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Forensic and Expert Social Anthropology as Cultural Expertise: Developing Professional Standards

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Introduction



Social anthropology has served as a specific form of cultural expertise in legal-administrative processes since the late 19th century. Since the 1970s, social anthropology has served increasingly as a source of forensic and expert evidence in legal processes in particular, including asylum claims, traditional land ownership and cultural heritage restitution claims, human rights abuse inquiries, and international development initiatives, among others (Campbell, 2015; Holden, 2022; Leaf, 2018; Ngini, 2018; Rose, 2021, 2022; Rosen, 1977; Trigger et al., 2013). Notwithstanding this increasing specialisation, internationally recognised professional standards for the provision of forensic and expert social anthropological evidence have remained historically absent. In response, in late 2021, the UK-based Royal Anthropological Institute (RAI) commenced development of a professional standards and certification framework for social anthropologists engaged in the provision of forensic and expert evidence to courts and other legally empowered bodies.

The RAI initiative represents the first internationally coordinated effort by a professional social anthropological representative organisation to develop such standards. The RAI

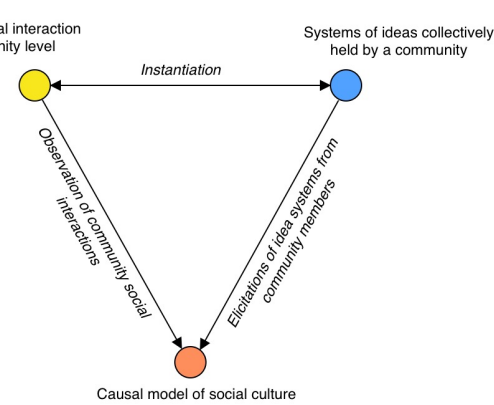
framework provides a mechanism by which social anthropologists may engage in the provision of forensic and expert services in a relevant, systematic and professionally recognised manner across a range of legal-administrative jurisdictions. The RAI framework establishes terms and definitions for use by both social anthropologists and legal professionals in assessing the prospective relevance of social anthropological services to legal-administrative processes, and in deciding the form that such services should take. This paper provides a summary of the RAI forensic and expert social anthropology framework and its relevance to legal-administrative processes as a specific form of cultural expertise more broadly (Campbell, 2020; Holden, 2022).

What is Social Anthropology?



What is Social Anthropology?

- Social Anthropology is the science of human social culture, comprising:
 - a) An object of study: **Social variation**
 - b) Spatiotemporal parameters: A **period of time and geographic space** relevant to social variation
 - c) A **model of causality** comprising feedbacks between **patterns of social interaction at a community level**, and **systems of ideas collectively-held by a community**.
- Social anthropology applied in legal-administrative settings represents a specific form of cultural expertise, which derives its explanatory and probative utility in legal-administrative settings from its basis in science.



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graph TD
    A((Patterns of social interaction at a community level)) -- Instantiation --> B((Systems of ideas collectively held by a community))
    B -- "Elicitations of idea systems from community members" --> C((Causal model of social culture))
    A -- "Observation of community social interactions" --> C
    
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Social anthropology is a field of science within the parent discipline of anthropology, which deals with variation between communities of human beings over time and across geographic space. As with any scientific discipline, anthropology in general is made up of objects of study, spatiotemporal parameters for conducting studies, and causal models for collecting data and making predictions about those objects of study.

In the case of the child field of *social* anthropology in particular, the object of study is observable variation in patterns of social interaction at the level of entire communities of people. The spatiotemporal parameters of social anthropological study are the time frames and geographic extents that are relevant to the social variation in question. The causal model for collecting data and making predictions in social anthropology, states that patterns of social interaction emerge from collectively-held systems of ideas endemic to a community, and that observable community-level social interaction represents an instantiation of those systems of ideas (Leaf & Read, 2012). Further, and most importantly, this community-level social interaction establishes the contexts for the reproduction and modification of those ideas over time. Social anthropology terms this system of

contextualised feedbacks, between collectively-held ideas and patterns of social interaction, 'social culture' (White & Johansen, 2006).

For example, available data tells us that prior to the industrial revolution, rural English communities were comprised of networks of villages linked together by systemic relationships of kinship, language, religion and economic exchange (Boothman, 2018; Dingle, 1997; Hinde & Edgar, 2016). This data also tells us these relationships were based upon collectively-held systems of ideas for arranging marriages, using specific dialects for communication, participating in church and seasonal religious festivals, and trade between and within villages. The advent of the industrial revolution, saw major displacement of rural labourers from the countryside to the cities of England between the 1760s and 1860s. The data tells us that not only were village social networks severely disrupted, but that the systems of ideas underpinning those networks became unsustainable, giving way to a major re-organisation in social culture in England during this time.

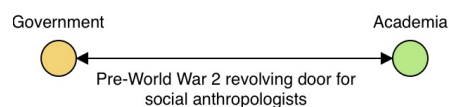
As I will explain momentarily, social anthropology may be summarised as the science of human social culture. Social anthropology applied in legal-administrative settings represents a specific form of cultural expertise, which derives its explanatory and probative utility in those legal-administrative settings from its basis in science.

Legal-Administrative Applications of Social Anthropological Expertise Over Time



Legal-Administrative Applications of Social Anthropological Expertise Over Time

- Social anthropology was formalised as a field of study in the 1860s-1870s in the USA and UK.
- Social anthropology was immediately engaged in legal-administrative contexts involving US government treaty negotiations with Native American peoples, and British colonial governance of Indigenous populations in Australia, Aotearoa/New Zealand, Canada and South Africa.
- A Revolving door opened between government and academia for practicing social anthropologists.



- Between the 1870s and 1970s, social anthropology was broadly considered the only academic field capable of delivering cultural expertise in legal-administrative settings.

Social anthropology as a recognised field of expertise is generally understood as having emerged towards the end of the industrial revolution, during the 1860s and 1870s in the United Kingdom and United States simultaneously (Morgan, 1871; Tylor, 1871). From the outset, founding figures in the field became involved in legal-administrative processes on the basis of their newly-developed expertise. In the US, this involved contributions to formal legal negotiations around treaty-making between the US federal government and Indigenous peoples (McCarty, 2008). In the UK, it involved development and operation of

administrative regimes for controlling the movement and employment of Indigenous peoples in various British colonies, most notably Australia (Gray, 2007), Canada (Darnell, 1998), Aotearoa/New Zealand (Metge, et al., 2013), and South Africa (Gordon, 1990).

As a formal scholarly base for social anthropology emerged and burgeoned between the 1910s and 1930s, a revolving door began to operate for practitioners moving between academia and government. In Australia, for example, the Chair of Anthropology at the University of Sydney - the only social anthropology department in the country until 1951 - was also the Vice President of the statutory New South Wales Aborigines Protection Board, with sweeping powers over the lives of Indigenous Australian people (Gray, 2007).

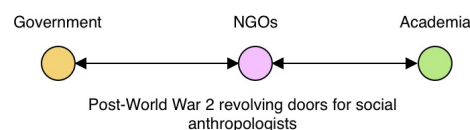
This trajectory took a significant turn in the aftermath of World War 2. Two new trends emerged: The first was that the emerging horrors of the pseudo-scientific philosophy of eugenics dissuaded social anthropologists from working directly for government agencies while ethnically discriminatory policies remained in place. The second was that decolonisation movements, including Indigenous-led self-determination campaigns in settler-colonial jurisdiction such as Australia, Canada, Aotearoa/New Zealand and the USA, saw many social anthropologists shift from working in government, to working for Indigenous community-run NGOs.

Regulation of Social Anthropological Service Delivery in Legal-Administrative Settings



Regulation of Social Anthropological Service Delivery in Legal-Administrative Settings

- World War 2 revealed horrors of pseudo-scientific philosophy put into practice.
- De-colonization and self-determination campaigns saw the emergence of Indigenous-run NGOs.



- The existing revolving door between government and academic social anthropology closed.
- Two new revolving doors opened: NGOs ↔ Academia, and NGOs ↔ Government.
- NGOs became a major legal-administrative employer of social anthropologists.
- Cultural expertise expanded and diversified to include members of post-colonial cultures, psychologists, linguists, historians, legal scholars and others.
- Despite growing post-colonial deployment of social anthropology, no coherent, transparent or internationally recognised guidelines for social anthropological practice in legal-administrative settings exist.

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The result of these new trends, was that between the 1950s and 1970s, the first revolving doors between government and academia closed, while two new revolving doors opened for social anthropologists working in legal-administrative settings: one between the NGO sector and academia, and another between the NGO sector and government. These two new revolving doors continue to operate in many of these latter jurisdictions today. Counter-intuitively, the legacy of social anthropology's pre-War history combined with these post-War, post-colonial employment opportunities for social anthropologists, have

discouraged the development of targeted and coherent professional standards for practitioners working in the legal-administrative settings of government, academia and the NGO sectors, relying instead exclusively on the general contractual conditions imposed by their separate employers.

Today, across the world, social anthropology that is deployed in legal-administrative settings as a form of cultural expertise, operates according to a patchwork of uncoordinated guidelines developed by NGOs, universities and governments where social anthropologists are employed. These guidelines tend to take the form of generalised ethical research and/or community engagement policies, and are not intended to regulate the delivery of forensic and expert social anthropological services.

Although professional representative associations, such as the American Anthropological Association and European Association of Social Anthropologists maintain their own codes of ethics, these codes, likewise, do not specifically regulate standards for professional practice and service delivery in legal-administrative settings where cultural expertise plays an important role.

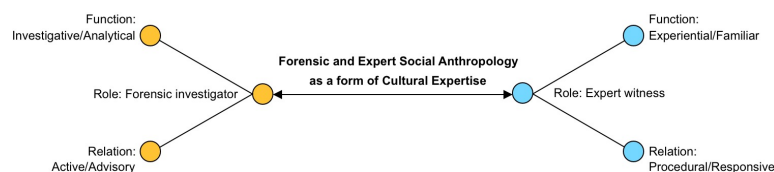
The burgeoning engagement of social anthropologists in legal-administrative service-delivery to the NGO sector in particular, with its links both to academia and to government, has seen an attendant growth in demand for coherent and transparent guidelines for social anthropological practice. These include guidelines about basic threshold criteria for engaging social anthropological expertise, and basic threshold expectations around the services to be delivered.

Cultural Expertise and the Legal-Administrative Application of Forensic and Expert Social Anthropology



Cultural Expertise and the Application of Forensic and Expert Social Anthropology

- Social anthropology, as a form of cultural expertise, currently serves two categories of legal-administrative functions, either:
 - a) Implementation of statutory law, where a requirement for social anthropological services is embedded in the statute itself, or;
 - b) Litigation and legal negotiation.



- These two categories of legal-administrative service both make use of one or a combination of two types of social anthropological expertise, either or both:
 - a) Forensic investigation and/or;
 - b) Expert opinion.

A growing literature on the range of legal-administrative functions that social anthropology currently serves, indicates that it falls into one of two general categories: either implementation of statutory law, where a requirement for social anthropological services are embedded in the statute itself, or; litigation and legal negotiation, where social anthropologists are called upon to provide evidence by legal representatives or by a presiding authority such as a court or tribunal (Rose, 2022).

These two categories of legal-administrative service both make use of one or a combination of two types of social anthropological expertise: Either or both forensic investigation and/or expert opinion. As I have described elsewhere (Rose, 2022), the threshold for distinguishing between a need for either or both forensic and/or expert services is whether facts of an inquiry have been established. In a setting where the facts are not yet known or agreed, a forensic social anthropological investigation may be required in order to assist in establishing those facts. By comparison, where facts have already been established and agreed, whether as a result of social anthropological investigation or by some other form of investigation, an expert social anthropological opinion may need to be sought in order to assist with determining the relevance of those facts.

Beyond this threshold distinction, the degree to which either a forensic investigation or an expert opinion may assist a legal-administrative process, depends upon the corollary degree to which statutory or common law defines a causal link between systemic social interaction and culturally-distinct systems of ideas.



Forensic and Expert Social Anthropology in Action: Two Australian Examples

Aboriginal Sacred Sites Act 1989 (NT)

- Defines the specific basis on which features of the landscape may be classified as 'sacred':
- Implies that this legal definition is commensurate with traditional Indigenous social culture, namely:
 - Indigenous systems of ideas regarding the assignation of sacred status, and;
 - Patterns of social interaction in Indigenous communities by which these ideas are instantiated.
- Provides constrained scope for the application of cultural expertise, including forensic and expert social anthropological explanation.

Native Title Act 1993 (Commonwealth)

- Provides statutory parameters within which common law may develop in relation to recognition of Indigenous rights in lands, waters and natural resources.
- Does *not* define the specific basis upon which such rights may arise (instead provides general parameters).
- Facilitates the development of precedent-setting case law, which in turn establishes and reinforces roles for forensic and expert social anthropologists as cultural experts.
- Provides significant latitude to forensic and expert social anthropologists in the deployment of cultural expertise.

For example, Australia's Northern Territory Aboriginal Sacred Sites Act (1989) is a statute that defines the basis on which natural and modified features of the landscape may be classified as sacred according to Indigenous Australian cultural traditions. This includes a tacit model of causality by which those traditions are considered to give rise to an assignation of sacredness. Administered by a Northern Territory government agency known as the Aboriginal Areas Protection Authority, the Sacred Sites Act thus sets out both a model

of causality regarding social culture, and a specific role for social anthropologists in the administration of the Act, including procedures for identifying, recording, and protecting sacred sites from damage or destruction. In this instance, the Sacred Sites Act calls for social anthropologists both to undertake forensic investigations, and to provide opinions with regard to the protection of sacred sites identified in the course of those investigations, according to the terms set out in the Act. The Act does not provide scope for social anthropologists to elaborate upon or otherwise modify the causal model tacitly encoded in the Act, by which systems of ideas specific to Indigenous Australian cultural communities are considered to give rise to the assignation of such sacredness. Thus, while both forensic and expert services are sought from anthropologists, the degree of this forensic investigative independence is constrained by the terms of the statute.

By contrast, in Australia's federal Native Title Act (1993), jointly administered by the National Native Title Tribunal and Federal Court of Australia, no specific role is identified for social anthropologists. However, in common law litigation and court-directed negotiation conducted under the auspices of the Act, social anthropologists are typically called upon to provide evidence, both in the form of results of specifically commissioned forensic investigations, and in the form of expert opinion. More pointedly, and even more unlike the Northern Territory Sacred Sites Act, the federal Native Title Act sets out only a very general causal model for predicting how Indigenous native title rights arise from traditional social culture. This weakly-axiomatic model of social culture provides significant latitude to forensic and expert social anthropologists. It allows us to develop independent causal models for demonstrating whether or how traditional rights in lands, waters and natural resources arise from collectively held systems of ideas, and the patterns of social interactions in which those ideas are instantiated. Unlike the Northern Territory Sacred Sites Act, the federal Native Title Act assigns an expansive degree of investigative independence to forensic and expert social anthropology, giving rise also (and inadvertently) to a high degree of risk for parties engaging the services of social anthropologists.

A similar range in the degree of assistance assigned to forensic and expert social anthropologists by statutory and common law regimes is apparent internationally, where social anthropologists are called upon to provide evidence to legal-administrative processes overseen by courts and other legally empowered bodies as a form of cultural expertise. Examples include immigration processes overseen by courts and tribunals the UK, EU and USA (Campbell, 2015; Good, 2015; Leaf, 2018), human rights abuse inquiries overseen by the Inter-American Court of Human Rights in Latin America (de Matos, 2018), Indigenous land claims overseen by the High Court of Malaysia (Idrus, 2010), and courts and tribunals established for specific purposes, such as in the Special Court of Sierra Leone, which was established to hear of evidence and make determinations with regard to alleged war crimes committed in that country during the early 2000s (Hoffman, 2007).

The Royal Anthropological Institute and the Regulation of Forensic and Expert Social Anthropological Practice



The Royal Anthropological Institute and the Regulation of Forensic and Expert Social Anthropological Practice

- in late 2021, the UK Royal Anthropological Institute undertook to develop a professional standards and certification framework for practicing forensic and expert social anthropologists, currently scheduled to launch in early 2023.
- The RAI framework for forensic and expert social anthropology is modelled on the Institute's existing framework for forensic physical anthropologists.
- This framework comprises three elements:
 - a) A Code of Practice;
 - b) A Certification program formally recognising three levels of professional practice, and;
 - c) A Continuing Professional Development (CPD) program for both anthropologists seeking certification, and for allied members of the legal profession and other interested parties.



Royal Anthropological Institute

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Despite these noteworthy patterns of similarity across international legal-administrative contexts where forensic and expert social anthropology is utilised, no internationally recognised professional standards for the provision of forensic and expert social anthropological evidence have been previously developed. In response, in late 2021, the UK Royal Anthropological Institute undertook to develop a professional standards and certification framework for practicing forensic and expert social anthropologists, which is currently scheduled to launch in early 2023.

The RAI framework for forensic and expert social anthropology is modelled on the Institute's existing framework for continuing professional development and certification of forensic physical anthropologists, successfully developed and deployed by a team led by Professor Dame Sue Black, current President of the RAI and member of the UK House of Lords (Black, 2021).

This framework comprises three elements, including a) A Code of Practice; b) A program for Certification of formal recognition at three professional levels of seniority, and; c) A Continuing Professional Development Program for both anthropologists seeking certification, and for allied members of the legal profession and other interested parties, to undertake training in the field, in order to better understand and more effectively engage forensic and expert social anthropology in legal-administrative settings (Black, 2021).

In late 2021, Professor Dame Sue Black and RAI Director Dr David Shankland invited me to commence consultations with the senior international and Australian practice communities in support of the development this program. Most importantly for the purposes of the discussion today, this includes development of a range of continuing professional development courses tailored both to practicing forensic and expert social anthropologists

and to allied members of the legal profession and members of government and NGO sectors where forensic and expert social anthropology is currently utilised and may be of use as a form of cultural expertise in the future.

Courses in development by the Royal Anthropological Institute include a range of introductory and advanced subjects on asylum claims, customary land rights, cultural heritage preservation, child custody disputes, and development of legal strategy, among others.

In our view, there is a high degree of synergy between the Royal Anthropological Institute initiative and the Euro-Expert program to formalise the broader field of cultural expertise. Where cultural expertise represents a program to more effectively illuminate and coordinate the roles of cultural experts in legal settings, for the purposes of a more ethical and effective functioning of courts and other legally-empowered bodies, the RAI initiative complements this program by focussing on the professional standardisation of forensic and expert social anthropology as a specific form of cultural expertise.

Thank you.



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