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Native Title

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CONTEXTUALIZING BELIEF IN CONSPIRACY THEORIES: A CASE STUDY IN NATIVE TITLE

PASCALE TAPLIN*

Abstract

This paper reflects on conspiracy thinking, and the relationship of native title practitioners with belief (and believers) in conspiracy theories. Anecdotal evidence from native title practitioners suggests that conspiracy thinking disrupts the progress of native title claims by introducing conflicting narratives to native title consultation, research, and decision making. In this short article I explore what may drive claimants to bring conspiratorial beliefs to native title discussions, and the responses of practitioners and agencies of the State to such beliefs. But I might start with a story about a friend of mine.

Aboriginal and Torres Strait Islander readers are advised that the following article contains images and names of people who have passed away.

I SOVEREIGN

My friend is a dignified old fellow in his 80s, with carefully considered and warm old-fashioned manners. He grew up on a mission in North Australia, where he suffered abuse as a child. He speaks of the mission as a local arm of a far-reaching “Government” or “State”¹ and the forced removal of First Nations people as calculated to enable the theft of their countries. After the National Apology,² he formed a view that the government had found compassion for First Nations people and wrote a letter to the Queensland

* Pascale Taplin is a native title anthropologist, with experience in the Northern Territory and Far North Queensland. ‘I am indebted to Professor Komla Tsey contributed significantly to the shape of this paper. I am also extremely grateful for the thoughtful and engaged feedback provided by Ann-Marie Volpe and Warren Chase on their reviews of early drafts’.

¹ I follow Vincent (2017 p.7) in adopting the subjects’ view of ‘the state’ / ‘government’ in analysis; “I have perhaps succumbed to the temptation to treat ‘the state’ as if it were a thing-like thing, to which it is possible to attribute solidarity and uni-directionality ... Aunty Sue mob have experienced ‘the state’ in these more monolithic terms and frequently refer to it in this way.” My friend the subject of this story, considers ‘government’ in much the same terms

² In 2008 then Prime Minister Kevin Rudd Apologized to Australian First Nations People for the policies under which children were forcibly removed from their families.

Premier describing the state sanctioned abuse he had survived. The Premier did not reply, or acknowledge receipt of, his letter.³

Now my friend holds to a different set of beliefs. He says he is not an Australian citizen - which explains the lack of response from the Premier. My friend believes he is a "Sovereign Citizen" or a "SovCit", under no obligation to observe Australian Law. He believes all government funded employees – including me – work for an illegitimate corporation which has run out the real Australian Government and is now intentionally conning him and all Australians for profit. In his view, he has discovered "the Truth".

My friend subscribes to a local variant of the Sovereign Citizen (SovCit) movement, described by the Anti-Defamation League (2012) as among "...the most problematic domestic extremist movements in the United States", and which counts among its founders white supremacists and violent extremists. SovCits thinking originated in the US, but is now transnational, having provided some impetus for the "Freedom Rally" or "Canberra convoy" to Old Parliament House in February (Roose, 2022). Any relationship to the longstanding Indigenous sovereignty movement in Australia is very recent, and in my view is not benign; Jack Latimore (2022) in the Age says that alt-right SovCit actors co-opt Indigenous agendas, and have attempted a calculated "hostile takeover" at the Tent Embassy. Latimore calls the deliberate use of emotive political phrasing to capture Indigenous audiences "Blackfishing".

Belief in conspiracy theories (BCT) is a societal governance issue of global proportions. BCT also impacts on my work in native title anthropology, and my relationships with native title claimants. For this reason, I want to understand BCT amongst the communities I work with. I am not suggesting this BCT in First Nations is any more significant than BCT across the broader Australian community. But when native title claimants weave conspiracy narratives into our claim consultation and research, it begs the questions: Where are the conceptual links? How do we practitioners best negotiate this? Some of these conspiracy theories have potential to do harm - if we do directly address them, how can we do so effectively? In this short piece I hope to pitch some ideas for discussion; to focus on the "why?", and flag ideas in relation to potential responses.

Considered in isolation, my friend's subscription to an extreme conspiracy theory appears to reflect some aberrant mental state, or defective reasoning. But in the context of his lived experience, his beliefs can be more usefully understood as the conclusion of a person who can find no reasonable alternative explanation for the contradiction and violence he continues to experience at the hands of the State. There is plenty of literature on individual pathology behind BCT. But as the influence of some conspiracy theories continues to grow, it becomes necessary to consider broader sociological

³ "My friend" as described throughout this paper combines the true stories of several conspiracy believers I have met of different ages, genders, and communities. Like the other stories herein, the letter to the Premier is true, and is the nearest I have come to finding convincing evidence that some politicians are indeed reptiles in human-suits.

explanations. Some academic analysis of people's susceptibility to BCT draws attention to the relationships of trust (or mistrust) and power with government institutions.

For example, Pierre (2020) posits that BCT is best understood in its socio-epistemic context, which in some cases includes historical violations of trust by institutions of authority. In discussion of the impact of BCT on the perception of public health interventions among African American communities, Pierre (2020; 623) finds that

...epistemic mistrust is often associated with interpersonal and cultural mistrust that need not be pathological and on the contrary is, like trust, often earned.

In Australia, COVID19 disinformation and vaccine conspiracy theories have affected vaccination rates, including in Indigenous communities. Fredericks et al (2022) provide insightful context to the relationship between BCT and colonialism. Of particular relevance to the issue of acknowledgement of rights in land, they assert:

The failure of settler-nations to confront ... the ongoing violence of colonization have been described by some as a 'conspiracy of silence' ... These national silences fuel some Indigenous people's mistrust in governing authorities...

The relationship between collective mistrust and governmental failure to redress or acknowledge injustice is not further demonstrated by Fredericks et al in this early discussion, but their assertion presents interesting and potentially useful questions: Does State acknowledgement and redressive effort promote trust in societal governance? Can improving trust in this way impact BCT uptake amongst disadvantaged groups?

I have yet to find research that explores these questions explicitly. But amongst commentators and watchers of disinformation and conspiracy theories, there seems to be a view that, in analysis of systemic causes of BCT, the relationship of communities with government needs close examination. Coming back to my enquiry, as to why I see BCT in the native title arena, I am going to give some consideration to our relationship with First Nations (and by 'our' I position myself and native title practitioners as part of a state apparatus, like my friend does). I will do this by briefly providing some historical context.

II PROMISES CAN DISAPPEAR, JUST LIKE WRITING IN THE SAND⁴

I start with an iconic moment in 1975 (Figure 1) when, during the ceremonial return of Wave Hill station to traditional owners, Prime Minister Whitlam gave Vincent Lingiari a handful of sand (some might question whether it was ours to give). In 1984, proposed national legislation for the recognition of Aboriginal land rights was taken to Cabinet.⁵ In 1988 Prime Minister Bob Hawke received the Barunga Statement and promised a Treaty. The events of

⁴ Yothu Yindi (1993) "Treaty"

⁵ Cabinet submission no. 619

the 70s and 80s had generated (what felt at the time like) a seismic shift of Indigenous Land Rights into mainstream Australian politics; and the future looked promising.

Figure 1.

Prime Minister Gough Whitlam pours soil into the hand of traditional landowner Vincent Lingiari



© Commonwealth of Australia, National Indigenous
Australians Agency Photographer: Mervyn Bishop

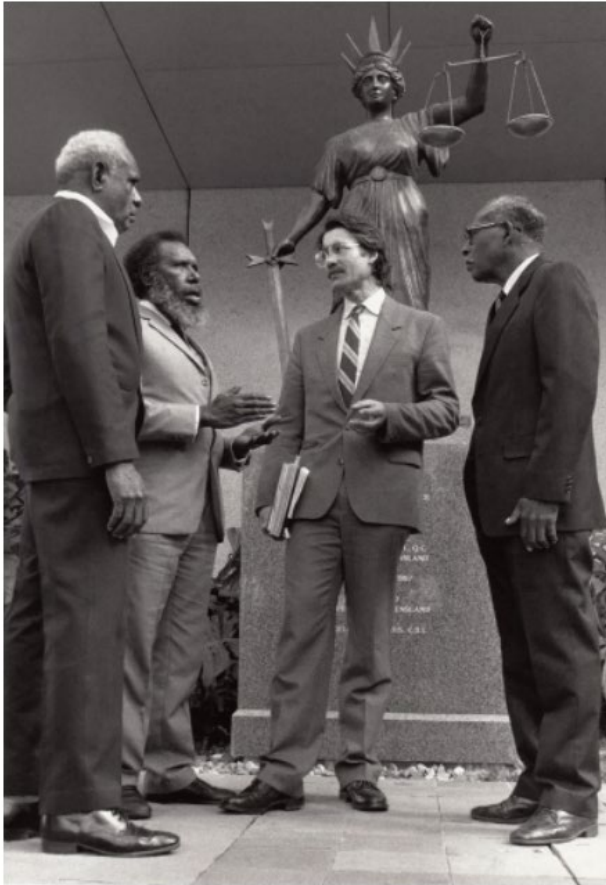
But the proposed national land rights legislation appeared to evaporate under the pressure of industry lobbyists, and just one year after he made it, Hawke acknowledged Parliament would not honor his promise of a Treaty.

Despite the failure and betrayal of Government, hope remained. A few months earlier (1992), the High Court had found in *Mabo v. Queensland (No 2)* that the Australian First Nations ‘...had their own laws and customs, and [that their] ‘native title’ to land survived the Crown’s annexation.’ Eddie Koiki Mabos’ ownership of his land on the Island of Mer was established because

the highest Australian Court recognized the pre-existing laws and customs of his Meriam society. Lady Justice, looking down in judgement on the Meriam applicants, had found in their favor – *this time* (Figure 2).

Figure 2.

Dave Passi, Eddie Mabo, barrister Bryan Keon-Cohen and James Rice outside the Supreme Court of Queensland (1989)



Photographer James McEwen, © Yarra Bank Films.

The Native Title Act (Cth) was enacted in 1993. The Act is predictably administrative and preoccupied with setting out the procedures and parameters by which it can be determined whether native title exists. But for invested Australians, this piece of legislation is entangled with all the expectations that arose out of the national movement for Indigenous land rights. The promise of inclusion, recognition of Indigenous world views, and legitimate systems of self-governance. The Native Title Act itself seems to

reflect this promise,⁶ stating in the preamble that, ‘The people of Australia intend ... to rectify the consequences of past injustices by the special measures contained in this Act’.⁷

III THE GAP BETWEEN THE INTENTION AND THE REALITY

I hope in the brief history above I painted a picture of what native title means to people – the expectations and symbolism we Australians attach to it. I will now move onto speculating as to why some people might become so disillusioned that they would rather talk about conspiracy theories than talk about their land rights at native title meetings. There are likely a lot of reasons, but here I will posit three.

A *Native title doesn’t live up to the expectations we as a nation attach to it, nor to its own stated intention*

Native title is (perhaps necessarily), a detached legal process. The Act is limited to recognizing laws and customs that *survived colonisation*. In places where massacres, forcible removals, and cultural genocide achieved the intended purpose of breaking down traditional connections to country, native title is not recognized. The Act is deliberately blind to the historical violence of dispossession. Put simply, despite best intentions, native title cannot be redressive of historical injustices because it provides no remedy in those places where connections to country were most brutally severed.

Let me be clear. Native title is not a dialogue between parties both recognized as holding a legitimate interest. It is a process in which the more powerful party decides whether the other side’s claim to hold a seat at the table is legitimate, and this judgement is made within very limited parameters. Which brings me to the issue of power.

⁶ On review of this paper a legal colleague noted that the NTA Preamble contained messaged acknowledgment that many will be unable to assert native title – and that there should be a special fund established to allow them to acquire land. This was the Indigenous Land Corporation, which was never properly funded and quietly forgotten about when Howard came to power in 1996.

⁷ The Acts’ preamble states:
 “The people whose descendants are now known as Aboriginal peoples and Torres Strait Islanders were the inhabitants of Australia before European settlement. They have been progressively dispossessed of their lands. This dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal peoples and Torres Strait Islanders concerning the use of their lands. As a consequence, Aboriginal peoples and Torres Strait Islanders have become, as a group, the most disadvantaged in Australian society. ... The people of Australia intend ... to rectify the consequences of past injustices by the special measures contained in this Act ... for securing the adequate advancement and protection of Aboriginal peoples and Torres Strait Islanders ...

B *The native title claim process is disempowering - because the power sits with the party who controls and understands the parameters set down by the Act*

Being court proceedings, native title claims are necessarily driven by lawyers. Anthropologists contribute evidence using terminology (such as 'traditional laws and customs') which attract special meanings in the native title context. Native title has its own exclusive instruction manual and dictionary both set out in the Act and constantly evolving through jurisprudence. Without a background in the field, it is impossible to decode the details of a claim or to gain any agency in the process. We are still Whitlam holding that stolen handful of sand, except now we are engaged in a baffling juggling act with it, deciding whether to give it back or not. The Native Title Act was not designed with the purpose of empowerment in mind. It was designed to give parties – including non-indigenous parties – certainty in relation to their legal interests in land.

Most critically in relation to power, native title anthropological research occurs under effective duress. The option for claimants is to opt out, potentially disenfranchising themselves of legal recognition of rights, or to opt in, and submit themselves to an intrusive research process aimed at determining the legitimacy of their claim. This brings me to my third point.

C *Native title projects the power of an intrusive and impersonal State into realms where it fits worst: culture, identity, and community*

This point is particularly important to me because, as an Anthropologist, I practice at this end of native title. In native title the legal test of continuity in the survival of traditional laws and customs is informed by anthropological analysis of family histories, religious beliefs, personal sentiment and identity, and relationships to country. Often in the research phase claimants are subjected to hours of anthropological interview, and the retrieval of archival and historical documents pertaining to specific and deeply personal issues, such as their forebears' paternity. All of this occurs in a litigated context where evidence, or proof, of continuity of connection is being interrogated.

Panning out to a bird's-eye view, the broad problem is thus: Rather than acknowledging First Nations' sovereignty and on that basis entering into inclusive dialogue about recognition, native title keeps structural power, including the power to judge certain types of cultural legitimacy in the hands of 'experts' in positions of authority. In this way, the native title claim process arguably perpetuates historical policies of State coercion and control. This birds-eye view exposes the structural issues that lead to disillusionment. Taking a close-up view, I speculate that the uptake of belief in conspiracy theories may be in part, a function of individual responses to those structural issues. I argue that in the land rights / native title space, seeded from epistemic mistrust, BCT fills the gap between the intention and the reality.

My friend⁸ – the SovCit – became involved in native title in the mid-90s. The research process was painful and disruptive. Archival records revealed formerly unknown details of the trauma of previous generations, and he was stunned to discover that one of his forebears was not Indigenous - they (and perhaps he) were not quite who he thought they were. Ultimately part of his claim was successful, but it was determined that he did not hold native title to a large area of the country he claimed. My friend is accustomed to government double-speak. It was at an order of the ‘Protector of Aboriginals’⁹ that his family were forcibly removed from their country. It was said to be for his benefit, that he was incarcerated in a mission. Now under native title, which said it intended to redress historical injustice, he revealed painful personal histories in a bureaucratic system, wherein these very ‘facts’ invalidated his connections to parts of his country. Now a SovCit, he has enculturated a frame of reference with which he can delegitimize the native title process, and build a narrative to cope with the pain and disruption it has caused him.

The SovCit conspiracy narrative seems absurd to me. But on reflection it is possible to understand why the idea of a hostile state, orchestrating disinformation to advance the interests of the wealthy and powerful, does not seem so farfetched to everyone. I set out to understand why some people find conspiracy theories more plausible than reality. I hope I have provided some part of the answer. Specifically, that native title earns mistrust through instituting an intrusive, disempowering process, and ultimately failing to live up to the expectations history has attached to it.

IV FROM LITTLE THINGS, BIG THINGS GROW

Paul Kelly and Kev Carmody envisioned greater things to grow out of that iconic moment of Vincent Lingiari’s handful of sand. But with the advent of native title, the political momentum driving broad recognition of land rights got inexorably bogged down in the detail of hundreds of over-complicated, geographically piecemeal claim negotiations with recalcitrant State governments as respondent parties.

Breadcrumbs left by Q¹⁰ led many to an insurrection in Washington on Jan 6th. What might grow from my friend’s small online community of Australian

⁸ One reviewer of this paper asked if I can still call this person a friend given he considers me an enemy, which gave me much food for thought. I settled on the conclusion that like all relationships ours is torrid and I determinedly look forward to the day where we can settle into comfortable conversation and count this argument among those that strengthen our shared understanding. So I insist on calling him my friend, even if he protests.

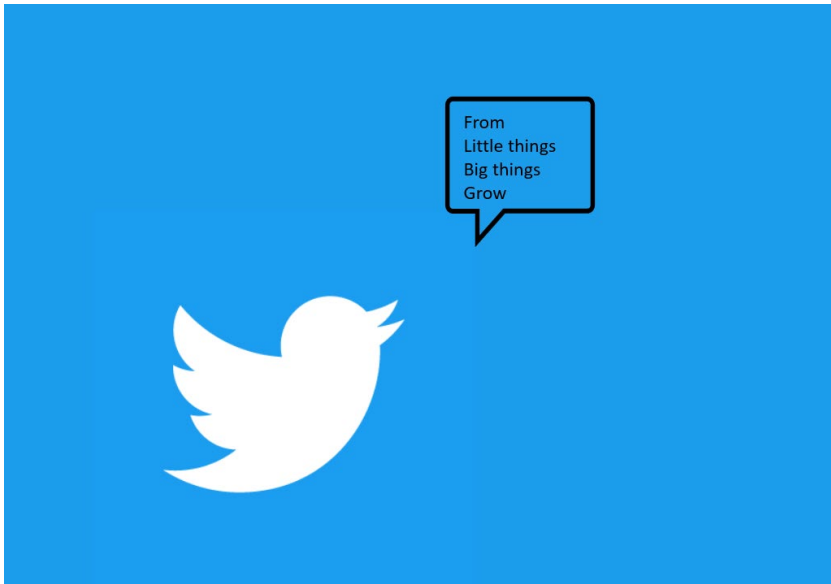
⁹ In Queensland under the Aboriginals Protection and Restriction on the Sale of Opium Act 1897, the Protector of Aboriginals had guardianship over all people with Aboriginal background in their jurisdiction. The Protector had powers to relocate people, and their approval was required to marry or take up employment agreements.

¹⁰ QAnon followers believe that posts by “Q” include “breadcrumbs” or clues that can be decoded to understand messages about a conspiracy where an evil global elite controls the world – and the fight against it. To my knowledge, the identity of the person or persons who have posted as “Q” is still not known. Van Badham’s 2021 book “QANON and on: A Short and

SovCits, who have tied their disillusionment with State failure to deliver a meaningful and redressive Land Rights agenda to a conspiracy theory? In a generalized observation of political conspiracy theories in America, political scientist Joe Uscinski (2018) says, 'Conspiracy theories tend to punch up ... conspiracy theories are for losers. Parties out of power tend to lob conspiracy theories at parties in power'.

Figure 3.

From little things, big things grow



Uscinski observes that BCT can indicate power imbalance; a desire to level the playing field by aiming accusations at a more powerful opposition. Imhoff and Bruder (2014) examined what they describe as 'conspiracy mentality' in a series of studies aimed at understanding conspiratorial propensities in individuals. In their article, 'Speaking (un)truth to power' provides commentary on socio-epistemic context, in respect of the social impact of BCT they find a potentially positive tangent:

Our research reveals an important but often neglected effect of conspiracy thinking: Challenging the status quo ... This may empower disadvantaged groups to take action and actively pursue their goals even in opposition to those in power. (pp. 35, 36)

In relation to Land Rights, the status quo is being challenged by both supportable arguments, and unsupported conspiracy theories which have the potential to do harm. What remains to be seen is how the State, and we practitioners, will respond.

"Shocking History of Internet Conspiracy Cults" is an interesting and accessible read on the history of the QAnon narrative.

Some of the native title practitioners I work with trivialize claimant-come ‘bush lawyers’ who expound SovCits concepts. Some give these people short shrift as a lost cause, at the same time disregarding the legitimate complaints that may well seed the issue. This is not a helpful response. I think there are systemic drivers lending momentum to the uptake of conspiracy theories. Reflective practice may provide us a clearer view how our own practice contributes to those systemic drivers and thus enable a more productive dialogue.

I have given native title a pretty hard rap in this paper – but I work in this field because I believe it is important to have a process wherein the pre-existing Laws of First Nations give rise to actionable legal rights. As an aside, I also think some of the inherent evils – the burden of proof on claimants, the impersonal nature of the process – may well be necessary evils from a purely pragmatic perspective (but that is a different discussion). The answer to the problem doesn’t necessarily lie in changes to native title. The answer comes back to the first principles – relationships of trust and power between communities and the State. I posited earlier that BCT fills the gap left between the intention and the reality: Perhaps we need to fill that gap with something other than native title. We are again presented with an historical opportunity: actionable, redressive change which captures national sentiment in the Voice. I hope that this time, we can live up to expectations.

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