult cultural issues involved in such negotiations. Each case should be given due consideration, and each community should be allowed to review and comment on cases. Federal agencies, research universities, and individual researchers must respect the tribal government and communities as part
of the process through which human- and community-subject protections are negotiated and realized. All of this effort may seem like a great burden, but it will help ensure protection for Native communities and human subjects, and will help ensure that research information and results are gained through consensual and mutually beneficial methods. The knowledge gained will be ethically cleaner, and the mutual and Native community support for approved research projects may well yield more results of higher and more useful quality. Gaining the consent and support of Native governments and communities for research projects may well yield not only better social relations and less research abuse but better research results and better use of research knowledge. Researchers and human-subjects review boards of all nations, unite!

NOTES

1 Keith James, ed., Science and Native American Communities: Legacies of Pain, Visions of Promise (Lincoln: University of Nebraska Press, 2001), 137–68.


6 Medicine, Remaining “Native,” 1–2.

7 Ibid., 328; Lee Philip Brumbaugh, “Shadow Catcher or Snatchers: Ethical Issues for Photographers of Native Americans,” in Contemporary Native American Cultural Issues, ed. Duane Champagne (Walnut Creek, CA: AltaMira Press, 1999), 220–22.


9 Robert A. Williams, Jr., “Essays on Environmental Justice: Large Binocular Telescopes, Red Squirrel Piñatas, and Apache Sacred Mountains: Decolonizing Environmental Law in a Multicultural World,” 96 West Virginia Law Review
NOTES


12 Ibid., 308.


15 Deloria, Custer, 275: “This book has been hardest on those people to whom I place the greatest amount of hope for the future—Congress, the Anthropologists, and the Churches. They have been spinning their wheels either emotionally or programmatically.” This sentiment was also related to the authors by Vine Deloria via personal communication at the meetings of the board of the National Museum of the American Indian, Washington, D.C., 1999.


17 See Navajo Nation Cultural Resources Protection Act, Tribal Council Resolution CMY-19-88, Section 301: “No person may engage in ethnographic research on Navajo lands, except that such activities may be conducted under the authority of and in accordance with the stipulations of a valid Navajo Nation Cultural Resources Permit issued by the Preservation Officer.”

18 For an example of such a code, see, for example, Colville Tribal Code, chapter 6-6 Research Regulation, which provides that anyone “wishing to undertake a study, survey, or research project for any purpose on the Colville Indian Reservation, . . . must first obtain a permit approved by the Business Council, or its designate, authorizing the conduct of such study, survey, or research project . . . pursuant to provisions of this Chapter” (section 6-6-3). The Code goes on to specify that, in order to receive a permit, a researcher must provide certain information, including the purpose, methods, and intended final product of the research, as well as “an indication of steps to be taken to ensure the protection of the rights of individual tribal members and their families and the rights of the Colville Confederated Tribes” (section 6-6-5). Furthermore, even when a researcher satisfies the permit-
ting requirements, that researcher must also execute a written agreement with the Colville Confederated Tribes "regarding the manner in which the . . . research project is to be conducted, creating a fiduciary relationship, and limiting the right of the individual [researcher] to publish the results or conclusions resulting therefrom without affording the Colville Confederated Tribes an opportunity to review and comment upon the intended publication, and including whatever comments are officially made by or on behalf of the Colville Tribes as part of the final published product" (section 6-6-4).

19 For example, for a research project on tribal law enforcement that we are conducting, our university’s Human Subjects Protection Committee required that we secure a letter from each of the fifteen tribal governments involved, granting us permission to request interviews with tribal members and government officials regarding the tribe’s experience with the availability and quality of reservation law enforcement.

20 In our current research project, devoted to reservation law enforcement, for example, the elaborate human-subject consent form concentrates on such potential harms to individual interviewees, ignoring the possibility that revelations about law-and-order problems on the reservation may adversely affect the tribes’ ability to advance their sovereignty in the courts, in Congress, or with administrative agencies at the state or local level.

21 See Colville Tribal Code, chapter 6-6 Research Regulation, section 6-6-5(i).

22 For an example of a far-reaching collaborative agreement between a Native nation and a research institution, designed to bring benefit to both entities, see Lawrence Spohn, “Navajos, Sandia Sign Historic Tech Plan,” Albuquerque Tribune, December 4, 2000, C7.


25 See Colville Tribal Code, chapter 6-6 Research Regulation, section 6-6-12; Navajo Nation Cultural Resources Protection Act, Section 308(d).

26 See, for example, Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978).

27 Nevada v. Hicks, 533 U.S. 353 (2001). Prior Court decisions had indicated that tribal civil authority over nonmembers would be limited only with respect to activities on nonmember-owned fee land within a reservation. Nevada v. Hicks was the first Court decision to suggest that the limitation may extend to all reservation land. However, to the extent that reservation land is tribally owned, the tribe retains the power to exclude individuals from that land. Applying for a tribal research permit would constitute establishing a consensual relationship with the tribe for purposes of Nevada v. Hicks and related cases. But some researchers might attempt to bypass the tribal permitting process altogether.

29 Individual rights may also be protected under tribal constitutions. For some illustrations, see Felix S. Cohen’s Handbook of Federal Indian Law (Charlottesville, VA: Michie/Bobbs-Merrill, 1982), 663–64.

30 Indian Civil Rights Act, Act of April 11, 1968, Pub. L. 90–284, tit. II, 82 Stat. 73, 77 (codified at 25 U.S.C. § 1301–303). Out of respect for the sovereignty of Indian nations, the Indian Civil Rights Act does not guarantee individuals freedom from the establishment of religion, the right to a republican form of government, the right to a jury in civil cases, or the right to a government-funded attorney in criminal cases prosecuted in tribal court.

31 Under Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), federal courts may not hear civil actions seeking to enforce the terms of ICRA. However, a federal forum is available by way of the writ of habeas corpus if an individual is in tribal custody in violation of ICRA (25 U.S.C. § 1303).

32 Where tribal constitutions and laws must be approved by the secretary of the interior, that secretarial power may be used to deny approval of provisions that are perceived to violate ICRA. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 66 n.22 (1978).

33 Laurie Anne Whitt, “Cultural Imperialism and the Marketing of Native America,” in Contemporary Native American Cultural Issues, ed. Duane Champagne (Walnut Creek, CA: AltaMira Press, 1999), 169–92. See also Lee Philip Brumbaugh, “Shadow Catchers or Shadow Snatchers? Ethical Issues for Photographers of Contemporary Native Americans,” in ibid., 217–24. For example, an individual tribal member may complain of a violation of his or her First Amendment rights under tribal laws that restrict communication with researchers. However, while an individual tribal member might justly complain if the tribe attempted to limit her access to a potentially beneficial medical research protocol, it may be more difficult for a tribal member to mount a successful first amendment challenge to a restriction on disclosure of information that the tribe may characterize as collectively owned. See also the special issue on ethics and Native photography in American Indian Culture and Research Journal (20, no. 3 [1996]).

34 “If it is to make a book you are seeking this information, I shall be still more highly pleased, and will take great pains to narrate the whole of our traditional history”: Chahtaimmataha in Gideon Lincecum, ed. “History of the Chahta Nation” as told by Chahtaimmataha. Gideon Lincecum Papers (Austin: Eugene C. Barker Texas History Center, The University of Texas at Austin, 1861), 3 (manuscript); See also the report by Francis La Flesche and the story of the Sacred Pole of the Omaha Nation in Robin Ridington, “All the Old Spirits Have Come Back to Greet Him: Realizing the Sacred Pole of the Omaha Tribe,” in Present and Past: Some Uses of Tradition in Native Societies, ed. Marie Mauze (New York: University Press of America, 1997), 162–63.

36 25 U.S.C. § 3005 (a). An object of cultural patrimony is defined as “an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group” (25 U.S.C. § 3001(3)(D)).

