



The integrative value of conflict and dispute: Implications for defining community in the native title context

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Abstract

Claimants and industry professionals frequently view conflict that arises in the course of a native title claim as a detriment to timely claims resolution. I argue instead that disputation itself may constitute an integrative social process through which participants define, delimit and reproduce community. I show also how ethnographic analysis of disputation can provide useful insights into broader social and cultural practices and normative value systems. Drawing on theoretical and methodological concerns with human agency and the integrative and constitutive role of conflict that challenges consensus models of community, I develop a practice-centred approach that is attentive to the ways that participants in a dispute articulate and contest the definition of community. The possibility of viewing 'culture' and group cohesion as contingent and emergent through disputation should assist anthropologists working in the native title field to incorporate conflict as a productive aspect of social and cultural practice.

KEYWORDS

community, conflict, disputation, native title, social process

1 | INTRODUCTION

Conflict within and between Aboriginal communities is a frequent counterpart to the native title claim process in Australia as in other jurisdictions (Brockwell *et al.*, 2005; Beyers and Fay, 2015).¹ Whether



or not the native title claim process itself is a causal factor, it nonetheless provides an arena (and resources) for disputation within and between Indigenous communities. How participants and other stakeholders view such conflict in the native title claims arena can profoundly shape outcomes. If conceived or preconceived as 'divisive' or potentially divisive, conflict episodes can lead to withdrawal of support for a claim or pressure for conflict to be 'resolved' or 'papered over'. Native title claims are highly charged politically in relation to both the wider national polity and more localised domains of inter- and intra-community relations. They also entail time-consuming and costly processes. These factors can spur stakeholders (e.g. claimants, claim lawyers, state officials) to regard any conflict that arises as detrimental to claim progress unless quickly resolved, leading often to strong pressure to suppress intra-community tensions. Such pathologisation and trivialisation of conflict not only fails to recognise disharmony as an ordinary aspect of social life but may, as lawyer Sarah Burnside (2012, p. 10) argues, undermine 'native title claimants' positions as decision makers and holders of proprietary rights'. I propose rather that we can examine intra-community conflicts in many instances as normative sociocultural practices, and thus as useful sources of cultural and social data. This enables consideration of conflict and disputing as integrative social process, challenging the assumption that resolution is necessarily a meaningful, viable or desirable end, without trivialising participants' experience of conflict as disruptive and hurtful.² Nevertheless, it is beyond the scope of this article to unpack the implications of actual violence that may form part of disputing and dispute processing (but see Burbank, 1994; McKnight, 2005). Furthermore, while recognising that the work of native title anthropology takes place in an inter-cultural field of action—what Aboriginal activist Noel Pearson dubbed the native title 'recognition space' (Mantziaris and Martin, 2000, p. 10)—my interest here is in elucidating conflict and dispute practices in relation to Indigenous parties' own local meaning systems.

Discussing generic examples of common types of dispute, I advance a theorised model of conflict and dispute processes as constitutive elements in the structuring of social and cultural fields as ordered spaces. I draw on deep traditions in the anthropological analysis of conflict as social process from the perspective of more recent social-theoretical attentiveness to how the practical and communicative actions of social agents contribute to the production, contestation and reproduction of the values, rules and processes that constitute them as members of a given community. This enables the consideration of conflict over land and political representation in claimant communities as integral *moments in* rather than *distractions from* the work of documenting contemporary forms and practices of landedness in Aboriginal communities.

I also have a pragmatic, applied aim, namely that a theoretically-grounded approach to the utilisation of conflict data will assist in facilitating communication between researchers, claimants, lawyers and other parties about the meaning and implications of conflict in native title settings, thereby demonstrating its value within the broader field of conflict management.

2 | BACKGROUND

2.1 | Anthropology in the native title context

Since the landmark 1992 Mabo decision, which first recognised an Aboriginal native title that had survived the onslaught of colonisation in Australia, the pursuit of native title claims and ensuing benefits by Aboriginal communities has profoundly altered the symbolic and physical landscape in Australia. It has also provided significant employment opportunities for anthropologists (among other professionals) engaged as consultant experts or research staff by Native Title Representative Bodies (NTRBs),³ Aboriginal community corporations, the government sector and stakeholders such as mining companies.

The principal focus of anthropological engagement in native title claims has been on establishing the facticity of a claim via 'legally-driven expert accounts of the present in terms of the traditions of the past' (Martin *et al.*, 2011, p. 3) to fit a narrowly-conceived 'recognition space' that is predisposed to a fairly static and essentialised conception of Aboriginal 'laws and customs'. This posits the anthropologist primarily as an expert in esoteric knowledge about particular Aboriginal communities, rather than as an expert in cultural and social analysis that might have a broader application, such as: providing ethnographically-informed advice for designing sustainable representative corporations or for agreement making and dispute management (Martin *et al.*, 2011, pp. 6–9). Shifting the prevailing role and task definition toward a broader deployment of anthropological analysis remains a challenge given the asymmetrical power relations between law and anthropology in the native title field (Burke, 2011, p. 26).

2.2 | Conflict in the native title context

The native title claim process in Australia is presided over by the Australian Federal Court. While some claims are litigated, increasingly claims are settled in a less adversarial way via consent or through non-court-based agreement. The focal contest is between a given Aboriginal community and one or more Australian state or territory governments, although other stakeholders (such as pastoralists) may also present as contesting parties.

Inter- and intra-community disputation over the constitution of the claimant group and rights to the country under claim is often brought to the fore (and indeed intensified) during the course of the claim process, as the claim process brings to the foreground questions of identity and power that are by their nature fraught. In isolation, such instances of conflict and dispute may appear disruptive or destructive, whereas seen in the context of a longer sequence of events and in terms of their social and cultural context, they may appear far less so.

Anthropological scholarship on conflict in the native title context has identified several concerns and lines of inquiry. These include questioning ethnocentric assumptions that might render conflict and dispute as 'breakdown' of 'classical' systems (e.g. Smith and Finlayson, 1997) or as absence of system or solitary social group (e.g. Langton, 1991; Macdonald, 1991). Edmunds (1995) has described how the native title context has shifted the way Indigenous Australians objectify their relationship to land and has made public (and even engendered) tensions and conflict within and between communities. Merlan (1997) and other contributors to Smith and Finlayson's (1997) volume, *Fighting over Country*, have looked at conflict and dispute processes as integrative mechanisms, and as (potentially) useful for indicating the vitality of Aboriginal systems of law and custom (Smith and Finlayson, 1997). Burbank (1994), McKnight (2005), Macdonald (1991) and Langton (1991) have provided detailed ethnography of disputes and 'dispute processing' (Langton, 1991) in contemporary Aboriginal communities, including the experience and use of psychological and physical violence as part of dispute processes. Both Langton and Macdonald argue that, although external contexts impinge on the nature and timing of disputes, there are internal cultural logics to disputes and their playing out; these include ritual aspects (explicitly identified by Langton [1991]; implicit in Macdonald [1991]). Macdonald argues that the fights she observes have to do (in some cases) with challenges to localised forms of dominance by ascendant families (Macdonald, 1991). My reading of her examples suggests that the fights act as levelling mechanisms, reinforcing commitment to an egalitarian ideal.

A term that arises frequently within the Aboriginal affairs sector and among Aboriginal community members in condemnations of internecine conflict is the term 'lateral violence'. Those who use the term base it in their perception that within vertical power structures subalterns may transfer



their own experience of domination and powerlessness into violence against their peers (and subordinates).⁴ I have observed heated discussion declaimed as ‘lateral violence’ and described as ‘just us hurting each other’ or as aiding the ‘divide and conquer’ tactics of the late colonial state. The term ‘lateral violence’ does not, however, appear to be an explanatory concept so much as a label for a set of assumptions regarding the causes of conflict. Indeed, I have seen it used to shut out dissenting voices in favour of what appeared to be pre-determined preferred outcome.

The impact of inter-/intra-indigenous disputes in the native title, cultural heritage and land rights context in Australia has led to a proliferation of interest in the pragmatics of dispute resolution, or, as some prefer to put it, dispute management (Martin *et al.*, 2011). Much attention is given to the need for (external) mediation, which seems to carry with it four assumptions: (a) that indigenous people do not have mechanisms for effectively managing disputes (at least in ways acceptable and recognisable to the mainstream stakeholders with whom they engage); (b) that indigenous groups lack overarching political structures that would enable adjudication of conflict between like units; (c) that conflict and dispute that arise in the native title, cultural heritage and land rights contexts are in part caused or at least triggered by their external socio-political environments; and (d) that resolution is the desired or desirable endpoint.

My concern here, rather, is with conflict and disputes as sites at which social and cultural values are not merely articulated or reflected but also constituted and reconstituted. Smith and Finlayson's edited volume poses a number of questions central to understanding the role of conflict and dispute about land in Aboriginal communities. Two of these questions, in particular, can be explored further and addressed through engagement with broader anthropological theory in regard to conflict and dispute. Those questions, somewhat reframed, are as follows. What tools can anthropological theory about dispute and conflict provide towards elucidating rights and their contemporary social and cultural basis through the analysis of conflict and dispute processes? What are the links between contemporary and past forms of conflict and dispute processes in ways that may demonstrate continuity?

3 | GENERIC EXAMPLES

The conditions of my engagement in native title anthropological research preclude the divulging of detailed ethnographic material deriving from my native title research for reasons of confidentiality, privacy and legal privilege. Even without the benefit of ethnographic specificity, however, it is possible to develop a thick description of generic examples, and this enables broader insights to be drawn. I present here three common scenarios of conflict and dispute performance encountered in the native title arena: (a) challenges to the inclusion of particular persons within a claimant group, often framed as (sometimes mutual) accusations of outsidership; (b) disputes regarding what constitutes the appropriate display of respect; and (c) refusal to engage or withdrawal as decisive action. I draw from my own experience and discussions with other anthropologists working particularly in ‘settled’ Australia, that is, the coastal areas that were subject to rapid colonial disruption and displacement. Such conflict and dispute performances are common in many native title jurisdictions (e.g. Brockwell *et al.*, 2005; Beyers and Fay, 2015); and both my examples and my explication of them should resonate in similar contexts elsewhere.

3.1 | Generic example 1: Identity challenge

The scene: A claimant group meeting attended by 20 or 30 adult community members and several NTRB employees to discuss progress on a claim.⁵ One claimant (Speaker A) is speaking. Suddenly another claimant interrupts:

Speaker B: Speak for yourself. You don't represent my family. You're not even from here.

Speaker A: I reckon you'd be the one who's not from around here, so I don't know why you're even talking to me. I speak for myself and my family.

Speaker B: I know where I'm from, but I wouldn't know about you.

Speaker A: There's a lot you don't know.

There follows a hushed pause. The protagonist and antagonist (part of a broad set of 'cousins') glare at each other. Such episodes may end in various ways. For example, one disputant (and supporters) may leave and the meeting then either dissolves or carries on without them, or the meeting resumes only after diplomacy has brought the disputants back in. Alternatively, the disputants may quieten down but continue to face off while the meeting resumes.

3.2 | Generic example 2: Demands for appropriate respect

The scene: A meeting of a family group to discuss how the family can ensure appropriate representation at the broader claimant group level for decisions affecting their country. A dozen or so adult family members are present, representing several sub-branches of the family group. Several NTRB personnel are present.

A senior family member explains how as a whole their family group ensures that their 'stories', that is, their knowledge about family history and association with country, are passed on to their youth. A younger adult interjects that knowledge is not being passed down even-handedly. There is an intensifying exchange about various purported past slights, with participants accusing each other of disrespecting them and their family and thereby seeking disproportionate representation in the native title claim. Other senior persons present may attempt to intervene and 'normalise' the dispute by referencing common problems that all families go through. Depending on whether other senior persons present can assist with a rapprochement, the meeting may end without resolution.

3.3 | Generic example 3: Withdrawal as protest

The scene: A claimant group meeting. A spokesperson for one family loudly declaims the claim strategy and the representativeness of the interest group that is pursuing the claim. This protagonist contends that there is personal interest and nepotism at work, jeopardising the protection of the broader common interest. Protestation from others that all relevant families, including that of the protagonist, have been and will continue to be included on an equal footing with other families, seem in vain. The protagonist counters that the rest of the group should not think that they can make decisions about country without the protagonist's family, remarking that those who continue with the current claim strategy do so at their own risk, and that the support of the protagonist's family is henceforth withdrawn. The protagonist and several close family members make a slow, deliberate departure from the room.

Sometimes such disputes lead to the disaffected family disengaging altogether from the claim, or even lodging a counter claim or becoming a formal respondent to the claim in question. Other times, the disaffected family maintains some distance from the claim process without disengaging entirely.



4 | THICKENING THE DESCRIPTION

To the anthropologist, such conflict and dispute performances prompt questions about social context, intended audience(s), intentional messages and the framing of such disputes and their performance in ongoing community talk and action. What might lie behind such an exchange? At whom might it be directed, and to what purpose? What might its implications be for variously situated persons in the room, and what responses might follow? What are the social relationships that pertain between the protagonists? What is their kinship relationship? What gender, age or generational differentials and tensions might also be at play? How do the protagonist, antagonist, their supporters and bystanders talk about the 'event' and its background over the ensuing days or weeks? Does it, indeed, get framed as an 'event', that is, as something remarkable or meaningful, or does it generate no interest? Is it framed as a personal altercation or a family-level dispute? Does the event fit into a pattern of such interactions between the individuals or their families? Does the characterisation of such an altercation as a meaningful event merely reflect lines of tension in existing social relationships, or bring such lines of tension into being? Does the highlighting of conflict and dispute, particularly if other community members take sides, foreground deep-seated divisions that might indicate permanent rupture of that community? Or does such conflict and dispute draw attention to core, if contested, values and symbolic resources over and through which members of a community negotiate their communal identity? And if so, how?

In one such 'identity challenge' situation that I witnessed, the protagonist and antagonist, who were accusing each other of being outsiders, were fairly closely related cousins. While it was not evident what had precipitated this public altercation, it appeared on the surface, at least, to follow one of several existing lines of tension within a particular 'family of polity' (following Sutton, 2003, pp. 210–212). I had not witnessed such a public performance before in this community, at least not one involving accusations of outsidership among persons who, to my understanding, whichever way one looked at them, were clear insiders. My initial assessment (based in part on how others in the community framed the dispute in their talk about it) was that, since the disputants were quite closely related, the challenge was internal to the 'family of polity', indicative possibly of an emerging fission into two families of polity. However, the tensions within the family did not appear to divide the family group through a neat bifurcation at any one ancestral node. What did become apparent, over time, was that it was misleading to attempt to make sense of the dispute as an intra-family dispute. Rather, a more likely structural logic (in this case) emerged later when one of the parties to the dispute explained how other lines of descent differentiated them from each other and, more critically, how their early socialisation had been to distinct families of polity, despite sharing a recent common ancestor. This public confrontation seemed thus to mark an as-yet unresolved negotiation (and recognition) of difference being played out in terms of whether or not the protagonists were from the same family of polity (but performed through accusations of complete outsidership).⁶ This had implications for how the claimants sought to articulate an appropriate mechanism for family representation in their eventual native title corporation. As the anthropologist, I gained a window into performative practices of community and family identity negotiation that confounded my initial descent-focused assessment of the socio-political clustering into 'families of polity', and was thus able to provide more nuanced advice on family representation to the claim lawyers.

Making sense of such conflict and dispute events requires not only attention to the kinship and marriage relationships involved, but also to the broader context within which other interested individuals, families (and external stakeholders) engage with and frame them as 'events'. It is instructive to examine the performative aspects of such events (whether or not they are deliberately marked as performance by participants). Why this particular moment of staging, this particular audience? To whom

is the performance directed primarily? What message(s) are being relayed through the performance, and to whom? I argue that, in seeking to explicate a particular conflict or dispute episode, attention to its staging as performance is as critical as attention to the social relationships and tensions that are made visible, confirmed or transformed through it.

On the surface, such altercations as indicated in the examples of conflict I have presented—and the tensions that underlie them—can be read as indicating the pursuit of personal or sectional interest as opposed to the common (broader family or community) interest. Once interpreted as such, they tend to be explained away in terms of acephalous political organisation, the pursuit of personal autonomy and a concomitant resistance to submitting to any attempt at overarching political organisation. In some cases, personal or familial self-interest does emerge strongly as a motivator for such social action, and broadly the problems of negotiating power within acephalous communities are relevant to understanding such conflict situations. However, once we start to consider such altercations as social action, a more expansive field of explanatory possibilities emerges.

In 'identity challenges' and 'demands for appropriate respect', such as my first two examples, the temporal flow of events was critical to understanding what was going on. In particular, the contrast in the 'before' and 'after' relationship between the families concerned was often quite significant. In some similar cases, whereas earlier only one of the two families at any one time had been participating in claim business, the particular public manifestation of their conflicted relationship marked a transition towards a muted and guarded mutual acknowledgement. Langton (1991) suggests that when disputes come to a head there can be a catharsis of sorts, with a diminishing of tension, even if the underlying contradictions remain. Burbank (2014, p. 16) argues that a particular act of aggression may itself be a means to resolving conflict—depending on its moral valuation in a given community context—rather than otherwise instantiating or perpetuating a cycle of conflict. It might appear that rapprochement following such conflict episodes could be explained simply as an outcome of the participants marking and reinforcing their commonalities (e.g. common ancestry and thus certain rights and interests in common). However, identities and interests are not static. Rather, dealing with the disruptions of conflict and dispute usually entails some recalibration of social relationships and notions of commonality.

Attentiveness to the agentive action of the individuals concerned, the event context and the parties' social and kinship relationships goes a long way to enhancing methodological rigour and descriptive thickness. Yet more important, I argue, is attention to the cultural frames that structure communicative action. Elucidating the communicative action itself allows us to consider that such conflict episodes may do a number of other things besides releasing tension and reinforcing particular modes of social integration. For instance, in the above examples these might include: (a) construing a particular genealogical or kinship relationship as salient with regard to common or non-usurpable rights and interests; (b) articulating that two parties, despite close common ancestry, represent distinct sets of interests; (c) announcing a truce or working arrangement that overrides (albeit temporarily) an acknowledged conflict; (d) acting as a levelling mechanism that reinforces commitment to an ideology of egalitarianism; (e) notifying other members of the community and the NTRB that unless there is recognition of the distinct interests of the two families the claim will lack legitimacy.

In my third example, of family groups withdrawing from the native title process but keeping a close eye on it, I also see this action as a levelling mechanism. Myers (1986b) describes how the context of public events (such as meetings) strongly pressures participants to show solidarity, while tensions and conflicts that cannot easily be expressed publicly simmer behind the scenes. Withdrawal from a meeting process can thus signify a refusal to affirm solidarity or a refusal to be placed in a position of having either to affirm solidarity or to bring a conflict to a head. Withdrawal from the claim process tends to instigate redressive mechanisms, whether from within the community or from the NTRB



staff, as both claimants and NTRB lawyers are mindful of the value placed on intra-community unity in claim management.

On the surface, the ‘stand-off’ between families in such situations can appear to be due merely to personal grievances, or to one family or other wanting to dominate the claim process. While personal grievances are always available resources in such disputes (and can be precipitating factors), often such conflict is founded in deeper misgivings about the basis upon which the claimant group has been constituted or the scope of the claim. Withdrawal from the process appears to be a mechanism for defusing or avoiding overt conflict. Often, while the claim process continues, some of the key ‘outlier’ protagonists remain outside of the process, though there may be some participation in claim business by other members of their families, potentially providing a level of proxy representation. In such situations that I have witnessed, overt conflict between key senior protagonists was avoided, while the claimant group got on with the business of negotiating with the state.

5 | THEORETICAL FRAMINGS

5.1 | Toward a practice-centred ethnography of conflict and contestation as social process

The lawyers for a native title claim, along with the courts and the other parties to a native title claim, tend to seek an understanding of who the right people are for a given piece of country, whether on the basis of descent or other factors. They also assume that both country and the groups claiming ownership will be neat and discrete phenomena that can stand in one-to-one relationship to each other. However, the ethnographic record suggests that the relationship between persons and country is very much contingent upon practices of sociality.

Various analytical levels are helpful in considering the utility of conflict and dispute episodes in modelling the relationship between persons and country. A dynamic ‘functional’ approach can be useful in making the argument that one can view some conflict episodes as integrative rather than as evidencing dysfunction. A practice-centric approach can be helpful for teasing out the agentive strategies and meta-messages that shape the field of action and can be seen, at least in part, as constitutive of that field of action.

Explicating the social and cultural framing of observed social process is quintessentially what ethnographic practice is all about. Clifford Geertz (1973) drew attention to the core ethnographic techniques of ‘thick description’ for illuminating the ‘complex specificness [and] circumstantiality’ that render social action meaningful (Geertz, 1973, p. 23). Thickly described context is a vital counterpart to the abbreviated forms of fieldwork that applied work often entails, and as such hinges less on evocative writing style than on clear description of the framing devices and contextual keys that enable a reader to understand the words and actions of cultural ‘others’.⁷ Given that such context and framing is never obvious to the outsider, and generally only partially available to participants themselves as conscious (discursive) knowledge, this requires an investigative method attuned to uncovering tacitly-held (unconscious) knowledge. Participatory ethnographic methods are particularly valuable for moving beyond both the outside observer’s initial naïveté and social agents’ own explanation of their practice which ‘conceals, even from their own eyes, the true nature of their practical mastery’ (Bourdieu, 1977, p. 19). This enables insights into tacit and embodied forms of knowledge (e.g. Schieffelin, 1985; Adloff and Wacquant, 2015).

Much of the earlier literature on conflict and dispute within anthropology was concerned with ‘native’ mechanisms for dispute resolution and containment as a means to understanding the modes

of political organisation and control in non-state societies. This earlier literature, or some of it, also examined disputes as reflective of cultural value systems and patterns of social organisation, and was concerned with how a given social system was reproduced and its values upheld despite the prevalence of conflict. The customs by which it was thus maintained were presumed to be stable over time and to operate more or less automatically.

Challenging this view of culture and social organisation as 'automatic', Max Gluckman and others associated with the 'Manchester School' began to investigate social process through an event-based approach to the description and analysis of social and cultural practices—what they called the extended case-study method (Mitchell, 2006, pp. 39–40). A key focus was the analysis of conflict and associated redressive processes (Gluckman, 1965, 1973; Marwick, 1970; Turner, 1974; Ortner, 1984, pp. 130–131). They were concerned to provide a more historicised and dynamic understanding of how order and balance were maintained, thus opening a door to the investigation of how systems of social order come to be through human social action (see Ortner, 1984, p. 130–131; Asad, 1983; Bourdieu, 1977).

Building on these theoretical foundations enables one to investigate conflict and disputes, not as a distraction or simply a reflection of existing tensions and divisions, but as an important means whereby values are asserted, defined and reproduced. While underlying tensions and contradictions may not be removed through the outplay of the conflict and consequent 'dispute processing' (Langton, 1991, p. 202), dispute processing in any community plays an integral part in the ongoing affirmation and reaffirmation of sociality—albeit a sociality that, however grudgingly, encompasses division, tension and contradiction. Indeed, as Myers (1986a, pp. 122–129) has argued, Aboriginal forms of sociality entail a primary motivating tension between autonomy and relatedness (or autonomy and obligation) that impinges upon people's relationship to each other and to place. I argue thus that the field of contestation may often be a better indicator of the extent of community than any reckoning of shared knowledge and understandings.

While one might counter that this merely displaces the locus of what is shared to a shared *ideational space*, I argue that since this ideational space may itself be subject to disputation, it is more helpful to characterise the constitution of community in processual terms, that is, as constituted by participants in ideational discourse who claim a sense of proprietary right to engage in that discourse (as opposed to outsiders who have no particular stake in the dispute). Both the bounds of community and the sustained right to participate in it are, in this formulation, emergent *from* participatory engagement. Moreover, I argue that episodes of contestation can thus be seen not as isolated moments but as events that arise for particular reasons and have specific effects, and thus provide useful windows into the constitution of community and sociality.

5.2 | Performative aspects of conflict

In the context of native title claims, the field of action, even for ostensibly inter- or intra-indigenous disputes can be far broader than the parties to the dispute itself. The messages entailed in such disputes can be purposively directed at and/or indirectly received by parties external to the dispute in question. Indeed, the 'acting out' or 'performance'⁸ of conflict and dispute may at times be directed primarily to an external audience and not to the ostensible object of the dispute. A dispute may thus, to the extent that it is visible and 'legible' to external parties, influence relationships not immediately party to the dispute. The performance of conflict and dispute, moreover, usually entails mechanisms whereby the parties themselves, or interested outsiders, attempt conciliation. In short, both the participants and observers of a given dispute hold expectations about roles and behaviours. Indeed, as social



and symbolic action, conflict and dispute episodes generally follow routinised performative patterns or schemas (see Langton, 1991, p. 201; Gluckman, 1973, pp. 129–130; Turner, 1967, p. 27). That is, there are conventional ways by which disputants signal that they are entering a ‘dispute frame’, and this in turn shapes the perceptions and responses not only of the parties to the dispute, but also of interested bystanders and stakeholders.

Attention to the discursive frames through which conflict is waged (and talked about) can be helpful in understanding the social context of, and grounds for, conflict and the cultural values (e.g. ideologies of personhood) and goods (such as rights to land) that are the focus of conflict. In this regard, it is important to bear in mind that both words and actions convey meaning through what they make explicit and through what ‘goes without saying’. The latter is understood in context by insiders but is often held as ‘practical consciousness’ (Giddens, 1984, p. xxiii) or ‘habitus’ (Bourdieu, 1977, pp. 18–19) rather than something that is readily articulable discursively (see Pilbrow, 2001, p. 34; White, 1987). Members of a given socio-cultural community have recourse to tacitly held ‘cultural schemas’ (Strauss and Quinn, 1997; Quinn, 2005) and ‘language ideologies’ (Irvine and Gal, 2000, p. 35; Kroskrity *et al.*, 1992; Woolard and Schieffelin, 1994) that are emergent in, and structure, discourse and social action. One must also consider that not all insiders are equal participants in any given conflict episode or communicative event. Individuals vary in their knowledge and competence, possessing differential social, political and cultural capital (Bourdieu, 1991).

5.3 | Critique of the consensus model of community

I argue that a focus on the process of human social action—both that which engenders conflict and that whereby conflict is processed—draws the analytical focus away from the dispute itself to the construction of the social and cultural fields that structure participants’ experience. Participants engage social and cultural values and schemas in marking a particular situation or interaction as a dispute and in waging that dispute. This is not to suggest that the reasons for, and object of, disputes are immaterial. Rather, it is to recognise that most conflict within a community arises due to the breaching of social norms; and that in dealing with conflict people generally appeal to both social norms and generally observed rules of engagement. This does not mean that members of a community will necessarily agree on what are those social norms and rules of engagement. Focusing on the social action in a dispute (rather than its object) brings into focus how members of a community themselves negotiate the relationship between dispute and consensus (Irvine, 2010), and indeed how they define the make-up and limitations of that community.

While both the concept of ‘community’ as a self-identifying collectivity differentiated functionally from other kinds of collectivity, and relationally from other like communities, has a long history in anthropology, it has long been a contentious concept (e.g. Arensberg, 1961; Cohen, 1985). In particular, the inadequacy of consensus models of community to account for difference and conflict in social scientific theory has a long history (Creed, 2004, p. 57). Moreover, as Creed observes in relation to national-level politics in Bulgaria, a naïve or unexamined appeal to ‘community’ ‘easily leads to social fragmentation or violence as people strive for associations that are uniform and cohesive’ (Creed, 2004, p. 57). On the other hand, critiques of the inability of consensual models to account for conflict ‘often lead to the conclusion that there is no community, or a crisis of community, rather than a redefinition of the term incorporating conflict’ (Creed, 2004, p. 57). Toward addressing this challenge, Creed advocates a practice-centred approach attentive to the constitution of community through purposive human social action (Creed, 2004; see also Holcombe, 2004). The approach I take in this article is a response to this challenge.

Assuming that a universe of shared understandings is a necessary prerequisite for considering a particular constellation of people as a community—particularly when understandings are demonstratively *not shared*, but, rather, *deliberatively contested*—will likely lead one to fail either to describe community at all (regardless of ‘emic’ representations that there *is* a community) or to accord meaning to domains of action that consume considerable community time, energy and interest. A practice- and process-centric analysis that illuminates the social and cultural fields that render conflict and dispute meaningful, I argue, enables both a more integrated approach to the relationship between knowledge, rules and action—each of which is open to contestation—and a more holistic conceptualisation of community. It is precisely such social and cultural fields that anthropologists are trained to uncover or recover through analysis of the intersection of action and ideology (i.e. the intersection between what people do and their own ‘script’ for what they are doing). As Judith Irvine argues, ‘attention to the discourse of disputation can illuminate ... the relationships between [conflict and consensus]’ (Irvine, 2010, p. 214). Moreover, much can be gained from considering not only the discourse and practice of disputing, but also how people talk about disputes on the sidelines, and after the fact, a methodology advocated by Max Gluckman and others from the Manchester School (Gluckman, 1968, p. 31).

6 | CONCLUSIONS

Conflict in a native title claim context often poses a significant challenge to both community members and external stakeholders. While typical responses are either to downplay conflict (for the sake of claim-focused unity) or to place undue expectation on resolution or mediation of the conflict, I have argued for and demonstrated the value of ethnographically-grounded analysis of conflict episodes for gaining perspective on the conflict itself and also for gaining broader insights into a community's social and cultural practices. This may, in turn, enrich the anthropological findings regarding the management of social boundaries, decision making and other aspects of traditional landholding. Incisive description of the social world within which the dispute is occurring has value for clarifying whether the dispute falls within the bounds of normal sociality (in predictable ways) and for pointing to avenues and mechanisms for resolution or accommodation of the dispute.

Anthropological training is focused on developing ways of gathering, describing and analysing the relationship between social action and discursive awareness—that is, the relationship between what is explicitly knowable and what is implicit and embodied knowledge. However, certainly within the NTRB research setting, data collection is skewed towards a privileging of the explicitly stated within a semi-structured interview setting, both due to time and resource constraints and in response to the expectations of claim lawyers. Yet key observational data often comes from settings such as claimant meetings, where we may not have the same ability to ensure informed consent from those present with regard to utilising their words and our observations of their action in our analysis. Additionally, we face the difficulty of substantiating (to various stakeholders) the argument that such observational evidence is not merely anecdotal. I have presented here an approach to the analysis of conflict episodes that also provides a theorised grounding for distinguishing the socially and culturally meaningful from the merely anecdotal.

A person's participation in such altercations as I have described operates as a positioning device within a field of action that is at once discursive, transactional and embodied, in which words and actions are applied purposively to social ends even if their consequences may differ from those initially intended. Viewed this way, we are able to examine the rhetorical and other communicative aspects of such actions and their consequent and ongoing interpretations and uses. This is not, indeed, to privilege conflict and dispute—although Turner (1974, p. 34) argues that this would be justified analytically as



conflict episodes entail condensation of affect, ideology and action—but merely to suggest that like any other social action, conflict and dispute require considered and perceptive analysis. Nevertheless, with the pace and resourcing of native title claims precluding long-term immersion fieldwork, public conflicts that arise—and the private reflections they give rise to—can provide valuable data regarding cultural value systems, ‘structures’ of ‘sociality’ and the rights and interests in land and waters they impinge upon. Thus, there is at least a pragmatic value in being attentive to them.

This is not to suggest that conflict episodes are merely to be read textually as moves in a game. While conflict episodes often reveal (reflect) ‘structures’ and rules and fields of action, they themselves are instances of real social action with often long-term consequences for individuals and family groups. The vesting of interest in one side or other of a conflict renders participants unable or unwilling to see the ‘functional’ integration that an outside observer might see. From an analytic perspective, one can argue that it is the struggle over core values or specific rights through which sociality and common interest are constituted and reproduced. It may not always seem that way to participants. As Langton suggests, in some situations a conflict episode can release tensions without removing the divisions that underlie them (Langton, 1991).

There are two ways in which envisaging conflict as having a constitutive role in social and cultural life is likely to be of value in native title anthropology. Firstly, through providing an alternative to viewing conflict as distraction or disruption, but rather as an important and vital aspect of social practices and cultural meanings linked to land and landedness in contemporary Indigenous communities (Myers, 1986b; Merlan, 1998), and as a means for conveying messages in multi-stakeholder contexts when direct communication may need to be avoided. Secondly, framing conflict in this way enables one to explore conflict and conflict management as dynamic systems, which may evidence systemic continuities even as elements within the system are undergoing change (Peterson, 2010). This has implications for how we theorise other aspects of social and cultural systems, particularly through foregrounding a historicised approach to cultural production and cultural change (Weiner, 2007).

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ENDNOTES

- ¹ My discussion draws from my own experience with Australian native title matters and from discussion with anthropologists working in other jurisdictions.
- ² The question of how external stakeholders might seek to exploit divisions (or seeming divisions) in Indigenous communities for their own ends is beyond the scope of this paper.

- ³ NTRBs, established under the *Native Title Act*, provide legal, research and logistical support to claimant groups within defined jurisdictions. For the purposes of my discussion, I include Native Title Service Providers (NTSPs) under the banner of NTRBs.
- ⁴ While I was unable to locate discussion of this term in the scholarly literature of anthropology, sociology or social psychology, internet-based research led me to a series of circular references to its use to describe bullying behaviour, with the term emerging initially within the field of nursing.
- ⁵ This and subsequent examples, while loosely based on observation, are fictionalised.
- ⁶ Accounting for the effect of marriage and affinal relationships demands a more nuanced analysis of contemporary Aboriginal kinship practices. This is beyond the scope of this article.
- ⁷ Geertz's evocative, textural style of writing is—to my mind—merely one (albeit compelling) response to the challenge of thick description.
- ⁸ Pam McGrath reminded me that there may be an imperative to perform conflict in particular ways.

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