Education for Information 37 (2021) 3–26
DOI 10.3233/EFI-190359
IOS Press

Rights in and to records and recordkeeping: Fighting bureaucratic violence through a human rights-centered approach to the creation, management and dissemination of documentation

Kathy Carbone*, Anne J. Gilliland and María Montenegro
Department of Information Studies, University of California, Los Angeles, CA, USA

Arguing that records and other forms of evidentiary documentation are increasingly being 'weaponized' against various communities and categories of people, this essay addresses diverse calls for the recognition of personal and community rights in records and recordkeeping. After reviewing some prominent examples and the growing literature on information rights, the essay introduces a framework for human rights in and to records and recordkeeping designed to support refugees. It then examines its potential applicability in restoring internationally acknowledged human rights to US Indigenous groups seeking federal sovereignty recognition. This approach suggests where there might be potential for convergence and highlights important areas of divergence between these two different rights discourses. In both cases the authors argue that affected individuals and communities might be empowered through different, and culturally appropriate, forms of educational outreach. The essay concludes by emphasizing the importance of preparing future archival and other information and computing professionals to navigate and respond to the complexities and potential incommensurabilities of the growing multiplicity of calls for rights in records.

Keywords: Records and recordkeeping, archives, rights in records, indigenous rights, human rights, educational outreach

> "The human right to information can be nothing less than the right to the information a human needs to live completely actualized" (Kelmor, 2016, p. 110).

1. Introduction

This essay addresses the growing diversity of calls by affected communities, scholars and civil society entities for the recognition of personal and community rights in records and recordkeeping, broadly conceived to include information, data and other forms of documentary evidence as well as the practices whereby they are created, managed and disseminated. These calls have arisen in situations where bureaucratic violence, lack of efficiency and effectiveness in recordkeeping, and 'weaponization' of data and documentation requirements have impeded tens of millions of individuals and

*Corresponding author: Kathy Carbone, Department of Information Studies, University of California, Los Angeles, CA, USA. E-mail: kcarbone@g.ucla.edu.

communities around the globe from enabling and actualizing human, sovereignty and civil rights that are enshrined in law and international conventions and declarations. At the same time, however, the increase in scholarly, professional and policy attention on the notion of rights in information/ data/records/documentation, has inevitably led to a complexification of the rights discourse as the interests and needs of diverse communities, some of them conflicting, are brought into dialog with each other.

After briefly introducing some prominent examples and reviewing the growing literature on rights relating to data, information management and recordkeeping, the authors draw upon their own research and through two cases discuss how arguments for human rights in and to records and recordkeeping have arisen in very different contexts. In the first case, Carbone and Gilliland address the work of the Refugee Rights in Records (R3) Initiative in developing the *Refugee Rights in Records Framework,* a human rights in and to records platform centered around recordkeeping and archival situations faced by refugees and other forcibly displaced persons. Approaching the second case through the lens of that R3 *Framework*, Montenegro addresses whether such an approach might support building human rights principles that are enshrined in the *UN Declaration on the Rights of Indigenous Peoples*' (UNDRIP, 2007) into US federal Indian law and policy, and ensure that these rights are not thwarted by overly onerous and inappropriate records production requirements. The authors discuss how their research has led them to consider human rights in records in each case, as well as how the awareness of affected individuals and communities might be raised through different forms of educational outreach. The essay concludes by emphasizing the importance of preparing future archival and other information and computing professionals to navigate the complexities and potential incommensurabilities of the growing multiplicity of calls for human, sovereign and civil rights in records, as well as to devise and implement professional and technological services and solutions that might respond to them.

2. Bureaucratic violence and the weaponization of documentation

In a recent opinion piece on US voting rights and voter suppression, a group of journalists called international attention to the growing numbers of US voters systematically disenfranchised by states that have increasingly put barriers in place between voters and the ballot box in acts of political partisanship (Rao et al., 2019). The journalists argue that such disenfranchisement undermines the civil rights of citizens and even threatens US democracy. Prominent among the barriers to voting are strict voter ID laws that require would-be voters to present evidence of identity that can meet specified trust requirements; voter registration restrictions that limit who is allowed to register in a particular voting district; and purges of voter rolls that remove potential voters for a variety of reasons, including not voting in previous elections. In each of these cases, records (e.g., driver's licenses, household utility bills, property deeds and apartment leases) and recordkeeping (e.g., processes for regularly updating

voter and citizenship rolls within states, distinguishing between those with similar names, correcting inaccurate names or dates of birth, and determining whether felons still owe fines to any state agency) play pivotal roles in whether or not an individual is enfranchised to vote and whether they may actually be permitted to vote at a polling place. Barriers may also disenfranchise entire communities or categories of voters. For example, the state of North Dakota's voter ID law requires residents to show identification with a current street address and does not accept P.O. boxes as valid. North Dakota, however, is home to many Native American reservations that do not use physical street addresses, and thus tribal members' identity documents do not meet the state requirement, rendering them ineligible to vote.

The US does not have compulsory voting such as in Australia, a strategy that seeks to ensure that marginalized populations cannot be disenfranchised (Hill, 2002). Nor does it have Federal data protection and privacy legislation similar to the European Union's General Data Protection Regulation. US governments and commercial and technological interests have consistently argued that the US population benefits more from an "opt out" than an "opt in" data culture, although this has come under increasing pressure as a result of new forms of data collection and analysis by technology companies such as Facebook and Apple (Barrett, 2019). The US is instead a nation where digital authentication practices such as facial and other forms of bio-based recognition are increasingly routinely deployed for purposes as diverse as accessing one's phone or bank account, ordering goods online, boarding and disembarking an airplane, or determining who is entering and exiting buildings; and where household marketing companies have maintained granular personal data profiles for decades. In the context of voting in the US, therefore, civil society advocates argue that obstacles associated with personal identification, document production and bureaucratic recordkeeping, rather than being difficult to surmount, are instead being used deliberately to discourage or disenfranchise certain would-be voters.

Anthropologists, such as Akhil Gupta (2012) and David Graeber (2015), who study bureaucratic and structural violence have surfaced many ways in which bureaucratic recordkeeping has negatively affected the welfare of particular populations by failing to acknowledge their presence or enable their rights. In the past several decades, an international community of archival practitioners and scholars has emerged that is engaging with similar concerns critically and systemically and challenging state and institutional bureaucracies. In several cases, including the recent "Windrush scandal" in the UK, government archivists and institutional recordkeepers were directly implicated and forced to respond. In the case of the Windrush scandal, thousands of Caribbean-born, long-term British residents were wrongly classified as illegal immigrants and denied healthcare, the right to work, and access to their bank accounts. Many also were detained and deported. The documents that could prove that they had arrived legally in the UK were their original completed landing cards, but these were destroyed by the National Archives in 2010 (Hewitt, 2020; Vargha 2018).

One prominent earlier example resulted from the publication of *Bringing Them Home,* the 1997 Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. The Report repeatedly demonstrated the historical roles that bureaucratic recordkeeping played in the identification of Australian Indigenous children and their forcible removal from their families and assimilation into white society between 1879 and the 1970s. It also placed a major focus on the ways in which archives today might support redress for those who had been removed and the inclusion of their lives, experiences and voices within the national memory. It is indicative that the very first recommendation of the report called for the development of Indigenous community archives, or 'keeping places', asking:

> ... the Council of Australian Governments [to] ensure the adequate funding of appropriate Indigenous agencies to record, preserve and administer access to the testimonies of Indigenous people affected by the forcible removal policies who wish to provide their histories in audio, audio-visual or written form (*Bringing Them Home*).

Many of the Report's other recommendations also had important archival implications, especially its requirements not to destroy any records relating to Indigenous persons who had undergone removal, and for negotiation with Indigenous communities regarding possible repatriation of those records. The latter was in part because various relevant records had been destroyed over the years, either as the routine implementation of records retention schedules where the importance of the records to Indigenous peoples had not been recognized when developing the schedules, or "in a conscious attempt to bury the past" (Schwirtlich et al., 2003, 142). The recommendations also focused on the imperative to index or re-describe records held in government and non-governmental repositories such as those of churches, schools and other private bodies, that related to "Indigenous persons who had been removed from their families for any reason" (*Bringing Them Home*). These recommendations called for indexing un-indexed records and indexing records by family name instead of solely by date to provide more accessibility. They also called for re-describing records in consultation with and in ways meaningful to Indigenous individuals, families, and communities.

Underlying the Report was a recognition that much of what these persons would need to recover, reconstruct and reclaim their Indigenous identities, to reunite families that had been torn apart, or even to access family health information was held in records generated by the very programs that had oppressed them. No Indigenous peoples in the South Pacific employed writing systems prior to contact with Europeans and many of the other tangible and intangible 'texts' that related to Indigenous identity and memory-keeping – for example, songs, dance, paintings, particular places, weavings, possum skin cloaks, tattoos and bark paintings – were not recognized as records as understood in European juridical and archival terms (Wareham, 2001a, 2001b). They were thus often ignored, forgotten, lost, destroyed or distributed not only

across the collections of non-Indigenous museums in Australia, but also in Britain and elsewhere in Europe and North America. In these museums, they were cataloged and displayed, sometimes together with Indigenous skeletal remains, as anthropological artifacts and natural history or scientific research specimens.

Yet another prominent example, which directly engages with the concept of rights in records, can be found in the ongoing coordinated action movement that has brought together the care leaver community, archivists and academics in Australia, Canada, the UK, Ireland and other countries to address grave abuses perpetrated on children in out-of-home care. Hostile institutional and government recordkeeping practices as well as the inability to keep their own records have been shown to have been integral to the abuse and trauma that they experienced. A 2017 summit held in Melbourne by the *Setting the Record Straight for the Rights of the Child Initiative,* centered around the thesis that "Recordkeeping and archiving systems are failing to meet the lifelong identity, memory and accountability needs of children who get caught up in child welfare and protection systems" (Setting the Record Straight for the Rights of the Child, 2017) and argued that:

- Childhood records and involvement in their recordkeeping is an important part of developing a sense of self and connection with family, community and culture.
- Current recordkeeping and archival infrastructures exclude children and young people from participation in decision-making about their records and continue that exclusion throughout adulthood.
- Poor quality recordkeeping impacts on the efficiency and effectiveness of decision making in child protection systems and fails to foster transparency and accountability.
- Fractured, dysfunctional, complex and inconsistent archival access frameworks are re-traumatizing, and often harm rather than heal. (Setting the Record Straight)

Archival researchers working with the movement have argued for a new concept of "archival autonomy," which they define as the ability for "individuals and communities to participate in societal memory, with their own voice, and to become participatory agents in recordkeeping and archiving for identity, memory and accountability purposes" (Evans et al., 2015, p. 347). In this frame, "Co-creators would be engaged in decision-making about appraisal, description and access both now, and into the future – a vision of active rather than passive participation. Recognition of co-creation rights in records is thus a necessary step towards archival autonomy" (Evans et al., 2015, p. 356). One component of this effort, which is contributing directly to international discourse on person-centered rights in records and recordkeeping, is the Rights in Records by Design Project, a collaboration of archival and recordkeeping, social work and early childhood education researchers at Monash University and the Collaborative Research Centre in Australian History (CRCAH) at Federation University Australia. The Rights in Records by Design Project seeks to re-imagine the design of recordkeeping and archival systems so that they could support such rights in responsive and accountable child-centered ways, while also promoting historical justice and reconciliation for those who have experienced out-of-home care (Setting the Record Straight).

3. Recognition of the concept of rights in and to information, data and records

The language and traditions of human rights conventions, treaties, charters, statutes, and policies by international, national and regional bodies as well as human rights discourses across disciplines that have gained prominence over the past 50 years provide a strong basis for the notion of rights in and to information, data and records that are increasingly being advanced by different communities of scholars, practitioners and activists. At the same time, however, many of these statements, laws and discourses about rights conflict in fundamental respects, conflicts that need to be explicitly recognized and equitably accounted for in policy, systems design, professional information practices and community engagement.

3.1. Rights to information

Article 19 of the *Universal Declaration of Human Rights* (United Nations Office of the Commissioner for Human Rights, 1948) enshrines a right to seeking, receiving, holding and transmitting information:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In addition, nearly 120 countries have adopted national laws or regulations that set out specific rights to information held by public bodies, including rights known as the "right to access information" (RTI) or "freedom of information" (FOI) (Banisar, 2018). These rights have also been enshrined as a corollary of freedom of expression in major international treaties, including the *International Covenant on Civil and Political Rights* (1966) and the *American Convention on Human Rights* (1969). Furthermore, many countries have constitutionally protected the right to information. As of 2012, Right2Info.org reported that:

> the right of access to official information is now protected by the constitutions of 59 countries. At least 53, and arguably all 59 expressly guarantee a 'right' to 'information' or 'documents', or else impose an obligation on the government to make information available to the public. The top courts of additional countries have interpreted their constitutions to recognize the right implicitly (Right2Info.org, 2012).

In a similar vein, a number of intergovernmental agencies, such as the World Bank and the World Trade Organization, have updated their policies to allow greater access to their records (Bishop, 2012, p. 4). However, it is important to note that such rights to access information do not necessarily take into account other, and possibly conflicting rights regarding how knowledge is accessed and circulated and by whom, such as Indigenous rights that are recognized in UNDRIP.

There are also growing calls by scholars for the recognition of a right to information as a human right (Banisar, 2006, p. 8; Bishop, 2012; Britz & Lor, 2010; McDonagh, 2013). Among them, law librarian Kimberli Kelmor argues that the proliferation of laws defining a right to information cumulatively adds weight to the premise that there is "in fact a strong freestanding human right to information" (2016, p. 111). Kelmor notes, however, that a human right to information requires several things, including assurances of accuracy of information and the availability of information to all (addressing barrier issues regarding cost, format, access, accessibility, privacy and confidentiality). Social and legal issues would also need to be addressed, including who would be responsible for providing information already in existence as well as whether or not there is a duty to create or collect information and who would fulfill that duty (2016, p. 110).

3.2. Rights in information

Article 12 of the *Universal Declaration of Human Rights* (United Nations 1948) enshrines the right to privacy, including privacy related to personal information:

> No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Many other international human rights treaties and charters also recognize the right to privacy, including the *International Covenant on Civil and Political Rights* (1966), the *American Convention on Human Rights* (1969) and the *Charter of Fundamental Rights of the European Union* (2012). Further, jurist Stefano Rodotà argues that the right to privacy is not just about the right to be left alone, but is also about maintaining control over one's information and the ability to "determine the manner of building up one's own private sphere" (2009, p. 78).

Closely aligned with the right to privacy is the right to the protection of personal data, which is the right to control the creation, processing and retention of one's data and records created and held by other parties. Over one hundred countries have adopted data privacy and protection legislation (DLA Piper, 2019), the most recent being the *EU General Data Protection Regulation* (GDPR) (European Parliament and Council of the European Union, 2018) which contains some of the most rigorous data protection laws in the world, including the "right of access by the data subject" (Article 15), the "right to rectification" (Article 16), the "right to erasure" ('the right to be forgotten') (Article 17), and the "right to data portability" (Article 20).

3.3. Human rights and information

As the cases discussed in this essay evidence, actualizing and enabling human rights are increasingly dependent on records, data and other forms of information. It is fundamental, therefore, that individuals know where and how to search for

information pertaining to their rights, and also be able to access, use, interpret, and apply such information in claiming and asserting their rights. In 1998, the UN General Assembly recognized the right to information in relation to human rights, adopting the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (the *Declaration on Human Rights Defenders*) (Office of the United Nations High Commissioner for Human Rights, 1998). Article 6 specifically provides for access to and use of information about human rights:

> Everyone has the right, individually and in association with others:
> (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
> (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

If knowing, seeking, obtaining, receiving, holding, studying, and discussing information about human rights constitutes a human right in itself, then it follows that there is a universal need for education across sectors, communities and academia that fosters and supports the skills and knowledge people need to seek, access, interpret, keep, meaningfully use and benefit from information relevant to their lives.

The archival and recordkeeping field brings some additional concerns to this discourse because of its role in ensuring that bureaucratic documentation is effectively, comprehensively and accountably created and managed as institutional evidence and also as a guarantee of citizen, civil and human rights. In this respect, the field is particularly concerned with what constitutes trustworthy documentary evidence and ensuring that it is both created and maintained; with enabling both institutions and individuals to preserve evidence that will secure rights and self-knowledge, not only for those living today, but also for their descendants in the future; and, with accounting for the reasons why records cannot be presented upon demand, or why records might be inconsistent (for example, regarding translations of names, or mistranscribed dates).

The following two cases detail how the need for rights in and to records has been surfaced in the authors' own work and suggest how the development of a platform of human rights in and to records might influence the adoption of similar but not necessarily identical approaches in other communities and contexts.

4. Case 1. Creating a rights in and to records framework for refugees and others who have been forcibly displaced (Carbone & Gilliland)

The worldwide population of people forcibly displaced by persecution, violence

and climate disasters[1] has reached nearly 80 million (UNHCR, 2020, p. 2), a level unprecedented since World War II. Official records, recordkeeping systems and practices, new forms of data collection, and traditional archives all play crucial roles in the lives of forcibly displaced persons and are also central to the activities and effectiveness of asylum lawyers and humanitarian aid workers. The archival and recordkeeping field, however, has largely failed to address in both professional training and practice the records and other documentation needs of refugees and their families and descendants across time and geographies. The field has also not acted to ensure that new data and recordkeeping technologies being deployed and shared by governments facing migrant and refugee crises on their borders or vetting asylum seekers and refugees for resettlement do not compromise refugees' human rights. The Refugee Rights in Records (R3) Initiative[2] is an international multidisciplinary, multi-stakeholder research collaboration between researchers at the University of California, Los Angeles (UCLA) Center for Information as Evidence, the Liverpool University Centre for Archive Studies (LUCAS), and at Queen's College, City University of New York Graduate School of Library and Information Studies. It is pursuing multiple projects seeking to (1) understand the roles that records as well as the data they contain and the recordkeeping purposes, systems and processes that produce and manage them, play in asserting, securing or denying refugees' fundamental human and other personal, information and data rights; and (2) ensure that records, as well as the data they contain and the recordkeeping purposes, systems and processes that produce and manage them, do not prevent refugees from asserting and securing their human and other personal, information and data rights.

Through this research we have identified specific bureaucratic records and recordkeeping systems, processes and data that have a profound negative impact on the welfare of refugees (and often that of family members and their descendants) when they fail to take their needs and rights into account. Failures implicate bureaucratic and archival infrastructures in refugees' home countries, border regimes in countries through which they pass, and bureaucracies of states in which they settle. The research also exposes a range of complexities, contingencies, and inherent power relations that actively 'weaponize' documentation requirements against displaced individuals seeking asylum in other countries, and systematically preclude them from being able to carry or produce acceptable records that they need to actualize and enable their human rights (Gilliland & Carbone, 2019). Additionally, records may not be self-evident, and refugees often have little records literacy and sometimes no reading and writing skills in the language of the records or of the authorities into whose country they are attempting to enter. In some countries, citizens might have encountered a record about themselves, might not be aware that records are kept about them or where they are

[1]The United Nations identifies several different categories of forcibly displaced people according to their status: refugees, asylum seekers, internally displaced persons, stateless persons and returnees. Unless specified otherwise, this essay uses the term 'refugees' to address all categories.

[2]https://informationasevidence.org/refugee-rights-in-records.

located, might not be able to read or understand their record, or might not understand what records they need and in which forms to satisfy asylum-seeking and refugee processes. More than 50% of all refugees today are children, but like adults, and regardless of how young they are, they must represent themselves in official processes requiring document promote. All of these factors point to a critical need for a platform that promote specific rights in and to records and recordkeeping for those who have been forcibly displaced.

4.1. Research design

We used archival warrant analysis as our research method (Duff & Cumming, 2016). This entails identifying and using recognized authoritative sources such as codes of best practice, rules, standards, law and customs accepted by diverse professions and communities as forms of evidence from which to build archival concepts, theory and practice. We identified statements of relevant rights within 20 key international human, civil, and information/data rights instruments (see Appendix 1) and warrants for archival action contained within the International Council on Archives' *Basic Principles on the Role of Archivists and Records Managers in Support of Human Rights Working Document*. We then mapped these against cases and stories about displacement and documentation issues reported in the English and Arabic language news media since 2015 when the most recent migrant and refugee crises in Europe began, as well as in NGO reports, and in personal narratives of refugees and aid workers. We also convened a series of R3 forums in 2018 and 2019 that aimed to obtain additional insight into issues linked to records and other documentation for refugees. The forums were held in Budapest, Dublin, Los Angeles, Zagreb, Malmö, Yaoundé, London, and Melbourne. A variety of stakeholders participated and presented, including former and current refugees, lawyers, archivists, NGOs working with refugees and migrants, witnessing projects, historians, artists, and documentary filmmakers.

Based on all these inputs we identified multiple, although sometimes conflicting, rights in and to records that refugees and their families and descendants need to enable, assert, and actualize their human rights in and over time and place. These were distilled down, compiled into a *Refugee Rights in Records* (R3) *Framework*, and made available for public comment (Gilliland & Carbone, 2019). The final revised framework, contains 23 human rights to have a record created; rights to know; rights regarding records expertise; cultural, self-identity and family rights in records; right to respond and to annotate (right to rectification); refusal and deletion rights; access, reproduction and dissemination rights; consultation rights; and, personal recordkeeping rights (see Appendix 2 for the full list of rights). While many of the rights in the framework are already enshrined in existing policy instruments, others are not. Further, some rights differ in significant respects from those expressed in the instruments we analyzed. The main reason for this is that our research design centered the human situations and needs of refugees and their families and descendants in

enabling and activating their human rights, rather than those of a more general public or the institutions or states that maintain the records or bureaucracies and technologies that produce them. The rights are conceived of as human rights because they have proven to be prerequisite in so many cases for individuals to enable and actualize currently recognized human rights and as requiring recognition and response at every level from the international to the local and institutional.

4.2. Educational outreach

As already noted, there are tens of millions of refugees around the world who need to understand better at every point how records and recordkeeping are implicated in their predicaments, what they should do and to whom they should turn. Often refugees rely on other refugees and the lawyers and aid workers assisting them for help in navigating asylum and refugee systems. However, lawyers and aid workers are not experts in records and recordkeeping, and documentary requirements are being changed and ratcheted up at an alarming rate. A mistake made at any point in records that are presented can lead to an asylum case being rejected, or even the citizenship of a long-resettled refugee being stripped. One key area of intervention, therefore, is to raise the awareness and center the voices of affected individuals and communities through different forms of educational outreach across sectors.

Our conversations with stakeholders at the R3 symposia indicated that there is a glaring absence of records expertise on the frontlines in displacement crises. Moreover, because recordkeeping repositories, technologies and practices of countries all over the globe are integral to creating, preserving and accessing records and other data that are essential to the displaced, border regimes and aid agencies alike, a key priority must be the production of professionals with such expertise who can then be deployed into relevant, potentially new types of positions. These professionals need to be able to:

- understand the roles of data, information, documentation, records and recordkeeping systems in asylum and refugee processes and in activating and enabling human rights
- conduct research assessing the impacts, roles, and capacities of records and recordkeeping systems on asylum processes and needs of refugees and their descendants across time and space
- contribute actively to human rights and data policy in national and transnational contexts
- design new systems and services that respond directly to the circumstances, literacies and languages of refugees
- critique existing bureaucratic, security and archival systems in terms of their weaknesses in addressing refugee rights and needs, and recommend possible modifications
- work knowledgeably across national and sector (government, not-for-profit, corporate) boundaries

– work across information and records/documentation settings as diverse as public libraries (where much basic information and literacy assistance for newly arrived refugees takes place) archives, legal clinics and other legal aid entities, community centers helping asylum seekers and refugees, and NGOs working "in the trenches" who face many difficulties in managing their own information needs and production.

To prepare such professionals, however, new pedagogical spaces and mechanisms need to be created that expose students to others working on human rights activism, immigration law and policy. Structures also need to be put in place that facilitate NGO environments sharing knowledge and co-developing curriculum. Professional archival education is notoriously siloed by country and by language, and so mechanisms for cross-training archival students across national and linguistic spaces are also needed. Following the example of Central European University and the Open Society Archives in Budapest where law and history students were trained together using materials held by the OSA in seeking, defending and challenging archival evidence, we are working with the Promise Institute for Human Rights in the UCLA Law School to explore the possibilities of developing a joint clinic to cross-train archival studies and law students who wish to work with asylum seekers and refugees. We have also devised and taught two experimental graduate courses in the UCLA iSchool, *Locating and Using Records as Evidence in Human Rights Activities* and *Migrating Memories: Diaspora, Archives, and Human Rights*.

Additionally, it is important to increase knowledge among refugees about how they can, within the limits of their own circumstances, best manage their own documentation. For example, R3 researchers in England have developed a *Personal Record-keeping Workshop* which was first offered by James Lowry and Pauline Soum-Paris in November 2019 through a University of East London Open Learning Initiative (OLIve) workshop to refugees and asylum seekers in London who came from Zimbabwe, Togo, Sri Lanka, Bangladesh, Egypt, Tanzania, Albania, Russia, Cameroon and Sudan. The curriculum for this workshop continues to be further developed and revised based upon feedback received from participants.

5. Case 2. A 'rights in and to records' framework to support the implementation of Indigenous peoples' rights in US tribal legal contexts (Montenegro)

At the 2017 annual conference of the Association of Tribal Archives, Libraries and Museums (ATALM), Pawnee attorney Walter Echo-Hawk raised the following question: how can archivists help to inject the human rights recognized in the UN Declaration on the Rights of Indigenous Peoples' (UNDRIP) into US federal Indian law and policy? He raised this question in the context of the emergence of a national joint project between the Native American Rights Fund (NARF) and the University of Colorado Law School to implement Indigenous human rights standards into US

law. Responding to Echo-Hawk's call to action and also to the R3 Initiative's argument that the "actualisation of human and personal rights articulated in key conventions, declarations and other internationally recognized instruments is significantly impeded without similar recognition of individual rights 'in and to records'," (Gilliland & Carbone, 2019, p. 1), I explore in this case how a 'rights in and to records' framework might function to restore the rights contained in the UNDRIP and thereby support their materialization in US tribal legal contexts.

Based on my ongoing research addressing the documentation requirements placed upon tribes petitioning for federal acknowledgement in the US (Montenegro, 2019) – the policy through which the federal government 'legally recognizes' the sovereign and separate political status of tribal nations – I argue that the Federal Acknowledgement Process (FAP) fails to recognize some of the key rights articulated in the UNDRIP (of which the US is a signatory). These rights are: Indigenous peoples' right to self-determination; their right to the recognition, observance and enforcement of treaties; their right to self-governance/sovereignty and to freely pursue their economic, social and cultural development; their right to determine their own identity or membership in accordance with their customs and traditions; their right to protect their cultural practices; and their right to land ownership. (United Nations, 2011)

Additionally, the evidence requirements of the FAP force petitioning tribes to engage with non-Indian accounts and frequently racist definitions and interpretations of tribal existence based on stereotypes and traditionalist assumptions of Indianness (Den Ouden & O'Brien, 2013; Barker, 2011). Tribes who are applying for recognition are not allowed to provide evidence according to their own cultural and epistemological practices, religious beliefs, media, and language – oral accounts and traditional knowledge, for instance, are not recognized as legitimate, standalone evidence by the Office of Federal Acknowledgement (OFA). Rather, OFA agents and a review committee comprising anthropologists, genealogists and historians decide on the petitioning groups' tribal status. By legitimizing political parameters that have historically dispossessed, categorized, and evicted Native people from sovereign spaces while denying their ancestry, therefore, the FAP can actually undermine Indigenous struggles for self-determination, even while offering the possibility of a limited acknowledgement of it.

5.1. Research design

Through a critical archival ethnography approach and documentary analysis of multiple tribal petitions for federal acknowledgement in the US, I mapped the R3 rights framework against the problems that tribes experience in presenting documentary evidence to the OFA. I have identified a number of rights in and to records, which, if actualized through the help of archivists in particular, could support tribes in preparing their recognition petitions:

- The right to know where a record about oneself exists

- The right to request and be provided with a records advocate or expert in legal and bureaucratic processes...
  Because many of the types of documentary evidence that the OFA requires have been destroyed, removed, or appropriated from tribes, and/or are otherwise inaccessible to them (Gould, 2013; O'Neal 2015; Smith, 2012; Anderson & Christen, 2019), archivists could assist in implementing this right by supporting petitioning tribes in the processes of locating, using, and producing needed records or alternative evidence. Additionally, archivists could help implement this right by assisting tribes in re-interpreting and repurposing records for their recognition petitions, as well as supporting more nuanced or 'against the grain' readings of the documentary evidence that already exists and has been dismissed or deemed illegitimate by the OFA, so that evidence can make it across the thresholds of legal and bureaucratic acceptability or notions of "truth."
- The right to have a records expert testify as to the historical and bureaucratic circumstances surrounding the creation, management and reliability of records...
  Many tribal records survive only through the filter of settler writings, even when they are attributed to Native people's voices (Barker, 2011, 2013; O'Neal, 2015; Calloway, 2016). The intentional or unintentional mistakes, misunderstandings, and ambiguities contained in those documents make it difficult for tribes to use them as evidence in their recognition petitions. Given the cultural and political import that historical, anthropological, bureaucratic, and legal records have for tribes, as well as the colonial conditions under which they were created and now are used, a records expert such as an archivist could support petitioning tribes by explaining to the OFA bureaucratic irregularities and inconsistencies, and providing provenancial context for the evidence that would demonstrate its biases.
- The right to have one's cultural or community recordkeeping practices recognized...
  This right would require that OFA agents and reviewers recognize Indigenous-centered approaches to records and evidence that directly reference Indigenous lifestyle, codes and custom and privilege these over externally imposed legal and colonial forms of evidence. Taking into account the incommensurabilities between written and oral regimes of proof, authority, authenticity and truth (Nugent, 2017), archivists could use their position as experts of the record to advocate for validation procedures for oral accounts, traditional knowledge and ceremonial ties to land, especially in situations where the legal, bureaucratic, or historical records and their interpretations are inherently biased, or deemed to be erroneous or to have been rejected or requiring further evidence by the OFA. This right would ensure that tribes at least receive fair, impartial, non-discriminatory evidence assessments and participation within the process.
- The right to guaranteed safe, secure, timely and low or no-cost access to relevant records ...

Accessing the records that are required as evidence for their petitions is not an easy endeavor for tribal communities due to distance, financial resources, and the academic qualifications that most institutions require of potential researchers in their archives, as well as a frequent lack of adequate finding aids for those materials (Den Ouden & O'Brien, 2013; Montenegro, 2019; Rivard, 2015). The archival profession could lobby repositories that have restricted and elitist access policies to proactively assist tribes to work with relevant records they hold through specialized reference assistance and even developing alternate finding aids to key materials as was recommended by the *Bringing Them Home* Report. Such actions could potentially also open up a wider conversation about expanding the notion of rights and obligations regarding tribal records that have historically come to be 'owned' by external entities or individuals in accordance with western notions of authorship, ownership and intellectual property rights (Anderson, 2013).

5.2. Indigenous community concerns about rights approaches

The FAP clearly does not support rights in and to records as conceived in the R3 framework. Having demonstrated how such a framework might benefit tribes petitioning for federal recognition, it is also necessary, however, to stress that any new framework that recognizes or affirms rights for Indigenous peoples needs to be devised and implemented only with their participation and consent and with Indigenous realities in mind. Rights rhetorics have a tendency to circumscribe tribal nations and other Indigenous groups within a legal apparatus that presumes that all sovereignty and jurisdiction are held by the state, potentially foreclosing exactly the arguments of sovereignty that these proposed new rights seek to support. Legal scholar Maggie Blackhawk (Fond du Lac Band of Lake Superior Ojibwe) argues that, "rather than rights, subordinated communities ought to demand the power to define their own laws, their own systems of governance, and their own rights." (Blackhawk, 2019, p. 1857). Political theorist Vine Deloria (Standing Rock Sioux) has noted that the concept of rights can be antithetical to Indigenous peoples' goals of mutual respect with economic and political independence (1970). Furthermore, imposing a homogeneous vision of rights on tribal nations would undermine the pluralism found within Indian Country. Blackhawk further argues that imposing national or universal values on local communities does more harm than previously recognized:

For colonized communities, imposing rights defined by the colonial power causes harm and furthers the colonial project in two ways: First, by undermining the sovereignty of the colonized community. Second, by forcing the colonized community to integrate into the polity of colonial power in order to have a say in the definition of their rights. (2019, p. 1872)

Nevertheless, many scholars of federal Indian law, including Kristin Carpenter, Sonia Katyal, and Angela Riley (Citizen Potawatomi Nation), have theorized the need for the US and other sovereigns to recognize various kinds of collective rights

of Native Nations – group rights to cultural property among them. Rights in and to records could potentially be another set of group rights that should be recognized, not only by the state but by international entities drafting human rights and Indigenous rights regulations as well. With the above important caveats in mind, the R3 framework seems applicable, relevant and necessary for tribes seeking recognition in the US in terms of remedying their *evidence problem,* and also as a necessary first step to injecting the human rights enshrined in UNDRIP into federal Indian law. Doing so would mean that these rights would be recognized as inherent human rights, as seen by international law, and not as rights 'given' to Indian people by the US settler state and would have a major impact on the FAP. They would be seen as rights that tribes already have, that arise from their Indigenous cultures and histories – the kind of inalienable rights, as Echo-Hawk argues, "that are indefeasible; that all free and democratic nations were formed to protect; the kind of rights that no nation can take away" (2017).

5.3. Education and tribal knowledges

Because the dispossession of Indigenous land (and the rights to that land) advanced by US federal policies such as the FAP and many others goes hand in hand with the continued exclusions related to knowledge production and the circulation of cultural information that are part of colonial collecting legacies (Anderson & Christen, 2019), a 'rights in and to records' framework and, in particular, the Right to Know, could be effectively applied to support the materialization of Indigenous rights in education and information policy contexts. This was compellingly exposed by a paper given by Deloria titled "The Right to Know" at The White House Pre-conference on Indian Library and Information Services On or Near Reservations in October 1978. Deloria argued that the Right to Know should be actualized as one of the many US federal government's treaty responsibilities. Tribes ". . . need to know; to know the past, to know the traditional alternatives advocated by their ancestors, to know the specific experiences of their communities, and to know about the world that surrounds them." (1978). This right should be implemented, Deloria continues, within the scope of the US treaty educational provisions through "direct funding from the federal government to tribes for library, information and archival services," making every effort possible in transferring the major bulk of tribal records to "modern and adequate facilities on reservations" (1978).

Recognizing that information and knowledge are critical assets for tribes, and that Indigenous peoples have not only rights to but also responsibilities for their knowledge (Krebs, 2012, p. 177), Deloria presented a *Right to Know to do list*, which includes issuing and making accessible a detailed survey and report of the existing tribal records held in the federal archives and record centers; making accessible records about critical events and policies which have affected tribes; developing information services customized for tribal communities; offering library and information science education for tribal members; providing proper and up-to-date equipment to tribes for

the preservation, duplication and transmission of information; establishing regional research centers that ensure the participation of tribes in the creation of tribal libraries, archives and information centers; and setting aside funding for repatriation (1978, pp. 13–16).

Deloria's *Right to Know to do list* continues to be critically relevant today, considering that local Indigenous control over education, knowledge production, and information circulation and access continues to be a decisive factor in successfully implementing tribal sovereignty (Lomawaima, 2002, p. 423). Western education systems have historically been used to deculturize, acculturate, and subjugate Native American peoples (Deloria, 1994; Knowles & Lovern, 2015) and information institutions – and their cataloging and classification systems – continue to play a crucial role in assimilating tribes into the mainstream of the dominant culture of settler states. As a consequence, the flow of information from and about tribes has taken place away from tribes and primarily by scholars, researchers, and non-Indigenous professionals – what has been identified as cultural or discursive genocide by several Indigenous scholars and thinkers (Grande, 2000; Kovach, 2009).

Today, information is slowly but increasingly flowing back to communities and within communities (Krebs, 2012; O'Neal, 2015), however, initiatives are still somehow isolated and driven mostly by the 'good will' of information institutions and their staff. Actualizing tribes' Right to Know structurally and systemically requires transforming information practices, policies and procedures around information education and tribal knowledge held in non-tribal institutions so that tribes regain complete control of their records, thus making the process of locating and accessing evidence for recognition petitions less burdensome and oppressive (both physically, affectively and financially). One existing tool that can be used by information education and collecting institutions to support tribes' Right to Know and therefore advance this transformation are the Protocols for Native American Archival Materials (PNAAM). Drafted in 2006 by a group of Indigenous and non-Indigenous archivists, historians, anthropologists, thinkers and activists, the protocols were conceived as a response to Deloria's *Right to Know to do list*. The PNAAM articulate guidelines for culturally responsive care, access, circulation and use of Native American archival collections held in non-tribal repositories, thus stimulating a national discussion among archivists, librarians, and tribes on professional policy and practice which respects Indigenous rights to records. More and more archives, libraries and museums are incorporating the PNAAM into their access, circulation, digitization, and use policies, however, many still don't know that these protocols exist or they do not feel the need to incorporate them into their practices, or they do not know how to implement them in practice.

It is important to keep in mind, however, that several Indigenous scholars (Swisher, 1998; LaFromboise & Plake, 1983; and Robbins & Tippeconnic, 1985), have argued that Native peoples should be the ones to write about Indian education and teach their peoples. The 1991 White House Conference on Indian Education affirmed this stance by passing a resolution recommending that the US Department of Education

support a range of research by American Indian/Alaska Native scholars who are committed to addressing the pedagogical needs of American Indian and Alaska Native communities. As a non-Native scholar working with tribes and writing about Indigenous issues, I respect and endorse this position. It is critical, then, that the information and education fields reflect, in collaboration with tribal scholars and leaders, on the pedagogical archival needs of Native communities, including the negotiations that need to take place for responsible archival allyship with Tribes; who should impart education on rights to records within tribal contexts; and how can these archival pedagogies enter the more general information education field in culturally responsible ways. Identifying the role(s) that archivists can play in educating federal entities and collecting institutions on the rights to records – and to evidence – of Tribes applying for recognition might contribute to the implementation of Indigenous rights into US law and policy. This should be done, however, by educating archivists and tribal records' holders more generally about Indigenous rights to records without imposing a rights rhetoric/framework that could eventually limit tribal political sovereignty. The main goal is to bridge information education on rights to records with Indian education concepts, epistemologies and values that consider an education that is experiential, that acknowledges the relatedness of all things, and that emphasizes reciprocity (Swisher, 1998; Kovach, 2009; Smith, 2012), as a unique foundation for pedagogical theory and praxis.

6. Conclusion

This essay has argued that due to an increasingly powerful mix of contemporary political and technological developments, inefficient and sometimes recalcitrant bureaucracies, and information institutions that are insufficiently centered around fundamental human and humanitarian needs, individuals can no longer enable or actualize their human rights unless their rights to information, data and records are similarly recognized and honored. It also notes parallel concerns that arise with regard to Indigenous and civil rights. Given the diversity of interests and needs involved, the power differentials between affected parties, and the extensive pre-existing professional and technological infrastructures and practices, achieving universal agreement about such rights would likely be a difficult, lengthy, and potentially hegemonic even when only one set of information rights was being proposed. Nevertheless, as this essay has illustrated, the concept of human rights in and to records has become a strong and growing theme across activist and scholarly movements, and is increasingly being addressed through professional information practice, even where there is not complete commensurability or agreement. In this respect, the concept shares commonalities with protocols such as PNAAM that have been developed by Indigenous information professionals in several parts of the world in an attempt to encourage non-Indigenous archives, libraries, data repositories and museums to work with Indigenous groups through respectful consultation processes regarding Indigenous materials. At the same

time, however, it is important to acknowledge that tenets of those protocols might not be equally appropriate for other non-Indigenous communities who have been dispossessed of their heritage or are victims of bureaucracies, and who also may seek to have more voice in how those materials are managed and made accessible.

The essay has also emphasized the importance of educating all concerned parties about rights, interests and needs, and of applying culturally and contextually appropriate pedagogies in doing so. As a final note, the authors would like to underscore the role of professional education in preparing information practitioners, especially archivists, to address the rights and needs discussed in this essay. Navigating complexity, incommensurability and even controversy do not make such concerns less important or of less immediate concern for the archival and recordkeeping field to take on. Indeed, the opposite is the case. Regardless of whether rights frameworks or community protocols are universally or locally accepted, archivists and other information professionals have profound responsibilities to support individual and community rights to and in information, data and records. They can play crucial roles in educating and empowering others about these rights, and they have an obligation to be vocal and active advocates for those who are systematically disempowered and disenfranchised by information and recordkeeping practices. At the same time, the institutions with which they are associated need concrete, tested, and financially implementable approaches that will help them to better support these rights and needs. To do this, professional education will need to address the arguments raised by Montenegro above. Key to achieving this will be preparing future archival and other information and computing professionals to navigate the complexities and potential incommensurabilities of the multiplicity of converging and diverging calls for human, sovereign and civil rights in records, as well as to devise and implement professional and technological services and solutions that might respond to them.

References

Anderson, J. (2013). Anxieties of authorship in the colonial archive. In Chris, C. and Gerstner, D. (Eds.) *Media Authorship.* London, UK: Routledge Press.

Anderson, J. & Christen, K. (2019). Decolonizing attribution: Traditions of exclusion. *Journal of Radical Librarianship*, *5*, 113-52.

Australian Human Rights Commission. (1997). *Bringing them home: Report of the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families.* Retrieved from https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf.

Banisar, D. (2006). *Freedom of information around the world 2006: A global survey of access to government information laws.* Privacy International. Retrieved from https://www.right2info.org/resources/publications/publications/publications_banisar_freedom-of-information-around-the-world.-a-global-survey-of-access-to-government-information-laws/view.

Barker, J. (2011). *Native acts: Law, recognition and cultural authenticity*. Durham, NC: Duke University Press.

Barker, J. (2013). The recognition of NAGPRA. In Den Ouden, A. and O'Brien, J. (Eds.), *Recognition, sovereignty, struggles, & Indigenous rights in the United States*. Chapel Hill, NC: The University of North Carolina Press.

Barrett, B. (2019). Hey, Apple! 'opt out' is useless. Let people opt in, *Wired*, August. Retrieved from https://www.wired.com/story/hey-apple-opt-out-is-useless/.

Bishop, C.A. (2012). *Access to information as a human right*. El Paso, TX: LFB Scholarly Publishing LLC.

Blackhawk, M. (2019). Federal Indian law as paradigm within public law. *Harvard Law Review*, *132*(7).

Britz, J., Hoffmann, A., Ponelis, S., Zimmer, M., & Lor, P. (2013). On considering the application of Amartya Sen's capability approach to an information-based rights framework. *Information Development*, *29*(2), 106-113. 10.1177/0266666912454025.

Britz, J., & Lor, P. (2010). The right to be information literate: The core foundation of the knowledge society. *Innovation: Journal of Appropriate Librarianship and Information Work in Southern Africa*, *41*, 8-24.

Calloway, C. (2016). *The world turned upside down: Indian voices from early America*.

Boston, MA and New York, NY: Bedford/St. Martin's Macmillian Learning.

Carpenter, K., Katyal, S.K., & Riley, A.R. (2009). In defense of property. *118* YALE L.J. 1022, 1050-59.

Carpenter, K., Casaperalta, E., & Lazore-Thompson, D. (Eds.), (2019) *Implementing the United Nations declaration on the rights of Indigenous Peoples in the United States: A call to action for inspired advocacy in Indian Country*. Conference Report, March 15–16, 2019 Report. University of Colorado Law Review. http://lawreview.colorado.edu/undrip/.

DLA Piper. (2019). Global data protection laws of the world-world map. Retrieved November 25, 2019 from https://www.dlapiperdataprotection.com/index.html.

Deloria, V. (1970). *Custer died for your sins: An Indian manifesto*. Norman, OK: University of Oklahoma Press.

Deloria, V. (1978). *The right to know: a paper, United States and White House pre-conference on Indian library and information services on or near reservations.* Office of Library and Information Services, U.S. Department of the Interior, Washington, DC.

Deloria, V. (1994). *God is red: A native view of religion*, Golden, CO: Fulcrum Press.

Deloria, V. (2001). Knowing and understanding, In V. Deloria & D. Wildcat (Eds.), *Power and place: Indian education in America*. Golden, CO: Fulcrum Press.

Den Ouden, A. & O'Brien, J. (2013). Introduction, in A. Den Ouden & J. O'Brien (Eds.), *Recognition, sovereignty, struggles, & Indigenous rights in the United States.* Chapel Hill, NC: The University of North Carolina Press.

Duff, W. & Cumming, K. (2016). Respect my authority. In A.J. Gilliland, S. McKemmish, and A.J. Lau, (Eds.), *Research in the Archival Multiverse* (pp. 456-478). Clayton, Victoria: Monash University Press, Retrieved from http://www.oapen.org/search?identifier=628143.

Echo-Hawk, W. (2017). Keynote at the Association of Tribal Archives, Libraries and Museums Annual Conference, Bernalillo, NM at the Santa Ana Pueblo-owned Tamaya Hyatt Regency.

European Parliament and Council of the European Union. *General Data Protection Regulation (GDPR)*. Pub. L. No. 2016/679 (2018).

Evans, J., McKemmish, S., Daniels, E., & McCarthy, G. (2015). Self-determination and archival autonomy: Advocating activism. *Archival Science*, **15**(4), 337-368. 10.1007/s10502-015-9244-6.

Federal Acknowledgement of American Indian Tribes; Final Rule. 2015. Department of the Interior, Bureau of Indian Affairs, Federal Register, Vol. 80, No. 126, Wednesday, July 1, 2015.

First Archivist Circle (2006). *Protocols for Native American Archival Materials*. Retrieved from http://www2.nau.edu/libnap-p/.

Gilliland, A.J. & Carbone, K. (2020). An Analysis of warrant for rights in records for refugees, *The International Journal of Human Rights*, **24**(4), 483-508.

Gould, R. (2013). The Nipmuc nation and a case of mistaken identity. In Den Ouden, A. and O'Brien, J. (Eds.), Recognition, Sovereignty, Struggles, & Indigenous Rights in the United States. The University of North Carolina Press, Chapel Hill, NC.

Graeber, D. (2015). *The utopia of rules: On technology, stupidity, and the secret joys of bureaucracy*. Brooklyn, NY and London, UK: Melville House.

Grande, S. (2000). American Indian geographies of identity and power: At the crossroads of Indigena and Mestizaje, *Harvard Educational Review*, *70*(4), 467-498.

Gupta, A. (2012). *Red tape: Bureaucracy, structural violence and poverty in India*. Durham, NC: Duke University Press.
Hewitt, G. (2020). The Windrush scandal: An insider's reflection, *Caribbean Quarterly*, *66*(1), 108-109.
Hill, L. (2002). On the reasonableness of compelling citizens to 'vote': The Australian case, *Political Studies*, *50*(1), 88-89.
Kelmor, K. M. (2016). Legal formulations of a human right to information: Defining a global consensus. *Journal of Information Ethics*, **25**(1), 101-113.
Knowles, F.E. Jr., & Lovern, L.L. (2015). *A critical pedagogy for Native American education policy: Habermas, Freire and emancipatory education*. New York, NY: Palgrave Macmillan.
Kovach, M. (2009). *Indigenous methodologies: Characteristics, conversations, and contexts*, Toronto, ON: University of Toronto Press.
Krebs, A. B. (2012). Native America's twenty-first-century right to know, *Archival Science*, *12*(2), 173-190.
LaFromboise, T., & Plake, B. (1983). Toward meeting the educational research needs of American Indians, *Harvard Education Review*, *53*, 45-51.
Lomawaima, K.T. (2002). American Indian education: By Indians versus for Indians, In P. Deloria, and N. Salisbury (Eds.), *A Companion to American Indian History*. Oxford, UK: Blackwell.
McDonagh, M. (2013). The right to information in international human rights law. *Human Rights Law Review*, *13*(1), 25-55.
Montenegro, M. (2019). Unsettling evidence: an anticolonial archival approach/reproach to Federal Recognition, *Archival Science*, *19*(2), 117-140.
Nugent, M. (2017). Entanglement of oral sources and colonial records. In Reid, K. & Paisley, F. (Eds.), *Sources and methods in histories of colonialism: Approaching the imperial archive.* New York, NY: Routledge.
O'Neal, J. (2015). The right to know: decolonizing Native American archives, *Journal of Western Archives*, *6*(1).
Office of the United Nations High Commissioner for Human Rights (OHCHR). *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Pub. L. No. 53/144, 53/144 (1998).
Project to Implement the United Nations Declaration on the Rights of Indigenous Peoples in the United States. University of Colorado Law School. https://un-declaration.narf.org/about-project/.
Rao, A., Dillon, P., Kelly, K. & Bennett, Z. (2019). Is America a democracy? If so, why does it deny millions the vote? *theguardian.com*, 7 November. Retrieved from https://www.theguardian.com/us-news/2019/nov/07/is-america-a-democracy-if-so-why-does-it-deny-millions-the-vote.
Refugee Rights in Records Initiative, https://informationasevidence.org/refugee-rights-in-records.
Rivard, C. (2015). Archival recognition: The Pointe-au-Chien's and Isle de Jean Charles Band of the Biloxi-Chitmacha Confederation of Muskogees' fight for federal recognition. *Settler Colonial Studies*, *5*(2) 117-127.
Robbins, R., & Tippeconnic, J. (1985). American Indian education leadership, Tempe, AZ: Center for Indian Education.
Rodotà, S. (2009). Data protection as a fundamental right. In S. Gutwirth, Y. Poullet, P. De Hert, C. de Terwangne, & S. Nouwt (Eds.), *Reinventing Data Protection?*, Dordrecht: Springer, pp. 77-82.
Schwirtlich, A.M., Stokes, J. & Macpherson, P. (2003). Bringing them home: Database ethics, culture and information about Indigenous Australians, *Comma*, *1*, 141-146.
Setting the Record Straight for the Rights of the Child Summit. (2017). Retrieved from https://rights-records.it.monash.edu/about-the-initiative/.
Smith, L. T. (2012). *Decolonizing methodologies: Research and Indigenous peoples*. London, UK.: Zed Books.
United Nations. (2011). *United Nations Declaration on the Rights of Indigenous Peoples*.
United Nations Office of the Commissioner for Human Rights. *Universal Declaration of Human Rights*, *217* A (III) $ (1948).
United Nations High Commissioner for Refugees (UNHCR) Global Data Service. (2020). "Global Trends: Forced Displacement in 2019," June 18. Retrieved from https://www.unhcr.org/globaltrends2019/.
United States Government, The Office of Federal Acknowledgment (OFA). Procedures for Establishing

that an American Indian Group Exists as an Indian Tribe. *Code of Federal Regulations* (25 CFR Part 83), Retrieved from https://www.bia.gov/WhoWeAre/AS-IA/OFA/.

Vargha, D. (2018). Windrush scandal: A historian on why destroying archives is never a good idea, The Conversation, 24 April. Retrieved from http://theconversation.com/windrush-scandal-a-historian-on-why-destroying-archives-is-never-a-good-idea-95481.

Wareham, E. (2001a). From explorers to evangelists: Archivists, recordkeeping, and remembering in the Pacific Islands, *Archival Science*, *2*, 187-207.

Wareham, E. (2001b). Our own identity, our own Taonga, our own self coming back: Indigenous voices in New Zealand record-keeping, *Archivaria*, *52*, 26-45.

Appendix

Appendix 1. Instruments Analyzed

1. UN Declaration of Human Rights, 1948
2. Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 1950/1953
3. Convention and Protocol Relating to the Status of Refugees, 1951/1967
4. International Covenant on Civil and Political Rights, 1966
5. Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, 1981
6. Guidelines for the Regulation of Computerized Personal Data Files, 1990
7. Orentlicher Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, 2005
8. UN Declaration on the Rights of Indigenous Peoples, 2007
9. International Standards on the Protection of Personal Data and Privacy (The Madrid Resolution), 2009
10. EU Charter of Fundamental Rights, 2012
11. International Council on Archives: Principles of Access to Archives, 2012
12. The Organisation for Economic Co-operation and Development (OECD) Privacy Framework, 2013
13. Necessary & Proportionate: International Principles on the Application of Human Rights to Communications Surveillance, 2014
14. Policy on the Protection of Personal Data of Persons of Concern to UNHCR, 2015
15. International Council on Archives: Basic Principles on the Role of Archivists and Records Managers in Support of Human Rights, 2016
16. EU General Data Protection Regulation (GDPR), 2016
17. New York Declaration for Refugees and Migrants, 2016
18. Marrakesh Political Declaration, 2018
19. The Global Compact for Safe, and Orderly and Regular Migration, 2018
20. The Global Compact on Refugees, 2018

Appendix 2. R3 Platform of Human Rights in and to Records

Rights to have a record created:

- The right to be provided with a universally recognized identity document upon request.
- The right to have a birth certificate, and to have both parents' names listed on that birth certificate if the father is deceased or otherwise unable to be present at his child's birth, if the mother requests it.
- The right for family members and other dependents to a process for issuing a death certificate when there is no body after a certain amount of time.

Rights to know:

- Prior to a record about oneself being created, the right to be fully informed about why it is being created, what it will contain, what it may be used for now and in the future, and how it will be secured.
- The right to know that a record about oneself exists, where, why, and who can see it and under what circumstances.
- The right to know if there is a classified record or data impeding an action one is trying to complete.

Rights regarding records expertise:

- The right to be provided, and at no cost, with the index terms or other metadata necessary for locating and retrieving records about oneself.
- The right to request and be provided with a records advocate or other expert in locating, introducing and challenging records.
- The right to have a records expert testify regarding the historical and bureaucratic circumstances surrounding the creation, management, reproduction, translation and reliability of records about oneself that are introduced in asylum and immigration adjudications, return, restitution and other actions.

Cultural, self-identity and family rights in records:

- The right to have one's cultural or community recordkeeping practices recognized in legal, bureaucratic and other processes that depend upon the introduction of records.
- The right to have one's self-identity acknowledged in records about oneself, including, but not limited to name, gender, and ethnicity.

Right to respond and to annotate (right to rectification):

- The right to respond to and include a permanent annotation on records about oneself.

Refusal and deletion rights:

- The right to refuse to participate in the creation of a record about oneself or to resist being recorded if there is a credible fear that doing so will compromise one's human rights or those of others.
- The right to request deletion of a record or deletion of data or metadata about oneself from a record if that record, data or metadata would compromise one's human rights.

Accessibility, reproduction and dissemination rights:

- The right to access records about oneself, including those that are still otherwise subject to legal or other closure periods.
- The right to access one's record according to one's own literacy, modality, writing or signing system.
- The right to guaranteed safe, secure, timely and low or no-cost access to relevant records about oneself upon request.
- The right to receive copies of records about oneself, and to specify the form and format of those records, or else to be given a clear explanation as to why one may not.
- The right to transmit or share records about oneself.

Consultation rights:

- The right to be consulted regarding how, where and when records about oneself are preserved or archived, made available for archival research, or disposed of.
- The right to be consulted when and why another party, including family members, requests access to a record about oneself.

Personal recordkeeping rights:

- The right to a secure personal recordkeeping/archival space.
- The right to a safe, secure, and trusted infrastructure for managing, preserving, certifying, and transmitting one's documents.