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# Real-time Repatriation: Data Governance for Social Anthropology in the 21st Century

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# Real-time Repatriation: Data Governance for Social Anthropology in the 21st Century

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## Introduction



The image shows a hand holding a mobile phone over a map, with a rolled-up document nearby. The background is a dark blue gradient.

  
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# Real-time Repatriation

Data Governance for Social Anthropology  
in the 21st Century

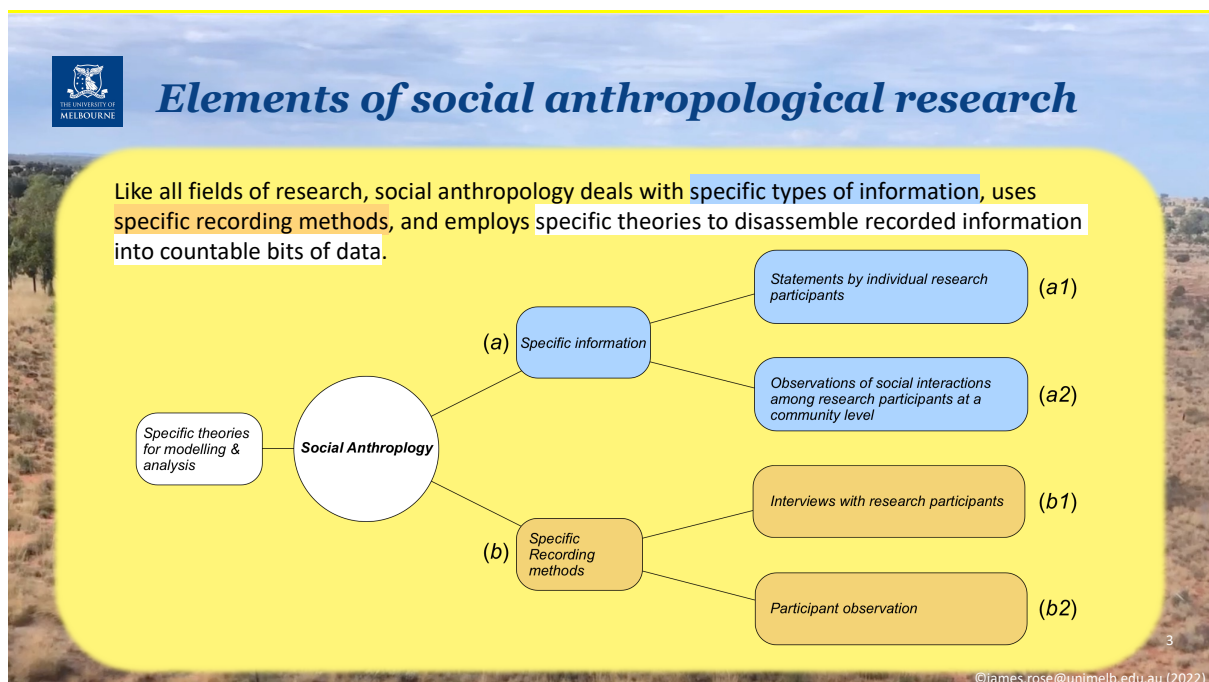
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Social Anthropologists are currently grappling with complex simultaneous changes in research ethics and data governance regimes across diverse jurisdictions. Internationally, repatriation of unethically acquired ethnographic collections is becoming common-place, resulting in the return of both tangible and intangible cultural property to its rightful owners. In Europe, the open data movement and the recent implementation of the General Data Protection Regulation appears to challenge social anthropologists' commitment to protect the confidentiality of often-vulnerable research participants. Meanwhile, in Australia, New Zealand/Aotearoa, Canada and elsewhere, the popular refrain 'Indigenous data sovereignty' is compelling many social anthropologists to face discomfiting aspects of their field's involvement in colonial administrative regimes.

In this paper I present a model for how social anthropology might reconcile three interrelated factors contributing to this complex situation: 1) Repatriation of data collected

from research participants without clear or sufficiently comprehensive consent; 2) Risks and opportunities presented by legislated instances of the open data movement and; 3) Relevant and operable features of the Indigenous data sovereignty movement. Drawing on my 20-year career as a forensic and expert social anthropologist working with Indigenous community organisations on land rights and cultural heritage preservation cases in the Australian Federal Court and under Northern Territory statutory regimes, I illustrate how this model of social anthropological data governance can be put into effect. ‘Real-time repatriation’ describes the synthesis of leading ethical, legal and technological standards in proactively upholding and safeguarding the interests and decision-making autonomy of participants in social anthropological research.


## Intangible Property and its Transfer in the Course of Social Anthropological Research



Social anthropology, like all fields of research, deals with a specific type of information, distinct to its object of study. Like all fields of research, social anthropology uses a combination of recording methods that are unique to its field. And like all fields of research, social anthropology uses specific theories to disassemble that information into countable bits of data, which anthropologists then model and analyse in order to be able to make characterisations, such as ‘Social culture X exhibits features Y and Z’,

Part of what distinguishes Social anthropology from other fields of research is (a) the type of information with which it deals, and; (b) the recording methods that it uses to collect that information. With respect to (a) the type of information, social anthropology deals with (a1) statements by individual research participants, and; (a2) observations of social interactions among research participants at a community level. With respect to (b) the recording methods that we use to collect information, this includes (b1) interviews with research participants, and ; (b2) participant observation derived from what journalists sometimes call ‘embedding’, in which anthropologists passively accompany research participants as they go about the social activities that anthropologists are researching.

There are two elements in this model of social anthropological practice that are relevant to the discussion that we are having at this conference today: The first is the information itself, and the second is the recording process.



## *Intangible cultural property and its transfer*

Unlike related fields of research, such as physical anthropology, archaeology, and museology, *social anthropology does not deal in tangible cultural objects, but rather intangible cultural objects*, also known as forms of 'cultural expression', including "customs, beliefs, traditions, skills, languages, artistic expressions, and folklore" (Chainoglou, 2017, p. 110).

As a consequence, social anthropology involves *the transfer of intangible property from one party to another*, including the customs and beliefs that research participants articulate in interviews, and the photographs, videos, audio recordings and written records of research participants' social activity.

The property transfer that occurs, *whether consented by research participants or not*, is from *culture bearer → researcher*.

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Unlike physical anthropology, archaeology, and museology, social anthropology does not deal in tangible cultural objects, but rather *intangible* cultural objects, also known as forms of 'cultural expression', including "customs, beliefs, traditions, skills, languages, artistic expressions, and folklore" (Chainoglou, 2017, p. 110).

As a consequence, the conduct of social anthropological research does not involve the transfer of tangible property from one party to another. Whereas physical anthropology, archaeology, and museology require human remains and artefacts to be taken to a laboratory in order for information to be recorded, social anthropology involves speaking with people and recording what they say, and observing people and recording what they do, specifically how they interact with one another at a community level.

As a consequence, social anthropology involves the transfer of *intangible* property from one party to another, including records of the customs and beliefs that research participants articulate in interviews, and the photographs, videos, audio recordings and written records of research participants' social activity. As with physical anthropology, archaeology, and museology, the property transfer that occurs, whether consented to by research participants or not, is from culture bearer to researcher.

There are two further elements that I would like to add to the list we are keeping in mind as we progress through the rest of this paper. These are: 1) intangible cultural heritage as a form of property, and; 2) its transfer during the research process.



### *Intangible property ownership and social anthropology*

Both tangible and intangible forms of property are subject to ownership.

- A property owner is commonly understood as that party that holds *some bundle of enforceable rights to determine the actions of others in relation to that property.*
- The most common understanding of property ownership is that of *alienation*, which is *the right to exclude other people from interacting with the property.*
- *Information, as intangible property, requires transmission from one person to another in order for that information to survive.* The critical factor in transmission is the recording of the information by either conversation or demonstration.
- *Social anthropology, as a field of research, is completely dependent upon the transfer of intangible property in order for that research to be undertaken.*

**What framework does social anthropology use to regulate this property transfer, to ensure that ownership rights are formally, transparently, and ethically defined and understood by both researchers and research participants?**

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As with all forms of property, both tangible and intangible, there is always an owner. A property owner is commonly understood as that party, whether an individual or some kind of collective, who holds some bundle of enforceable rights to determine the actions of others in relation to that property. The most common, everyday understanding of property ownership is represented by the right of alienation, which is the right to exclude other people from interacting with the property in any way. In the case of real estate for example, this means the right to exclude other people from accessing it. In the case of money, by further example, this means the right to exclude other people from spending it.

Tangible property ownership such as this, is relatively intuitively understandable, because it is physical, and physical reality is the most intuitive version of reality. Intangible property ownership on the other hand, is less intuitive. When we imagine ownership of customs, beliefs, traditions, skills, languages, etc., it is sometimes a little challenging to imagine how one might alienate others from holding a certain belief, singing a certain song, weaving a certain kind of cloth, or speaking a certain language.

This challenge is easily overcome however, when we consider that information of any kind requires transmission from one person to another in order for the information to survive, and that the critical factor in transmission is the recording of the information in some form of text, whether a conversation or a demonstration. And this is where social anthropology comes in, for this is exactly what social anthropology does: It is a field of research the primary activity of which, is the recording of information about customs, beliefs, traditions, skills, languages, artistic expressions, and folklore.

So, social anthropology as a field of research is completely dependent upon the transfer of intangible cultural property in order for that research to be undertaken. This raises immediately the question: What framework does social anthropology use to regulate this

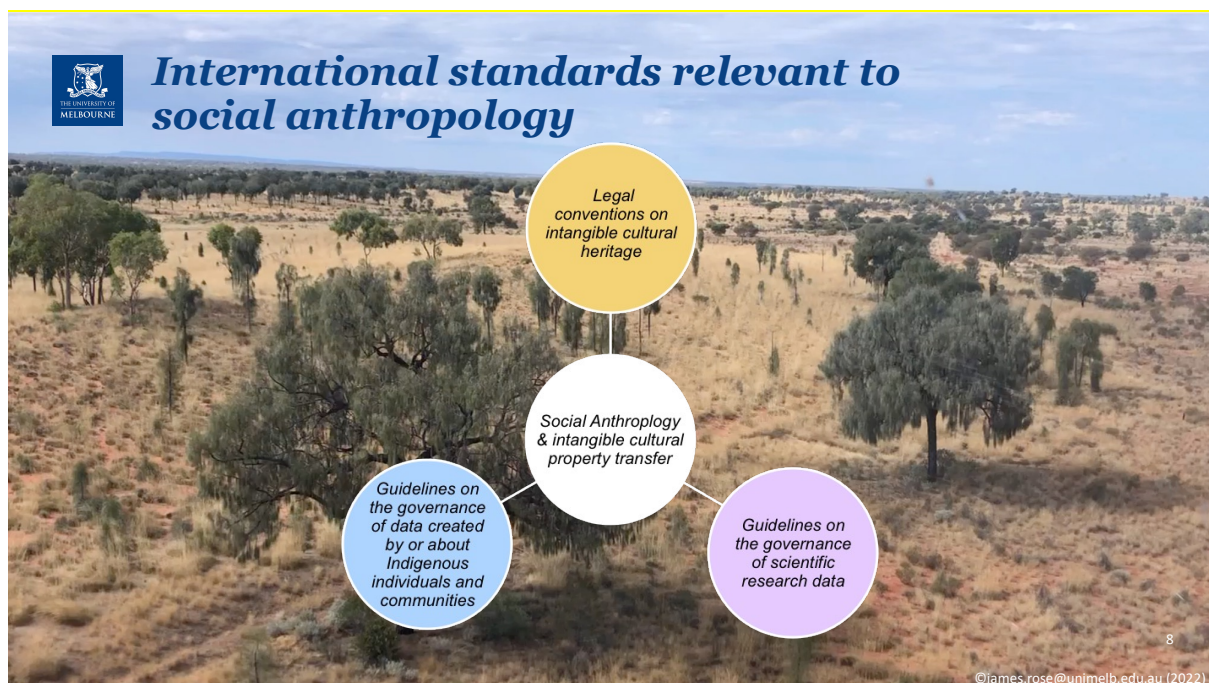
property transfer, to ensure that ownership rights are formally, transparently, and ethically defined, and understood by both researchers and research participants?

The short answer is: None. There is no such framework.

Despite the existence of multiple ethical and professional research standards created and maintained by governments, universities, and NGOs where social anthropologist work, and by the professional associations of which many social anthropologists are members (Crowder et al., 2020; Pels et al., 2018), there is no unifying international framework for regulating the transfer of intangible property, which is critical to the entire practice of social anthropological research.

So, what comes close?

### Intangible Cultural Heritage, Scientific Data, and Indigenous Data



There currently exist three sets of non-binding international standards that relate to the transfer of intangible property, which are relevant to social anthropology: 1) international legal conventions regarding intangible cultural heritage; 2) international guidelines on the governance of scientific research data, and; 3) international guidelines on the governance of data created by or about Indigenous individuals and communities.

Each of these three sets of standards are designed to serve different functions, and none are specifically directed at social anthropology as a distinctive field of research. Nevertheless, each set of standards contributes one or more elements, which are both relevant to the transfer of intangible property on which social anthropology depends, and each set of standards is generally consistent with the other in terms of their organising logic.

Let us summarise them:

## 1. International Legal Conventions Regarding Intangible Cultural Heritage

**1. International legal conventions regarding intangible cultural heritage**

Following the wide-spread looting and destruction of tangible cultural heritage in Europe during World War 2, the United Nations developed a series of international conventions in an attempt to prevent further such incidents.

The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage is currently the leading international instrument for protecting intangible cultural heritage, defined as:

- Oral traditions and expressions, including language as a vehicle of intangible cultural heritage;
- Performing arts;
- Social practices, rituals and festive events;
- Knowledge and practices concerning nature and the universe;
- Traditional craftsmanship.

‘Safeguarding’ is defined as any “measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage” (UNESCO, 2003).

Diagram illustrating the relationship between Bearer, Expert, and Practitioner through Transmission.

Logos for UNESCO (United Nations Educational, Scientific and Cultural Organization) and Intangible Cultural Heritage.

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Following the wide-spread looting and destruction of tangible cultural heritage in Europe during World War 2, the United Nations developed a series of international conventions in an attempt to prevent further such incidents. Beginning with the 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, this series of conventions gradually shifted in focus from conflict to peacetime, and from Eurocentric definitions of tangible cultural property, to include broader and more diverse definitions of both tangible and intangible cultural heritage.

Among the most contemporary instantiations of this series is the 2003 UNESCO *Convention for the Safeguarding of the Intangible Cultural Heritage*, currently the leading international legal instrument for establishing the terms on which signatories may base national-level statutes. The 2003 UNESCO Convention defines intangible cultural heritage as including:

- Oral traditions and expressions, including language as a vehicle of intangible cultural heritage;
- Performing arts;
- Social practices, rituals and festive events;
- Knowledge and practices concerning nature and the universe, and;
- Traditional craftsmanship.

‘Safeguarding’ is defined by the Convention as any “measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage” (UNESCO, 2003).

Most importantly, the 2003 UNESCO Convention defines three roles involved in this safeguarding framework, including ‘culture bearers’, ‘cultural practitioners’, and ‘cultural experts’, all of whom contribute to the transmission of intangible cultural heritage between successive generations of culture bearers.

Although not specifically directed at social anthropologists, the 2003 UNESCO Convention framework is nevertheless highly relevant in defining both (a) the substance of the information that social anthropology depends upon as a field of research, and; (b) a generalised mechanism for the transfer of such information between culture bearers, practitioners and experts, namely its ‘transmission’.

What the UNESCO Convention does not provide, despite explicitly including the term ‘research’ in the body of its text, is a mechanism for regulating the involvement of researchers in such transmission, where their role may be linked to that of culture bearers themselves. In other words, the UNESCO Convention does not provide social anthropology with the terms and definitions that might be used to formalise repatriation of the intangible cultural property on which the field depends.

## 2. Open Data and International Guidelines on the Governance of Scientific Research Data

**2. Open data and international guidelines on the governance of scientific research data**

**Open data is:**

1. Freely accessible (at little or no cost)
2. Freely sharable (following access)
3. Complete (not partial)
4. Timely (readily accessible)
5. Interoperable (easily accessible)
6. Primary (not previously processed)
7. Modifiable (able to be processed)
8. Fully open (open not only to specific groups)

The FAIR Guiding Principles on Scientific Data, stand for **(F)indable, (A)ccessible, (I)nteroperable and (R)eproducible, but also “As open as possible and as closed as necessary”** (Landi et al, 2020).

The EU **General Data Protection Regulation** aims to provide data owners the right to:

1. Access
2. Be informed
3. Object
4. Withdraw consent
5. Rectification
6. Erasure
7. Data portability
8. Restrict processing.

The diagram shows a triangle with 'Owner' at the top, 'Steward' at the bottom left, and 'Custodian' at the bottom right. Arrows indicate interactions: 'Processing' from Owner to Steward, 'Storage and access' from Owner to Custodian, and 'Storage and access' from Steward to Custodian, with 'Processing' also indicated between Steward and Custodian.

Logos for FAIR and GDPR (General Data Protection Regulation) are included.

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The most widely accepted definition of open data, which aligns with the international Open Data Charter (International Open Data Charter, 2015) and the UK-based Open Knowledge Foundation, incorporates eight key principles, that data must be:

- Freely accessible (at little or no cost)
- Freely sharable (following access)
- Complete (not partial)
- Timely (readily accessible)
- Interoperable (easily accessible)
- Primary (not previously processed)
- Modifiable (able to be processed)
- Fully open (open not only to specific groups)

Since 2016, key principles of open data have been embodied in the FAIR Guiding Principles on Scientific Data, where FAIR stands for the objective of making scientific research data findable, accessible, interoperable and reproducible (Wilkinson, 2016). Following their publication, the FAIR Guiding Principles have been rapidly endorsed by a number of international governmental entities, including the European Council and European Commission, the G7, G20, the International Science Council's Committee on Data (CODATA), and the Research Data Alliance among others (Mons et al., 2017; Stall et al., 2019).

In 2018, key elements of the open data principles and the FAIR Guiding Principles were implemented in the European Union's General Data Protection Regulation (GDPR), which sets out the rights of EU citizens to data that they generate (Regulation (EU) 2016/679). The terms of the GDPR orient it specifically towards the recognition of data as a form of property via its regulation in the EU's single digital market (Palmirani & Governatori, 2018). The GDPR enshrines eight personal rights in relation to the controlling and processing of personal data by entities operating in the European Union, including the right to:

- Access;
- Be informed;
- Object;
- Withdraw consent;
- Rectification;
- Erasure;
- Data portability, and;
- Restrict processing.

The determination of these rights is contingent upon definitions of the roles of individuals and other entities participating in the EU's digital economy, especially with regard to ownership on the part of EU citizens and other entities responsible for the creation of data, along with the roles of data custodians and stewards who are authorised on behalf of those owners, to store and process their data. This includes the use of such data for research purposes (Regulation 2016/679).

Like the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, the FAIR Guiding Principles and the GDPR are underpinned by the definition of a form of intangible property, in this case data, together with the definition of a mechanism for that data's transmission among certain parties.

Unlike the UNESCO Convention however, the FAIR Guiding Principles and the GDPR provide a clear set of terms and definitions for *how* data should be repatriated to its owners, in the event that it has been transferred from them without their consent, knowingly or unknowingly, features which are captured by the open data movement's maxim 'as open as possible and as closed as necessary' (Landi et al., 2020).

The FAIR Guiding Principles are particularly relevant to social anthropology in this respect because they clearly define formal, transparent and ethical use of data for research purposes, based on the clear distinction between data owners, data custodians and data stewards, also known as an 'OCS model' of data governance, which I have discussed elsewhere (Rose, 2021).

### 3. International Guidelines on the Governance of Data Generated by or about Indigenous Individuals and Communities

**3. International guidelines on the governance of data generated by or about Indigenous individuals and communities**

*Social anthropology's historic deployment as an administrative tool of colonial governments means Indigenous peoples are over-represented* among social anthropological research participants. This has resulted in significant social anthropological collections of information and data, created both by and about Indigenous peoples.

*The Indigenous data sovereignty movement has developed with an objective of recovering such information and data*, and ensuring appropriate governance of that property in the present.

The CARE Principles relate not only to historical administrative data, but to any and all data generated by or about Indigenous peoples. The CARE Principles set out terms and definitions for the appropriate governance of such data by data custodians and stewards in a manner that reflects the ownership of that data by Indigenous peoples, based on the mnemonic *'collective benefit', 'authority to control', 'responsibility' and 'ethics'* (Hudson et al., 2020).

**FAIR**  
Findable Accessible Interoperable Reusable

and

**CARE**  
Collective Benefit Authority to Control Responsibility Ethics

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Due to social anthropology's historic deployment as an administrative tool of colonial governments, Indigenous peoples are over-represented among social anthropological research participants. This has resulted in significant social anthropological collections of information and data, created both by and about Indigenous peoples.

Social anthropological information and data is but one subset of such intangible property, which has arisen as a consequence of colonial administration over the past several centuries, particularly in settler-colonial jurisdictions such as New Zealand/Aotearoa, Australia, the USA and Canada. In response to this large-scale transfer of intangible property from Indigenous research participants without appropriate consent, both historically and in the present day, the Indigenous data sovereignty movement has developed with an objective of information and data recovery, and enhanced governance of that property in the present (Rainie et al., 2019).

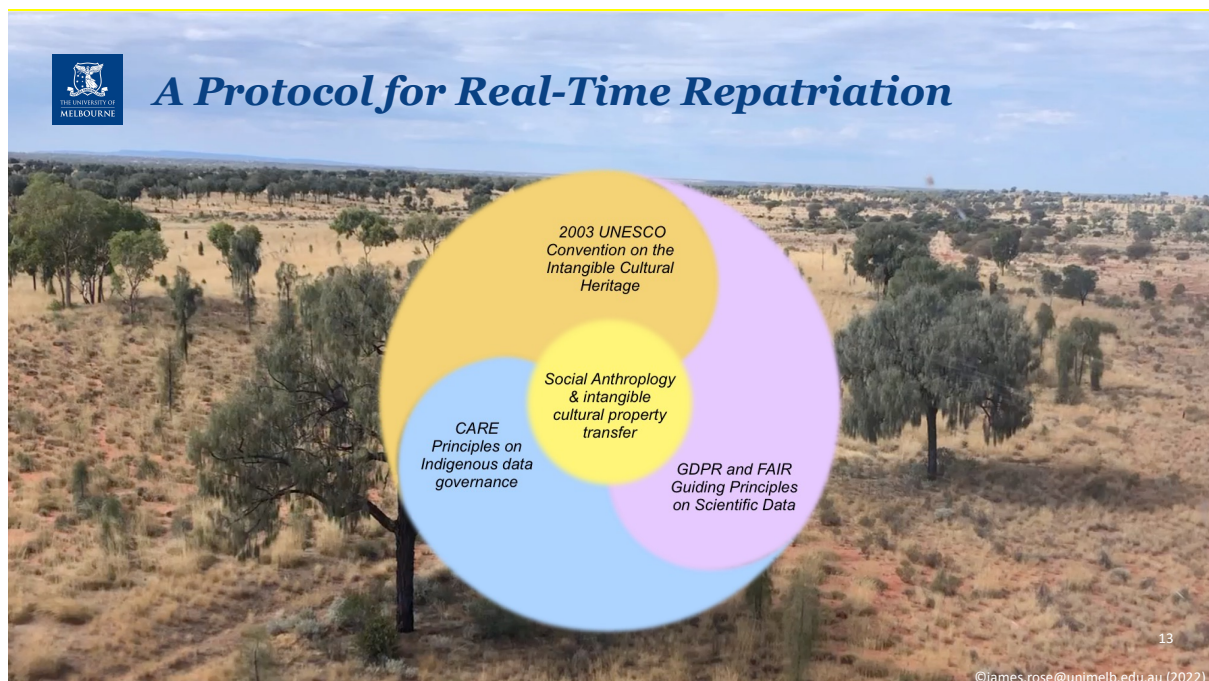
Emerging from this movement, and responding in particular to the FAIR Guiding Principles of Scientific Data, an international consortium of Indigenous academics based in settler-colonial jurisdictions, has developed the CARE Principles of Indigenous Data Governance (Carroll et al., 2020).

The CARE Principles relate not only to historical administrative data, but to any and all data generated by or about Indigenous peoples. The CARE Principles set out terms and definitions for the appropriate governance of such data by data custodians and stewards in a manner that reflects the ownership of that data by Indigenous peoples, based on the mnemonic 'collective benefit', 'authority to control', 'responsibility' and 'ethics' (Hudson et al., 2020).

Because of their orientation towards the FAIR Guiding Principles, which clearly define the terms and definitions for the ownership, custodianships and stewardship of scientific research data, the CARE Principles provide a useful reference point for a prospective standard to which social anthropology might aspire as a field of scientific research.

Although social anthropological research extends to all social cultures, and not only to Indigenous cultures, the CARE Principles of Indigenous Data Governance underscore the importance of research participant ownership of research information and data created by or about them. The CARE Principles also reinforce the FAIR Guiding Principles' inclusion of a mechanism that permits the repatriation of information and data back to research participants where possible and requested, especially where there is a cultural basis for such a repatriation.

### Real-time Repatriation: A Prospective Protocol for Social Anthropology



Together, the three sets of standards described above provide parameters for the formal, transparent and ethical governance of social anthropological research data.

The 2003 UNESCO Convention identifies *intangible cultural heritage* as a form of property, the viability of which depends on its ongoing transmission between successive generations of owners. The UNESCO Convention sets out both a specific mechanism for transmission of this property, and the roles of culture bearers, practitioners and experts in this transmission.

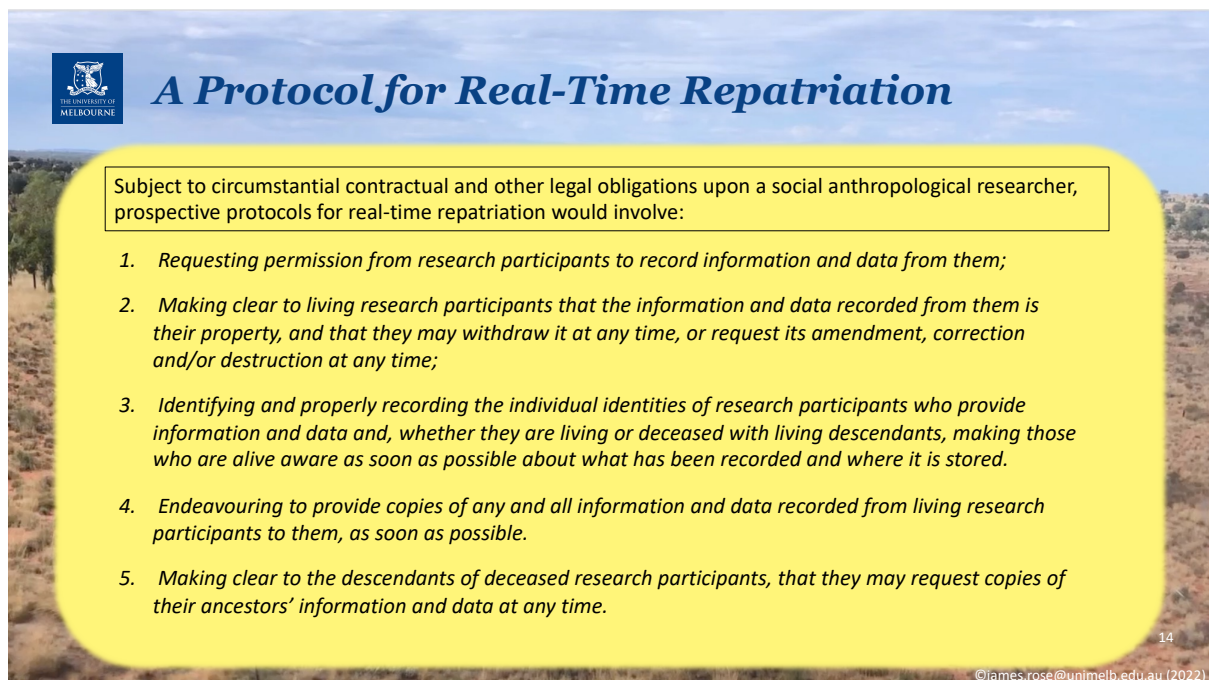
The GDPR, underpinned by open data principles, identifies *data* as a specific form of intangible property. The FAIR Guiding Principles, also underpinned by open data principles, specifically identify *scientific research data* as a subtype of intangible property critical to the effective functioning of scientific research.


Finally, the CARE Principles, as a response to the FAIR Guiding Principles, identify data generated by and about Indigenous peoples as bearing a specific historical risk profile with respect to scientific research. The CARE Principles establish terms that may be adapted to broader consideration of the risk profiles of other cultural communities with which social anthropologists work.

Over the course of my 20 years as a forensic and expert social anthropologist, I have interviewed at least two thousand people from multiple cultural backgrounds, have engaged in many hundreds of cases of participant observation in a wide range of circumstances, and have collected tens of thousands of pages of fieldnotes and genealogical records, and tens of thousands of GPS coordinates, photographs, audio recordings and video, adding up to many terabytes of data.

I have worked for government agencies, legal firms, courts, NGOs, universities and private businesses. Each of which maintains their own distinct, anachronistic, and often contradictory, information and data governance guidelines, principles and protocols. Many of these organisations maintain no such frameworks at all.

How would the three sets of elements described here assist in guiding and maximising the priorities of formal, transparent and ethical scientific research involving a wide range of societies and cultures, with highly variable risk profiles, as all social anthropologists do?



 ***A Protocol for Real-Time Repatriation***

Subject to circumstantial contractual and other legal obligations upon a social anthropological researcher, prospective protocols for real-time repatriation would involve:

1. *Requesting permission from research participants to record information and data from them;*
2. *Making clear to living research participants that the information and data recorded from them is their property, and that they may withdraw it at any time, or request its amendment, correction and/or destruction at any time;*
3. *Identifying and properly recording the individual identities of research participants who provide information and data and, whether they are living or deceased with living descendants, making those who are alive aware as soon as possible about what has been recorded and where it is stored.*
4. *Endeavouring to provide copies of any and all information and data recorded from living research participants to them, as soon as possible.*
5. *Making clear to the descendants of deceased research participants, that they may request copies of their ancestors' information and data at any time.*

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It is suggested here that a prospective protocol would involve:

1. Requesting permission from research participants to record information and data from them;
2. Making clear to living research participants that the information and data recorded from them is their property, and that they may withdraw it at any time, or request its amendment, correction and/or destruction at any time;
3. Identifying and properly recording the individual identities of research participants who provide information and data and, whether they are living or deceased with living descendants, making those who are alive aware as soon as possible about what has been recorded and where it is stored.
4. Endeavouring to provide copies of any and all information and data recorded from living research participants to them, as soon as possible.
5. Making clear to the descendants of deceased research participants, that they may request copies of their ancestors' information and data at any time.



In a real-world social anthropological research setting, this proposed protocol is intuitive to understand and to recall, and easy to implement. It means asking research participants for permission to record before recording starts. It means asking research participants if there is anything that they would rather not be recorded, before recording starts. Once recording has started, it means making clear to research participants what is being recorded, and offering to show those recordings to them if requested. It means offering to stop recording whenever requested. It means offering to correct any records that have been made. Most importantly, it means offering to provide copies of what has been recorded, and where possible, to destroy any remaining copies in the anthropologists' possession if that is what research participants want. It also repatriating information and data from deceased research participants to their descendants as soon as possible after a request has been made.

All of these research functions orient social anthropologists towards the role of intangible cultural property experts, where the duty of that role is to the property owners – known as the ‘culture bearers’ in the 2003 UNESCO Convention - to ensure in the first instance that the expert role of social anthropologists, and any ensuing role, is authorised by those owners. Most importantly, these research functions provide a coherent, transparent and ethical framework that social anthropologists can deploy in the field, immediately, at short notice, and with confidence that they are working to leading international legal, scientific and ethical research standards.

Thank you.

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