

From Savannah to settlement: the psychology of land disputes

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Following shocking scenes (See [here](#) on Twitter) at a recent Camden Council meeting when members of the public launched not just a tirade of abuse, but also a chair, over the approval of a planning application for new homes in their street I found myself reflecting on my 20 year career as a mediator and barrister dealing with disputes over land and other matters. And what I've noticed is that the former tend to generate a particularly strong emotional response. Whether the conflict concerns the use of land (such as environmental or planning disputes), ownership or occupation (inheritance and boundary disputes, for example) or the rights and obligations that relate to land (easements, covenants, rights of way etc) what I've seen time and time again, and much more often than in other kinds of case, is parties displaying a level of emotional engagement, even distress, that seems disproportionate to what's at stake.

Why is this? Of course the drivers common to all conflicts apply: conflicting material interests (usually obvious) and the underlying emotional factors (status, self-esteem, security, control and power, and so on).

Then there are those influences peculiar to land disputes. Changing demographics and the resulting increased scarcity and value of land, the manner in which the state regulates land use, and an increasing attachment to ecological interests undoubtedly contribute to the dynamics of these conflicts. But in themselves these can't explain the phenomenon that I've noticed. So what's going on?

Animal territoriality

In his seminal 1966 book, *The Territorial Imperative*, anthropologist Robert Ardrey explored what he characterised as an animal propensity for territorial behaviour. Territorial defensiveness, he suggested, is central to all animal behaviour, partly because it meets the three basic animal needs: security, identity and (because of its capacity to generate confrontation) stimulation.

As humans are motivated by the same needs, a 'territorial imperative' not only drives our behaviour, but also forms the basis out of which human morality has evolved since late primate / early hominid encounters on the ancient African Savannah millions of years ago: sacrifice, altruism, trust, shared responsibility, interdependence, and so on. And is linked to modern concepts such as the nation state and property ownership.

Evolutionary legacy

Some of Ardrey's ideas are now dated, but the theme of territorial behaviour was picked up by Dominic Johnson and Monica Toft in their 2014 article *Grounds for War: The Evolution of Territorial Conflict* (International Security Journal, Vol 38, No 3, Winter 2013/14, pp7-38). They agreed with him that much human behaviour reflects evolved physiological and psychological mechanisms that we cannot switch on or off, whatever our rational minds might desire, and that territoriality is one example. Prehistoric competition for resources led humans to develop a tendency for violence and risk taking when engaged in conflict over land. That such a tendency persists unhelpfully in today's much more ordered world is no surprise: the behavioural adaptation developed over millions of years, whereas large urbanised populations and nation states are a relatively recent phenomenon.

The authors observe how this deep connection with territory manifests in other ways in the modern world. For example, in the structures that we've built around it: international law, border and immigration controls, the nation state and even the UN Charter, whose stated purpose is to maintain peace and develop friendly relations, but which expressly (and exceptionally) allows the use of military force to defend sovereignty. (At a domestic level, our tendency to enclose our homes and gardens with fences and walls, and to 'order' those parts visible to passers-by, are surely another example? The Englishman's home is truly his castle...)

Of particular interest to mediators will be the notion that territorial instinct explains common but poorly understood cognitive biases, including loss aversion (the preference for protecting possessions over acquiring equivalent gains) the status quo bias (a tendency to prefer things as they are) and endowment effect (valuing what is ours more highly simply because we already have it).

Handling land disputes today

So how does all this help to explain my observations above? The proper application of all this anthropological theory to modern litigation deserves a book of its own, but at a basic level the ideas of Ardrey, Johnson and Toft can help us to understand the drivers of disputes over land, and teach us how to handle more sensitively the parties involved.

For example, we know that almost anyone in a dispute over land, whether battling out a simple boundary dispute, or managing community-wide resistance to large-scale development proposals will – despite the (relatively) civilised and sophisticated modern legal context – be acting to some extent according to the inherited and irresistible motivations of their prehistoric ancestors, instructing their lawyers or campaigning on social media (or throwing chairs) just as early humans used their clubs and rocks.

Johnson and Toft also observed that violent territorial strategies were heightened when land perceived as 'homeland' was involved. So we can expect rational thought and commercial judgment to be especially clouded, and emotions running unusually high, when the land in question is seen as having the characteristics of 'home territory' by one or more parties. And in my experience this includes not just homes and other private property, but can extend to land, buildings or infrastructure that local people feel in some way 'connected' to: indeed, I am often struck by the fierceness and commitment with which communities will 'defend' open spaces, footpaths, fields, countryside, views, pubs, schools, even roads, when a threat is perceived.

All of this knowledge is useful. As lawyers it helps us to understand and manage our own clients in land disputes. It also helps us, and allows us to help our clients, understand the behaviour of those on the other side better. And importantly – and this is something often overlooked by those in litigation – it is a particularly good reason to handle the other side with a degree of sensitivity.

For mediators it helps us to understand, and therefore better handle, resistance to compromise. It also talks to the importance of approaching with particular sensitivity the question of rational and commercial decision-making.

Finally, it is a powerful reminder to those of us handling conflict of all types that what parties in dispute say, or do, does not necessarily reflect what they are thinking, or feeling. So next time the CEO of your blue chip propco client announces that whatever the chances of an expensive litigation failure, taking the ****ards to court is a matter of principle, it may be that she or he has temporarily become the mouthpiece for their inner primate, reliving a territorial skirmish on the central African plain millions of years ago.