

Settler Governance and Privacy: Canada's Indian Residential School Settlement Agreement and the Mediation of State-Based Violence

LARA FULLENWIEDER
ADAM MOLNAR
Deakin University, Australia

In 2007, the Indian Residential School Settlement Agreement (IRSSA) was developed to redress the violent and assimilative history of residential schools in Canada. The records collected through the IRSSA represent the most comprehensive documentation of violence against Indigenous populations in Canada: data that range from personal testimonials and records, medical histories, and institutional documents to tested legal statements regarding physical and sexual abuse and its effects. The implementation of the IRSSA has been punctuated by legal conflicts that mobilize discourses and laws centering on liberal-conceived rights concerning access to information and privacy. In this article, we examine how liberal discourses of privacy knowledge and uses of privacy law inform histories and futures of Indigenous and settler memory in the context of state-based violence. The article reveals how liberal notions of privacy, when mobilized alongside federally mandated policies of reconciliation, may reproduce the structural violence of settler colonial governance in liberal democracies.

Keywords: privacy, settler colonialism, liberal governmentality, reconciliation

From 1831 to 1996, federally funded Indian Residential Schools (IRSs) displaced an estimated 150,000 First Nations, Métis, and Inuit children from their homelands, families, and communities (Truth and Reconciliation Commission of Canada, 2015). The injustices experienced by Indigenous populations through this 150-year policy were and continue to be devastating: Forced displacement from ancestral homelands; attempted assimilation into mainstream settler societies; and physical, emotional, and sexual abuse was commonplace within these institutions. The 2007 Indian Residential School Settlement Agreement (IRSSA, or the Settlement) brought together the federal government, former IRS students and survivor organizations, civil litigants, the Assembly of First Nations, and several church bodies. The IRSSA provided redress through two compensation programs: a Truth and Reconciliation Commission (TRC) and further funding for the Aboriginal Healing Foundation. Through these legal and therapeutic registers, the IRSSA furnishes a unique regime of redress and reconciliation. Since its genesis, the settlement has been divided between the twin goals of generating awareness and offering restitution while also protecting the

Lara Fullenwieder: lara.fullenwieder@deakin.edu.au

Adam Molnar: adam.molnar@deakin.edu.au

Date submitted: 2017-02-08

Copyright © 2018 (Lara Fullenwieder and Adam Molnar). Licensed under the Creative Commons Attribution Non-commercial No Derivatives (by-nc-nd). Available at <http://ijoc.org>.

privacy of already-violated Survivors. Following nearly a decade of official reconciliation policies between the government of Canada and Indigenous populations, controversy erupted around questions of personal privacy and the importance of preserving historical records regarding state violence. Recent litigation surrounding the future of IRSSA-generated documents, including more than 38,000 statements from Indigenous individuals who experienced state-sanctioned violence, reveals the extent to which the legal notion of privacy can mitigate the revelation of historical truths.

We explore the evocation of privacy in the disputes following the near-completion of the IRSSA's mandates, particularly as privacy is mobilized to place a destruction order on the Independent Assessment Process's (IAP's) records and testimonials—an act that may erase the particular practices of Canadian settler violence, past and present. On May 25, 2017, following an appeal of the destruction order by the TRC and National Centre for Truth and Reconciliation (NCTR), the case was heard by the Supreme Court of Canada. We base our analysis on the court hearings, the arguments of the state and IAP legal team as well as the NCTR and the questions posed by the Justices. Privacy, as a set of legal claims within the context of the IRSSA, reflects a dominant feature of liberal governance as the primary means to minimize information-related harms and enshrine the protection of individual rights. The information collected by the IAP ranges from personal testimonials and records—medical histories, financial data, and institutional documents—to tested statements regarding physical and sexual abuse and its effects (Schedule D). The records collected through the IRSSA represent the most comprehensive documentation of violence against Indigenous populations in Canada. The Independent Assessment Process has resulted in the largest accumulation of sensitive personal data and information on a vulnerable population in Canada (*Fontaine v. Canada*, 2014). However, this accumulation also represents the most detailed account of institutionalized colonial violence in Canada. Their preservation can provide the basis for an institutional memory of Canada's genocidal practices. In addition to personal testimony, the destruction order extends to other collections, including the only records of the bureaucratic process of the IAP itself—a process that has been widely contested in subsequent litigation and court appeals, stories of legal misconduct and disbaring, and evidence of incommensurately painful experiences for the applicants.

As the future of these documents comes under dispute, privacy has emerged as a technology of erasure and forgetting—a characteristic, we argue, of settler colonialism. Following Lippert and Walby (2013), we examine privacy in the IRSSA as an object of knowledge and an instrument of liberal governance. Understanding privacy as a form of liberal governmentality elucidates how practices that are more or less authoritarian are tied to practices of settler colonial domination. We argue that privacy, when mobilized alongside federally mandated policies of reconciliation, can reproduce the structural violence of settler colonial governance in liberal democracies. To date, privacy has not been brought into conversation with scholarship that reflects on the logic and practices of settler colonial governmentality. The scholarly conceptualization of settler governmentality identifies several features that reproduce ongoing colonial power in settler societies: a "logic of elimination" (Wolfe, 2006); disavowal (Veracini, 2008); and the ongoing surveillance and control of racialized Indigenous populations deemed to be threatening to the acquisition of land and resources that support the reproduction of a postcolonial liberal political economic order (Fullenwieder, 2017; Monaghan, 2013). As a mode of governmentality tied to the legal infrastructure of settler societies, privacy confines the possibilities for political self-determination *within* the continuum of liberal political subjectivity. Privacy, and the notion of individual consent, is inseparable

from a number of epistemological commitments to the settler paradigm; privacy is bound to white settler ways of knowing, which obscure relational complexity and prefigure individual subjectivities.

We argue that, as a mode of settler governmentality, privacy and its liberal edifice can valorize settler imaginaries that threaten to reproduce configurations of colonial power that Indigenous peoples have historically sought to transcend (Coulthard, 2014). We present our research in three parts. First, we briefly detail the philosophical foundations of privacy as the dominant paradigm through which liberal democratic societies seek to remedy information-related harms. We contextualize privacy as a set of conditions within settler colonial relations. In this context, we describe how the governance of privacy can instead be reconsidered as governance *through* privacy—or privacy as an extension of settler governmentality. Second, we provide a brief historical overview of the IAP. Third, we illuminate our argument using the example of the IAP documents dispute. We detail the work of privacy as a technology for settler governmentality in three focal points: the jurisdictional control of the records, the treatment of the various data types in the destruction program, and the use of individual consent and a notice program. Through the example of the IAP documents, we demonstrate the deeply complex and contradictory ways in which privacy works to articulate survivor relationships to testimony, history, and archive.

From the Governance of Privacy to Governance Through Privacy

Privacy—as a theoretical framework, concept, intellectual tradition, constitutional order, and set of policy instruments—has deep historical roots within Western liberal political theory and ontologies. In the American legal tradition, the classical definition of privacy hinges upon an individual's "right to be let alone" (Warren & Brandeis, 1890) and reinforces the liberal specification that privacy is distinct to mostly rational and self-regarding individuals. In this model, privacy infringements—when the sovereignty of the individual is unreasonably intruded upon—are best remedied by a "personal right, peculiar to the individual whose privacy is invaded" (Prosser, 1977, para. 6521, as cited in Richards & Solove, 2007, p. 174). In the UK legal tradition, the law of confidentiality emphasizes norms of trust in specific relationships (Richards & Solove, 2007). In contrast to the individualistic conceptualization of privacy in the American tradition, privacy is infringed upon when norms of trust and confidence are breached and an unexpected disclosure of information occurs. The English tradition reinforces liberal norms and assumptions about obligations of confidentiality when information is shared for specific purposes (Gurry, 1984). Privacy infringements are only acceptable where consent has been given, where information is already in the public domain, or when the publication of the information is determined to be disproportionately in the public interest (Richards & Solove, 2007, p. 165).

Despite the differences in these legal traditions, American and English privacy paradigms share a common liberal model of society as made up of relatively autonomous individuals who inhabit a private sphere that is considered distinct from the public sphere of the government and the state. The rational liberal subject requires freedom from personal, communicative, or informational invasions "in order to fulfil the various roles of the citizen in a liberal democratic state" (Bennett & Raab, 2006, p. 4). Even critiques of liberal privacy, which have sought to emancipate the concept from the pitfalls of individualism and reframe it as a social and collective value (Nissenbaum, 2009; Regan, 1995), remain firmly embedded

within a liberal framework. Whether we conceive of privacy infringements in individual terms or in terms of collective social values of confidentiality, privacy as a concept and value translates nearly seamlessly into a liberal-rights-based discourse. Emerson (1970) states, "The concept of a right to privacy draws a line between the individual and the collective, the self and society" (p. 545). The defining characteristics of liberal notions of privacy reveal the extent to which privacy is also a "dividing practice" (Foucault, 1982) that naturalizes a tradition of liberal political ontology.

Privacy is conventionally recognized as a defining characteristic of liberal democratic citizenship, human rights, and political freedom, and, as such, it is only recently that it has come to be analyzed as a component of liberal governmentality (Lippert & Walby, 2013, p. 331). Rather than a legal claim that addresses unjustified intrusions or provides a countervailing check on surveillance, Lippert and Walby view privacy as "a set of protocols and technologies through which governance and security are enacted" (p. 331). In this view, privacy is less about the legal governance of privacy and more about understanding privacy as a constitutive process—working through a range of civil and state institutions and expressed through forms of knowledge as well as law (p. 333). Privacy law and forms of power/knowledge related to privacy "are simultaneously created and integrated into authoritarian (and other) practices rather than solely sitting on the surface obscuring such practices or countering them" (p. 333). This framing indicates the work of governing *through* privacy rather than the strict governance *of* privacy.

Lippert and Walby (2013) explore two main examples that illustrate the counterintuitive effects of privacy law and knowledge in relation to governing practices. In the first example of open-street CCTV surveillance, privacy law provides a set of rules that legitimize a range of other practices endemic to video surveillance that rely on an authoritarian construction of "threat-identities" and criminalization of "abnormality." The use of lawful signage to indicate the use of CCTV legitimizes the use of widespread surveillance technologies while still failing to address the other ways in which surveillance controls accommodate racialized authoritarian practices. Lippert and Walby demonstrate that the framing of privacy as the main paradigm through which to "constrain" surveillance is problematic. Compliance with privacy can indirectly provide tacit legitimacy, if not active authorization, for a broader set of social and political harms that go unnoticed (Wright & Raab, 2012). Second, the release of documents through access-to-information and freedom-of-information laws is also governed through privacy. In most liberal jurisdictions, these laws facilitate disclosure of information about state agencies that is not usually part of a broader public record (Larsen & Walby, 2012). Exemptions under access-to-information and freedom-of-information legislation are designed to protect the privacy of individuals or to conceal the investigatory methods of security and policing agencies for public safety purposes. However, excessive redaction and exemption, according to broad interpretations of legislative criteria, inhibits the work of researchers, the media, and the public and can systematically obscure information that might document authoritarian practices. Invoking privacy statutes as a means to exempt portions of documents—instead of redacting a narrower sample of lawfully defined "personal information"—prevents the release of information about practices that might illustrate how power and control are exercised (Lippert & Walby, 2013, pp. 347–350). In each of these examples, authorities engage privacy law as a mobilization of liberal rights but in ways that bolster techniques of security or authoritarian practices.

Settler Colonial Governance Through Privacy?

Building upon Lippert and Walby's (2013) discussion privacy and authoritarian practices, we are interested in how privacy as a liberal instrument of law and object of knowledge might also reproduce broader manifestations of settler colonialism. Canada is a settler colonial undertaking as the primary purpose of colonial invasion is not the extraction or appropriation of resources and/or labor alone; rather, Canada is a project characterized by the long-term acquisition and occupancy of land (in addition to extraction and exploitation). Canada is built around the dispossession of Indigenous lands leading to the establishment of regimes of private property and liberalism (Blomley, 2003). This *logic of elimination* (Wolfe, 2006) is enacted through physical and symbolic means. Settler invasion rests upon the denial of Indigenous peoples' indigeneity (a specific relationship to and of the land) and ways of being to sustain an insatiable accumulation of land and territory (Morgensen, 2011; Wolfe, 2006). In Canada, this is enacted through ongoing displacement and socioeconomic deprivation. We also see dispossession through disavowal of Indigeneity "to produce not so much extractive-effects on colonial bodies as governing effects on colonial conduct" (Scott, 1995, as cited in Crosby & Monaghan, 2012, p. 425; Veracini, 2008). Disavowal occurs through recurrent denial of title and treaty rights and more indirectly through assimilative, racialized policy that targets Indigenous identities—for example, IRSs and the Indian Act. Fundamentally, settler invasion, as a particular iteration of liberalism on stolen soil, attempts to naturalize a timeless regime and erase the possibility of (alter)Native ways of being.

Though privacy is popularly understood as a countervailing norm *against* erosions of rights and freedoms, as a product of liberal legal jurisprudence, it is deeply interwoven with imaginaries and practices that reproduce settler governmentality. Because Indigenous subjectivities are always a threat to settler state legitimacy, privacy, due process, and rule of law provide the "necessary checks" through which disavowal can be enacted: for example, the ongoing criminalization and surveillance of Indigenous subjects (Crosby & Monaghan, 2016). Similarly, Indigeneity is viewed as a source of insecurity—threatening to the acquisition of land and resources that support the reproduction of a postcolonial liberal political economic order (Crosby & Monaghan, 2012; Wakeham, 2012). As part of the legal architecture, justifying exceptional surveillance and control of Indigenous populations through criminalization, privacy is not an absolute but a matter of procedure. Its value is routinely weighed against perceptions of risk and the requirements of "collective" security. Privacy, as such, exists as a safeguard that authorities can readily justify exceptions to in the face of threats to the liberal order. Building upon Lippert and Walby (2013), redactions under access-to-information and freedom-of-information laws inhibit what can be known about specific populations and mechanisms of state power. The way in which Indigenous populations are included or excluded within the disclosure of public records or how Indigenous identities are represented by the state is reflective of the logic of elimination. Privacy as a legal practice establishes a set of terms through which this aspect of settler governmentality takes shape.

Privacy mediates information that might be significant for the production of counterhistories or that documents acts of violence specific to settler colonialism. Privacy can be instrumental in moderating the informational landscape that furnishes the fabric of settler imaginaries. In Canada, there is already a long history of erasure, destruction, and appropriation of Indigenous histories. There has already been substantial destruction of records by the federal government: Since 1935, some 15 tons of paper school

records, including accident reports, have been destroyed, and between 1936 and 1944, 200,000 Indian Affairs records were destroyed (Truth and Reconciliation Commission of Canada, 2015, p. 90). The *settler* archive seeks to establish placeness and legitimacy and to integrate the history of the dispossessed within a sanitized narrative of the rise and progress of the nation (Adams-Campbell, Glassburn Falzetti, & Rivard, 2014). Nika Collison, curator of the Haida Gwaii Museum, points to the way in which settler records allude to hidden or destroyed Indigenous experiences through these absences or omissions: For example, the archival documentation of smallpox vaccinations within the settler community and the documented lack of vaccination for the Haida community evidence genocidal practices in early colonization (McMahon, 2016, p. 12).

Some Indigenous community members and knowledge workers have drawn attention to the importance of the IAP and broader IRSSA records for Indigenous collectivities and nations. Madeleine Redfern, former executive director of the Qikiqtani Truth Commission, former mayor of Iqaluit, and the first Inuk to clerk at the Supreme Court of Canada, points out, "Developing a strong culture means having an awareness of your own past. . . . One elder said we have already lost too many and their stories are gone, so we need to preserve the stories we have collected" (McMahon, 2016, p. 12). As Michael Cachagee, survivor and IAP applicant, states, "the real dirt, is in those records" (Gallant, 2016, para. 6). The repertoire of practices and experiences detailed in and *through* the IAP records relate the characteristics of settler violence. Collison points out the importance of history and archive to Indigenous Nations: "Pre-European contact, our nations already had archives, oral histories maintained by our elders. Oral histories confirm a person's place in society, who holds what rights and how they acquired them" (McMahon, 2016, p. 12). For many Indigenous communities, colonial records can help to fill in interrupted or hidden histories of relationships, kinship, and territory—key facets of many Indigenous worldviews. This point is a crucial one. It evidences that while liberal legislation may protect *personal* information and offer Survivors an opportunity to claim their own stories through a model of individual consent, the move to destroy huge swaths of records and information regarding the history of state violence against Indigenous populations simultaneously conditions opportunities for Indigenous self-determination and reinforces settler legitimacy through absences in the archive. It is within this context that we move to understand the particular work of privacy as a measure to shape or erase Canadian articulations of settler violence.

Privacy and the Independent Assessment Process Records

We preface this analysis with a brief history and explanation of the IAP, its origins, and the decisions regarding the future of its documentary footprint. As noted in the introduction, the 2007 IRSSA is a legal settlement designed to redress one specific—and monumentally destructive—colonial policy. The IRSSA provided two modes of redress: personal compensation and national reconciliation through the Truth and Reconciliation Commission and the National Centre for Truth and Reconciliation. The federal government compensated Survivors through the Common Experience Payment for all self-identifying residential school attendees and the Individual Assessment Process (IAP) for further financial claims for experiences of physical and/or sexual abuses. The IAP reflected a solution to slow-moving and proliferating civil and class action suits brought against perpetrators of abuse, including Canada and the

various church bodies (Canadian Bar Association, 2005; Nagy, 2014).¹ The perpetrators, the church bodies and Canada, and many of the former students pursuing legal action desired increased confidentiality (*Fontaine v. Canada*, 2014) and a more expedient process given the age and vulnerability of the former students (Canadian Bar Association, 2005). The IAP promised to address these issues while still working to give the applicants justice. IAP applicants released the perpetrators from any and all further litigation pursuant to their IRS experiences in exchange for a “closed-door,” “non-adversarial” but “inquisitorial” process to pursue further compensation within a structured framework. To “validate” the claimant’s accusations, however, the IAP still required the burden of proof and evidentiary standards associated with civil litigation and allegations of equal severity (IRSSA, 2006, Schedule D, sec. h). The accused surrendered particular rights of questioning and confrontation (IRSSA, 2006, Schedule D, sec. g). In exchange for participation, all parties, applicants and the accused, were promised confidentiality and strict limitations upon the sharing of their information and identities (IRSSA, 2006, Schedule D, Appendix II, pp. i–iii.; IRSSA, 2006, Schedule D, Appendix III, p. v.).

To “validate” and offer “neutral” adjudication of the claims, the IAP generated a diverse conglomeration of documents and records, including extremely intimate information about the applicants. All applicants provided a written narrative of their personal experience and completed a form detailing their specific claims according to a points system: For example, “Repeated, persistent incidents of anal or vaginal intercourse” (45–60 points) or “Nude photographs taken of the Claimant” (5–10 points). In this process, “Canada” was both the compensating body and “the accused” in most of the applications. Therefore, the adjudication—the decision of whether to compensate claimants and how much—fell to the “independent” appointed legal representatives who made up the Indian Residential Schools Adjudication Secretariat (the Secretariat). The work of defending Canada was done by the Settlement Agreement Operations Branch (SAO) of Aboriginal Affairs and Northern Development Canada—a government department. To adjudicate each claimant’s application and provide its own defense, the SAO (Canada) was mandated to research and produce an Institutional Narrative and a Persons of Interest Narrative for each school. The Secretariat (“independent” lawyers) based their decision on the probability of the applicant’s accusations measured against the narratives produced by the SAO. Therefore, the SAO and the Secretariat shared a database (SADRE), within which they had overlapping but divergent access records regarding each claim.

As part of the closed-door adjudication, some assurances of privacy were offered in the IRSSA. Section o of Schedule D in the IRSSA (2006) states that information at a hearing will remain confidential “except their own evidence, or as required within this process or *otherwise by law*.” The IAP Application Form and Guide—designed and disseminated by the IAP Adjudication Secretariat and not included in the original settlement agreement—declare “Protected B document when completed” on every page. Under federal government designation, “Protected B” document indicates that compromise or disclosure of information contained within the document “could cause serious injury to an individual, organization or government” (Government of Canada, 2017, para. 3). Appendix B of the IAP Guide (IAP, 2013) explains that the documents may be retained in accordance with the changing archival procedures of Library and

¹ There was an antecedent Alternative Dispute Resolution Process, the critiques of which were used to structure the IRSSA. For a more detailed discussion, see Nagy (2014).

Archives Canada and applicable legislation (p. 29). Inclusive of the promise of confidentiality and privacy implicit in the IRSSA, the explicit references to the Access to Information and Privacy Acts were related to the fact that the information was limited to intragovernmental disclosure (*Fontaine v. Canada*, 2014). As part of the IRSSA, to redress the history of denial surrounding IRSs, applicants were supposed to be given the option of transferring redacted copies of their individual transcripts to the IRSSA-planned archival mechanism—the National Centre for Truth and Reconciliation. However, whether this option was conveyed in the 38,000 individual cases is contested (McMahon, 2016, p. 58).

Given the varied content of SADRE and the Settlement's unclear phrasing around the future of this information, there have been court appeals to decide the fate of the IAP records. The Adjudicator intended to destroy the records upon completion of the process. The signees of the IRSSA are in disagreement. Church organizations are intent upon destruction. Canada, the current holder of most of the documents, is intent upon preservation. Library and Archives Canada and the TRC commissioners sought to have the records archived. Survivors have been divided in their positions: Many counted upon the anonymity of the process and feel violated by the proposition to retain them; other Survivors and family members are keen to preserve the records of what was lawfully perpetrated against them. However, because the dispute is over an existing legal settlement, its resolution will largely be on legal terms—between the numerous signatories, legal counsel, subject to interpretations of the law, and the very primacy of the liberal order itself. All subsequent decisions, or opinions, are secondary, or subject to, the IRSSA's original wording, agreed upon by the various stakeholders *representing* institutional or individual interests.

On August 8, 2016, the Ontario Court of Appeal handed down a decision favoring the destruction of all of the IAP records, following a 15-year "cooling off period" (*Fontaine v. Canada*, 2014, para. 47). Justice Perell found that destruction of the records was required to honor the *original meaning* of the IRSSA and, by relation, the privacy of Survivors, including informational self-determination over their stories. First, the court decided that the records were not government records (*Fontaine v. Canada*, 2014, para. 19) and therefore not subject to the legislation that would preserve them. Perell reaffirmed earlier legal decisions which found the IAP to be under the court's supervision (*Baxter v. Canada*, 2006). Second, Perell found that an "implied undertaking" rule applied to the IAP records, meaning that the documents should not be used for any purposes other than the reasons set out in the IAP, despite the broader guidelines of the IRSSA (including the role of the TRC). Finally, the court decided that the court's role as supervisory body was to enforce the IRSSA and that "destruction of the IAP Documents is what the parties contracted for under the IRSSA and . . . what the common law and equity require" (*Fontaine v. Canada*, 2014, para. 19). Perell delayed destruction by 15 years. In this time, a court-supervised notice program will be administered to offer claimants the opportunity to consent to have their redacted statements archived in the NCTR.²

² The Supreme Court of Canada released a decision (*Fontaine v. Canada* [Attorney General], 2017), while this paper was under review which upheld Perell's original destruction order and retroactive consent program. However, it altered the conditions of the consent program. The Supreme Court stipulated that the program should be undertaken by the IAP Adjudicator—who argued in favor of the destruction of all records—rather than an Indigenous-managed NCTR or TRC.

We illustrate three ways in which the framing of this dispute over privacy and the IAP records mediates the control of the documents and delimits the possibilities for creating a historical archive. First, the legal definition of the IAP as a *sui generis* entity, outside of public designation, establishes jurisdiction over the documents that contributes to their destruction. Second, situating the contestation over records in terms of individual privacy undermines more detailed exploration of the larger breadth of information included in the records and circumvents the possibility of an insurgent historical record of state-based violence. Third, we explore the problematic nature of informed consent in the IAP as a basic feature in the protection of individual privacy. The lawful solicitation of individual consent conceals the asymmetrical power dynamics of the settler colonial relationship and of the IAP. Further, looking at the liberal ontology implicit in considering personal privacy and individual consent as self-determination, we show how privacy conditions possibilities for agential expression. We draw this critique of the colonizing work of privacy into relief by noting how the implicit assumptions of privacy values transform into the governance of memory and archive.

Legal Liminality of the IRSSA

Given Canada's complicated role as a perpetrator of colonial violence, the Independent Assessment Process was created as a unique mechanism to facilitate the state-based process of historical redress.³ The IAP Adjudicate was established to serve as a "neutral oversight body." This was justified by a perceived need to distinguish between the historical federal regime that perpetrated the violence of residential schools and a contemporary regime that was seeking legal redress to make fair and just amends. Put another way, the IAP, as an "exceptional" extrajudicial and extragovernmental emanation of the IRSSA, was rooted in a liberal-principled assertion of an adversarial court process that could meaningfully distinguish between Canada as a perpetrator and Canada as a contemporary benevolent state. However, this designation of the IAP as a *sui generis* entity, outside the binding jurisdiction of the nation-state, has far-reaching implications for the eventual fate of records of state violence.

The Ontario Court of Appeal ruled that individuals' control over the fate of their own information should supersede government intentions to preserve the records in any way (*Fontaine v. Canada*, 2014, para. 10). This affirmed an earlier decision distinguishing the IAP from the federal government, deciding that the records were not, as Canada argued, government documents (*Fontaine v. Canada*, 2014, para. 319). The court ruled that it is within its supervisory authority to order the destruction of the records for two reasons: first, because the sharing of the records by Canada to either the TRC or the NCTR would violate the deemed undertaking rule, stipulating that the documents cannot be used for a collateral purpose such as historical archiving (*Fontaine v. Canada*, 2014, para. 319); and, second, because it would constitute a breach of the IRSSA's assurances of confidentiality between the signees. This is a controversial departure from previous interpretations of control over records in Canada. Typically, government documents are subject to the Access to Information Act and the Privacy Act, which facilitate

³ Although there have been other truth and reconciliation commissions in the past decades—most notably the famous South African TRC, which popularized the notion and concept—the Canadian TRC is quite unique in its conception as part of a broader legal settlement. Despite the international TRC parallels, the role of privacy in this off-shoot of a *legal* enterprise is therefore exceptional. For more details about the parallel between the South African TRC and Canada, see Nagy (2014).

access with exemptions on the disclosure of any identifying personal information (Government of Canada, 1985a, s. 19). They are also subject to the Library Archives Act, whereby solely a national archivist could order their destruction (Banks, 2004).

If privacy is, according to Emerson (1970), about drawing “a line between the individual and the collective, the self and society” (p. 545), it is also about drawing lines between legal entities, jurisdictions, and ontologies. The legal definition of the IAP as a *sui generis* process places control over the records *outside* the remit of the state and its legislation but also simultaneously *outside* the bounds of Indigenous communities. Therefore, the IAP records—specifically the records of the IAP, SAO, and administration processes, which no one, not even the applicants, has complete access to—are also positioned outside the bounds of any institutional memory. The documents are situated in a liminal space that is subject to neither the laws of the liberal nation-state nor the informational self-determination of Indigenous communities. They are destined for destruction as a way to uphold *personal* privacy. By understanding the IAP as an obligation of trust and confidentiality between adjudicators and individuals (borrowing equally from both the U.S. and English law traditions), the possibility for a broader solution forged through Indigenous traditions is undermined. Despite principled liberal intentions to assert procedural fairness into the IAP, the oversight of the *sui generis* body still turns on the axiological center of the state: the liberal courts *protect* the interests of the Indigenous applicants *from* the pervasive control of the state. In the context of the IAP records, this paternalistic impulse and presumption to protect is articulated through the vernacular of privacy, to “grant” control over one’s own personal information. However, even if these records were to be preserved under Canadian legislation, they may still be subject to access-to-information and privacy legislation that is characterized by barriers to access (Larsen & Walby, 2012). Thus, the *protections* of the state through privacy legislation are supplanted by the *protections* of the courts through law. Through privacy as a protection of liberal freedoms, the invasive nature of liberal law remains settled, and the opportunity for articulations of Indigenous political autonomy is obscured.

Personal Privacy, Redaction, and Destruction

In the court proceedings, arguments to destroy the entirety of the records rested on the protection of personal privacy of an especially vulnerable population. Phil Fontaine, a survivor and leading figure in the movement toward IRS redress, recalled the significant number of cases involving lateral violence between students. He noted that the protection of privacy is extremely important for communities where both perpetrator and victim may reside or have family. The IAP chief adjudicator, Don Shapiro, pointed out that many of the hearings were still under way, and the participation of other witnesses and defendants might be compromised by an inability to promise total confidentiality (*Fontaine v. Canada*, 2014, para. 223). Indeed, these are integral questions to be addressed by Indigenous leaders and communities who will be impacted by the outcome of the IAP disputes—for generations to come. In his deposition for the IAP, former privacy commissioner of the Province of British Columbia, Dr. David Flaherty, recommended destruction of the records given what he called a “truly extraordinary” accumulation of such a large amount of “sensitive information on a stigmatized population” (*Fontaine v. Canada*, 2014, paras. 13, 62). According to IAP legal representation, the only way to uphold the individual privacy and confidentiality between applicants and the adjudicating body is to destroy all the records unless “the complainants” consent.

However, the content of the records under dispute reaches well beyond the narrower collection of personally identifying materials. As mentioned, the range of documents in question includes personal records, those mandatory documents for proving consequential harms—such as serious psychological harm, medical dysfunction, loss of income, pregnancy, bed-wetting (IRSSA, 2006, Schedule D, Appendix I). Personal records, termed “mandatory documents,”⁴ compose only 34% of the IAP records in SADRE (*Fontaine v. Canada*, 2014, para. 256). The other 66% of the IAP records, which the TRC and the NCTR are hoping to archive, include historical documents, narratives, and the administrative and legal records of the IAP. Under the aegis of survivor consultation and protection, the destruction order ensures the eventual destruction of all records *but* the survivor’s own testimonies: for example, school narratives,⁵ persons of interest, and the records gathered through the Common Experience Payment and Alternative Dispute Resolution processes. The court rendered the decision in part on the basis that it is information about a *vulnerable* population and that destruction was in the spirit of reconciliation. When broad exemptions are justified through individual privacy protections, practices of state violence and the relations that sustain it are obscured.

The decision also undermines the future recognition of remaining documents that might be used to sustain criticisms of Canada’s colonial past. While the public arm of the IRSSA, the TRC, did collect 7,000 statements as part of their own awareness-raising mandate, Justice Murray Sinclair points out that these collected statements were untested (Narine, 2014). The 38,000 IAP applications and narratives were tested by a court-appointed adjudicator, meaning that these statements would stand up to attempts to deny the reality of IRS history, as some have already done (Narine, 2014). Notably, destroying the broader historical narratives and records under a rubric of personal privacy and confidentiality also means that there might be no record of the inner workings of the IAP administration and adjudication. This is disconcerting, given that the process of the IAP may someday be recognized as meriting its own critical inquiry as an instance of settler violence. In sum, while the argument to protect personal privacy may appear to empower informational self-determination, it is mobilized in a way that simultaneously undermines transparency: an important precondition for accountability.

These material challenges beg the question as to why selective redaction of records is not more thoroughly pursued. Privacy rights animate arguments that support both the archiving of records in a redacted form as well as their destruction. Supporters for archiving IAP documents hold that the documents can be efficiently and appropriately redacted electronically. The IAP has already redacted 2,161 decisions their own database (McMahon, 2016, p. 49). However, the IAP Chief Adjudicator insisted that the redaction of the records, if they *were* to be archived, is unrealistic; it would require “an army of people wielding black markers until my children retire and this task would still not be completed.” He went

⁴ Among the “mandatory documents” included in the IAP are medical records (69% of IAP cases include medical records); workers compensation (49%); income tax (68%); employment insurance (18%); Canada Pension Plan (33%); corrections (jails) (63%); and education (62%)—a total of more than 272,000 separate documents. This represents only 34% of all records in SADRE (*Fontaine v. Canada*, 2014, para. 20). In other words, two-thirds of the records in SADRE are *not* of these types.

⁵ School narratives do *not* include the names of students or alleged abusers, nor do they include the highly specific details of individual cases.

on to say, “the exercise itself would be an invasion of privacy, exposing sensitive information to a legion of redactors” (Canadian Press, 2015, para. 9). In this hyperbole, privacy is mobilized to prevent the release of a broader set of “non-personally identifying” information about a history of violent state practices.

The lack of differentiation between the various types of records slotted for destruction suggests the assumed neutrality of the Adjudicate and the courts as a structure of control in this process. In our research, nowhere did any of the oversight bodies question the mechanisms of accountability that might be erased if the institutional memory of the IAP itself were destroyed. The focus on the potential victimization of Survivors—as a vulnerable population that the court must protect from the state—obscures the possibility that the court-appointed Adjudicate may need to be held accountable.

The Problem With Consent: Indigenous Self-Determination and the Archive

As noted, in the 2016 decision, recently upheld by the Supreme Court of Canada, the court recommended the destruction of the records; however, it mandated a “cooling off period” of 15 years, during which a notice program should be administered to offer claimants the opportunity for opt-in consent to have their records archived (and redacted) in the NCTR. The finer details of the notice program have yet to be negotiated. While informed consent, as an abstract legal doctrine designed to uphold informational self-determination, may appear ideal, we argue that, in practice, this consent program can simultaneously further settler governmentality. An opt-in consent model as an abstract privacy policy conceals serious limitations about how this policy could work in practice. The task of tracing and contacting a large number of individuals, potentially in remote communities, many of whom have since passed away, complicates the efficacy of this system—it destroys all deceased or uncontested testimonies *without* consent.

Because governance through privacy also works as a “dividing practice” (Foucault, 1982), the consent model conditions opportunities for Indigenous political subjectivities in ways that sustain settler hegemony. The decision to destroy one’s records is projected as an opportunity to subvert the long-standing tyranny of settler surveillance and invasive policy, even as it simultaneously naturalizes settler rule of law. Through an individualizing opt-in model, combined with broader destruction, settler law supplants Indigenous epistemological practices, which may offer ways to understand the meaning of the knowledges contained in the records in ways that transcend property or ownership. Members of the Coalition for Truth, an organization comprising individual Survivors, intergenerational Survivors, and allies, speaks to the collective meaning of the records: “For me, a meaningful choice would look like gathering the conversation with all my relatives and extended family” (Jacobs, 2017); “The people that testified should have control over those records for as long as they live, and after they live, they should be left for generations to come” (Bane, 2017). To trouble the notion of consent as informational self-determination is by no means to assert that these stories do not belong to Survivors. They most certainly do. Rather, we mean to gesture toward the ways in which privacy works coercively, as a mode of settler governmentality that can legitimize secrecy that further obscures histories of state violence and justifies absences from the archive.

The notion of individual consent as a safeguard for personal privacy in the IAP records dispute is demonstrative of settler governmentality in that it reduces Indigenous agency to a choice of *how* to participate in a settler paradigm. Given the complex history of dispossession and domination, the opportunity to destroy one's own statement rather than allow it to be appropriated by a government archive manifests itself as an overdue opportunity to *subvert* state power and settler surveillance. "G.C." states:

When I was in an Indian Residential School my dignity and selfhood was grossly violated. I did not have the freedom to make choices for myself. I would be further violated if the information gathered for the purpose of resolving my IAP claim is used for any other purpose outside of the IAP. (McMahon, 2016, p. 58)

These arguments against the archive are most pertinent in that they focus on the issue of consent: Individuals rightly assert their own desire to determine the providence of their information, stories, and memories. However, it is safe to say that if Survivors were never asked about archiving during the course of the IAP, then it is a failure of the IAP system to fulfill its IRSSA mandate in a timely manner. However, the symbolic context of consent also complicates and conditions the outcome. Now, even more so than during the IAP—in the wake of a legal battle and a claim by the federal government—the consent program arguably frames the archive as a concession to, or an imposition by, the federal government rather than an opportunity for an Indigenous determined archive.

As such, privacy also conditions political subjectivities in that it establishes and naturalizes conditions for political action. Lippert and Walby (2013) acknowledge that an value avenue for future research could involve a discussion of the importance of the role of privacy in processes of subjectification (p. 351). Indigenous studies scholars have given substantial critical attention to the role of subjection in settler domination (Alfred & Corntassel, 2005; Coulthard, 2014; Simpson, 2014). This area of study has crystallized around a critique of the role of law and the liberal legal framework for Indigenous recognition within the settler state. Lawrence (2004) draws attention to the ways in which "Aboriginality" is legislated into being—as a specific category of native identity within the limit conditions of the settler state—in such a way that the regulation of this normative identity appears natural. Coulthard (2014) demonstrates how this normative interpellation of a native identity works beyond the institutional frameworks of law, health, or economy to impact how Indigenous individuals and communities relate to one another and, ultimately, to land (p. 42). For Coulthard (2014), the seemingly progressive liberal politics of inclusion threaten to reorient Indigenous self-determination efforts (p. 78). Because privacy, as a legal claim and category, can recentralize settler protections of Indigenous interests, privacy can also reorient autonomous, Indigenous self-determination regarding knowledge and information.

A legal recognition of an individual's privacy hinges upon a liberal ontology wherein the autonomy of an individual and, importantly, his or her right to privacy, is at stake. This ontology fails to accommodate the possibility of a subject whose "property" or epistemological inheritance is held in common or within a complex range of relationships, kinship, or land-based affiliations. Although it is beyond the scope of this article and beyond our capacity and place as settler scholars to discuss the varied and complex Indigenous ways of being at stake here, one need only look to the ongoing disputes between

Indigenous communities and museums regarding remains and sacred objects, photographs, and recordings of Indigenous people to see how complex the issue of ownership and sacred communal knowledge can be (Bell & Paterson, 1999; Riley, 2000). The decision to offer a consent-based option for archival representation is premised upon a liberal conception of the subject: a free, autonomous agent who is informed and able to participate in free relations with the consent agreement. This idealized conception of the settlement as “separate” from the state overlooks the power asymmetries of settler hegemony and ongoing settler invasion. While rule of law may work through privacy provisions to protect the individual, in the context of settler colonialism, privacy can also work to enfranchise the Indigenous subject within a liberal ontology and indirectly disavow Indigenous autonomy. Privacy, within the context of settler colonial invasion, offers the Indigenous subject individualized rights-based protections but denies the possibility of political autonomy and deeply imbricated relational ties.

The Coalition for the Preservation of Truth—an organization composed of Survivors and the growing body of people who identify as intergenerational Survivors—has articulated the need for Indigenous control and authorship of the archives. The coalition has campaigned for the preservation of the IAP records through a series of YouTube videos. In the videos, individual Survivors, intergenerational Survivors, and allies speak to the importance keeping the records. A young Indigenous student, Clay Gray (2017) argues “the simplification of spiritual, social and moral questions into legal issues is deceptive . . . we are being deceived.” One ally states, “I know that there are Indigenous Survivors lined up on both sides . . . and it’s a problem that this is even being fought in a Canadian legal system” (Helps, 2017). The coalition advocates the preservation of records and lobbies for the importance of this knowledge for future generations (Bane, 2017)—specifically, through the preservation of the records in the NCTR. Unlike the court-appointed IAP, the IRSSA, or even the TRC, whose courageous and intrepid commissioners who did laudable work with the limitations of their IRSSA mandate, the NCTR is a uniquely Indigenous-controlled organization. The leadership comprises various Indigenous individuals from diverse Nations with distinct epistemologies. The structures of the NCTR are designed to respect, honor, and consult the ongoing wishes of Survivors and Indigenous communities. The NCTR could contextualize the IAP materials alongside their vast collection of other materials regarding IRSs—including the smaller collection of statements from the TRC process, some of which were also given anonymously.

Conclusions

To illustrate the necessity of the courts as oversight body for the IRSSA, Ontario Court of Appeal Justice Paul Perell offered the analogy of “the kabbala, which has ten emanations of the godhead,” to describe the diverse, omnipresent, and conflicting emanations of “Canada” in the settlement (*Fontaine v. Canada*, 2014, para. 60). His analogy foreshadows the pervasiveness of Canada’s gaze, enacted through the discursive repertoire of settler governmentality. Thus far, the courts have championed privacy as a shield: protecting the personal interests of residential school Survivors from the omniscience of the ten heads. However, as we have described here, privacy can also work to shield or conceal histories of state violence. Understood within the context settler hegemony, the courts and the instrument of privacy cannot protect Indigenous subjectivities from the intrusive gaze of settler invasion. If we keep with Perell’s insightful metaphor, the courts, are one of the ten heads. *To protect from* does not adequately recognize the positionality of the court as a cornerstone of settler power—as a legitimizing enterprise whereby

claims to settler placeness and ownership are made. To us, privacy, in a distributional sense, always prefigures a question: privacy for whom, and to what end? (Haggerty & Ericson, 2006). The dominance and limitations of privacy as a remedy to surveillance, whether as a legal claim or even as an object of knowledge, illustrate how privacy laws and privacy-related forms of knowledge may also constitute an instrument in a broader constellation of state-based forms of violence.

Privacy, it appears, is unavoidably prejudiced. On the one hand, privacy may (in principle) uphold the individual rights of vulnerable populations within the contemporary settler state. On the other hand, as a liberal legal claim with its basis in protecting the individual rights of vulnerable populations, as our analysis has illustrated, it can also catalyze a broader destruction of records that many consider necessary to critique the violence of the settler colonial project. Privacy as a discursive formation is also inextricably related to the constitution of subjectivities that can shape and delimit the terrain of possibilities for political transformation. While the work of such subtle technologies of governmentality may seem inconsequential when paralleled by the overt violence of history settler campaigns of Indigenous dispossession, it is precisely these insidious naturalizations that establish settler hegemony. For the moment when settler logic becomes "common sense" or self-evident, the true work of dispossession is exacted. Privacy at the margins, therefore, is not merely reducible to enhancing privacy protections for marginalized populations that are subject to greater levels of surveillance. Privacy is also tethered to forms of liberal authoritarianism that reproduce conditions of settler colonialism.

References

- Adams-Campbell, M., Glassburn Falzetti, A., & Rivard, C. (2014). Introduction: Indigeneity and the work of settler archives. *Settler Colonial Studies*, 5(2), 109–116.
- Alfred, T., & Corntassel, J. (2005). Being Indigenous: Resurgences against contemporary colonialism. *Government and Opposition*, 40(4), 597–614.
- Bane, R. J. (2017, April 28). *The people that testified should have control* [Video file]. Retrieved from <https://www.youtube.com/watch?v=-5Mn0C4i5-E&feature=youtu.be>
- Bill C-8: The Library and Archives of Canada Act. 2004. Retrieved from https://lop.parl.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=C8&Parl=37&Ses=3
- Baxter v. Canada. ONSC 41673. (2006). Retrieved from <https://www.canlii.org/en/on/onsc/doc/2006/2006canlii41673/2006canlii41673.html?resultIndex=5>
- Bell, C. E., & Paterson, R. K. (1999). Aboriginal rights to cultural property in Canada. *International Journal of Cultural Property*, 8(1), 167–211.
- Bennett, C. J., & Raab, C. D. (2006). *The governance of privacy: Policy instruments in global perspective*. Cambridge, MA: MIT Press.

- Blomley, N. (2003). Law, property, and the geography of violence: The frontier, the survey, and the grid. *Annals of the American Association of Geographers*, 93(1), 12–41.
- Canadian Bar Association. (2005). *The logical next step: Reconciliation payments for all residential school survivors*. Retrieved from <http://www.cba.org/CBA/Sections/pdf/residential.pdf>
- Canadian Press. (2015, October 27). Fight over residential school abuse stories in court today. *CTV News*. Retrieved from <http://www.ctvnews.ca/canada/fight-over-residential-school-abuse-stories-in-court-1.2629159>
- Coulthard, G. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. Minneapolis, MN: University of Minnesota Press.
- Crosby, A., & Monaghan, J. (2012). Settler governmentality in Canada and the Algonquins of Barriere Lake. *Security Dialogue*, 43(5), 421–438.
- Crosby, A., & Monaghan, J. (2016). Settler colonialism and the policing of Idle No More. *Social Justice*, 43(2), 37–57.
- Emerson, T. I. (1970). *The system of freedom of expression*. New York, NY: Random House.
- Fontaine v. Canada. ONSC 4585. (2014). Retrieved from <https://www.canlii.org/en/on/onsc/doc/2014/2014onsc4585/2014onsc4585.html>
- Fontaine v. Canada (Attorney General). SCC 37037. (2017). Retrieved from <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16797/index.do>
- Foucault, M. (1982). The subject and power. *Critical Inquiry*, 8, 777–795.
- Fullenwieder, L. (2017). Settler biopower: Accumulation and dispossession in Canada's Indian Residential School Settlement Agreement. *Settler Colonial Studies*. Advance online publication. <http://www.tandfonline.com/doi/abs/10.1080/2201473X.2017.1327401>
- Gallant, K. (2016, April 4). Evidence on abuse at residential schools can be destroyed, court rules. *Toronto Star*. Retrieved from <https://www.thestar.com/news/gta/2016/04/04/evidence-on-abuse-at-residential-schools-can-be-destroyed-court-rules.html>
- Government of Canada. (1985a). Access to Information Act. R.S.C., 1985, c. A-1. Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/a-1/>
- Government of Canada. (2017, August 25). *Levels of security*. Retrieved from <https://www.tpsgc-pwgsc.gc.ca/esc-src/protection-safeguarding/niveaux-levels-eng.html>

- Gray, C. (2017, May 3). *They gave us a hollow choice* [Video file]. Retrieved from <https://www.youtube.com/watch?v=IUS-QosJLio>
- Gurry, F. (1984). *Breach of confidence*. Oxford, UK: Clarendon Press.
- Haggerty, K. D., & Ericson, R. V. (2006). *The new politics of surveillance and visibility*. Toronto, Canada: University of Toronto Press.
- Helps, L. (2017, May 8). *By destroying those records, we erase history* [Video file]. Retrieved from https://www.youtube.com/watch?v=0_pN3dXgj40&t=26s
- IAP (Independent Assessment Process). (2013, April 4). *Guide to the Independent Assessment Process application* (Guide v3.2). Retrieved from <http://www.iap-pei.ca/media/information/publication/pdf/pub/iapg-v3.2-20130404-eng.pdf>
- IRSSA (Indian Residential Schools Settlement Agreement). (2006, May 8). Retrieved from <http://www.residentialschoolsettlement.ca/settlement.html>
- Jacobs, K. (2017, May 11). *What is a meaningful choice?* [Video file]. Retrieved from <https://www.youtube.com/watch?v=O0eNn0Q9f8Y&feature=youtu.be>
- Larsen, M., & Walby, K. (2012). *Brokering access: Power, politics, and freedom of information process in Canada*. Vancouver, Canada: University of British Columbia Press.
- Lawrence, B. (2004). *"Real" Indians and others: Mixed-blood urban native peoples and Indigenous nationhood*. Lincoln, NE: University of Nebraska Press.
- Lippert, R. K., & Walby, K. (2013). Governing through privacy: Authoritarian liberalism, law, and privacy knowledge. *Law, Culture and the Humanities*, 12(2), 329–352.
- McMahon, T. L. (2016). The final abuse of Indian residential school children: Deleting their names, erasing their voices and destroying their records after they have died and without their consent. Retrieved from https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2812298
- Monaghan, J. (2013). Mounties in the frontier: Circulations, anxieties, and myths of settler colonial policing in Canada. *Journal of Canadian Studies/Revue D'études Canadiennes*, 47(1), 122–148.
- Morgensen, S. L. (2011). The biopolitics of settler colonialism: Right here, right now. *Settler Colonial Studies*, 1(1), 52–76.
- Nagy, R. (2014). The Truth and Reconciliation Commission of Canada: Genesis and design. *Canadian Journal of Law and Society*, 29(2), 199–217.

- Narine, S. (2014). IAP privacy issues being hammered out in court. *Windspeaker*, 32(5), 8.
- Nissenbaum, H. (2009). *Privacy in context: Technology, policy, and the integrity of social life*. Palo Alto, CA: Stanford University Press.
- Regan, P. M. (1995). *Legislating privacy: Technology, social values, and public policy*. Chapel Hill, NC: University of North Carolina Press.
- Richards, N. M., & Solove, D. J. (2007). Privacy's other path: Recovering the law of confidentiality. *Georgetown Law Journal*, 96, 123–182.
- Riley, A. (2000). Recovering collectivity: Group rights to intellectual property in Indigenous communities. *Cardozo Arts and Entertainment Law Journal*, 18, 175–225.
- Scott, D. (1995). Colonial governmentality. *Social Text*, 43, 191–220.
- Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Durham, NC: Duke University Press.
- Truth and Reconciliation Commission of Canada. (2015). *Final report of the truth and reconciliation commission of Canada* (Vol. 1): *Summary: Honouring the truth, reconciling for the future by the truth and reconciliation commission of Canada*. Toronto, Canada: James Lorimer.
- Veracini, L. (2008). Settler collective, founding violence and disavowal: The settler colonial situation. *Journal of Intercultural Studies*, 29(4), 363–379.
- Wakeham, P. (2012). Reconciling "terror": Managing Indigenous resistance in the age of apology. *American Indian Quarterly*, 36(1), 1–33.
- Warren, S. D., & Brandeis, L. D. (1890). The right to privacy. *Harvard Law Review*, 4(5), 193–220.
- Wolfe, P. (2006). Settler colonialism and the elimination of the native. *Journal of Genocide Research*, 8(4), 387–409.
- Wright, D., & Raab, C. D. (2012). Constructing a surveillance impact assessment. *Computer Law & Security Review*, 28(6), 613–626.