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The emotional paradoxes of adverse possession

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Property lawyers are generally viewed as a serious lot, not prone to feverish bursts of excitement as we seek comfort and solace in established legal rules and precepts. In the same way, property law disputes tend to have a fairly low profile and fail to capture the public imagination in the same way as, for example, those involving criminal or human rights law. Such apparent indifference might seem a little strange, given the centrality of property in everyday human life and the significance which legal systems and individuals attach to property rights. However, there is one issue which always inflames passions amongst lawyers and non-lawyers alike: the acquisition of land through the doctrine of adverse possession, often described as ‘squatter’s rights’. No property-related topic is likely to light up a radio show phone-in switchboard quite like squatting.¹

Most, if not all, legal systems allow one person to lay claim to another’s land, based on uninterrupted possession over a period of time.² Adverse possession results in a trespassing squatter becoming the ‘rightful’ owner of property through what is initially a ‘wrongful’ act, while the original owner has their title extinguished without any payment of compensation

* The authors’ names are arranged alphabetically. We would both like to thank Professor Kieran McEvoy, School of Law, Queen’s University Belfast, for his comments on an earlier draft of this article.

1 Though the right to defend one’s home against intruders (the so-called ‘batter a burglar’ debate) comes a close second, given the media attention generated in England and Wales by recent judicial comments that burglars shot by their victims while committing such crimes should not expect any sentencing leniency, and the Conservative-led Coalition government’s proposals to allow householders to use disproportionate force in certain circumstances: see M Evans and S Marsden, “Expect to Be Shot if You Burgle Gun Owners”, Judge Warns Criminals’ *The Telegraph* (London, 26 September 2012); and N Watt and P Wintour, “Tories Go Back to Basics on Right to Defend Home” *The Guardian* (London, 9 October 2012).

2 In most jurisdictions, the basic limitation period (i.e. the time within which the rightful owner can bring an action to recover their land when it is being occupied by someone else) is set out in the relevant ‘statute of limitations’. For example, in Northern Ireland, the Limitation (NI) Order 1989 stipulates a 12-year period for actions to recover land and, in the Republic of Ireland, a similar period is set out in the Statute of Limitations 1957. The Land Registration Act 2002 in England and Wales stipulates a minimum 10-year period of occupation alongside other procedural requirements which are noted briefly in part 3 of this article. It is, perhaps, not surprising that the greatest variance in limitation periods occurs throughout the USA, ranging from three years in Texas, through to 10 years in states such as Alabama and Iowa, to 20 years in, for example, Delaware and Maryland, and 30 or 60 years in Pennsylvania (depending on whether the land is cultivated or uncultivated): for a full listing see S L Martin, ‘Adverse Possession: Practical Realities and an Unjust Enrichment Standard’ (2008) 37 *Real Estate Law Journal* 133, text to fnn 32–64.

from the squatter (or from the state).³ Attitudes towards the doctrine range across the entire spectrum, from laissez-faire notions of rewarding initiative and promoting efficient land use to more prevalent feelings of outrage and incredulity that the law is effectively sanctioning land theft. This article questions why adverse possession provokes such visceral reactions and identifies a number of inherent emotional paradoxes. Focusing on conventional, domestic-type squattings,⁴ it draws on selected cases and academic literature from both sides of the Atlantic where the topic has been one of increasing debate in recent years and the core issues essentially the same. The article begins by examining why ownership of property (and land in particular) creates such strong sentimental attachments within Western societies⁵ and uses these instinctive human responses as a means of deconstructing the predominantly negative emotions surrounding adverse possession. It then goes on to look at the range of variables which influence our perceptions of specific adverse possession claims, such as the character of the squatter, the level of apparent wrongdoing and the amount and type of property at stake. Finally, the article considers how adverse possession conflicts purport to be adjudicated in an emotional vacuum, yet both judges and legislators have responded to the less palatable aspects of the doctrine with an increasing emphasis on owner protection – the recent criminalisation of ‘residential’ squatting in England and Wales⁶ providing a good illustration.

1 The emotional response to adverse possession

Adverse possession claims vary, from minor encroachments and innocent trespasses over another’s property to larger-scale and/or deliberate instances of land-taking. Various rationales can be put forward for allowing the doctrine to operate,⁷ though three are often cited in particular. First and foremost, adverse possession is part of the general law of limitations; it prevents ‘stale’ claims with all their evidential difficulties, potential for costly litigation and capacity to upset continued reliance on the status quo.⁸ Secondly, the doctrine validates disputed land titles where official ownership records do not match perceived realities – an essential element of any property law system in which possession is the root of title⁹ – and facilitates land transfers where physical and legal boundaries are

3 Thus, adverse possession has been described as ‘an anomalous instance of maturing a wrong into a right contrary to one of the most fundamental axioms of the law’: H W Ballentine, ‘Title by Adverse Possession’ (1918–19) 32 Harv L Rev 135, 135. See also K J Gray and S F Gray, *Elements of Land Law* (5th edn, OUP 2009) 1159: ‘[T]he inception of adverse possession brings about one of the larger paradoxes of the law of realty – an uncompensated shift of economic value to the squatter or interloper . . . Estate ownership is fundamentally determined by behavioural fact rather than by documentary record.’

4 In other words, those between neighbouring landowners or homeowners, or between private individuals, as opposed to larger scale, socio-economic or politically motivated squattings, which often occur as a form of land reclamation within post-conflict states or those in a period of transition: see, for example, S Moyo and P Yeros (eds), *Reclaiming the Land: The Resurgence of Rural Movements in Africa, Asia and Latin America* (Zed Books 2005).

5 While this is not an exclusively Western phenomenon, collective views of landownership and the values attached to it vary within different societies and are strongly influenced by socio-cultural factors. Thus, Western constructs with their emphasis on private property and individualism will differ significantly from, for example, indigenous concepts of property and their emphasis on communal rights: see, generally, F W Rudmin, ‘Cross-Cultural Correlates of the Ownership of Private Property’ (1992) 21 Soc Sci Res 57.

6 Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012: see part 3 below.

7 For an overview, see J E Stake, ‘The Uneasy Case for Adverse Possession’ (2001) 89 Georgetown Law Journal 2419, 2434–55.

8 See T W Merrill, ‘Property Rules, Liability Rules, and Adverse Possession’ (1984) 79 Northwestern University L Rev 1122, at 1128.

9 See Merrill (n 8) 1129–30; as well as Gray and Gray (n 3) 163.

misaligned.¹⁰ Thirdly, the threat of squatting encourages landowners to be vigilant and can be linked to broader notions of social responsibility in promoting maximum use and productivity of a finite and valuable resource.¹¹ Yet, such ostensibly legitimate aims are irrelevant when it comes to the emotional reactions engendered by adverse possession and the loss of land which the doctrine facilitates. From the perspective of the dispossessed landowner, the primary emotions are often anger and disgust directed towards the squatter – a figure frequently portrayed as a villainous bogeyman in the popular media and elsewhere.¹² Such negative feelings are hardly surprising, given that adverse possession taps into key elements of the human psyche.

At its most basic level, adverse possession tends to be viewed as nothing more than ‘theft or robbery, a primitive method of acquiring land without paying for it’.¹³ The offence of theft itself connotes morally repugnant notions of someone taking something which does not belong to them and violating the rights of the property owner in doing so. Yet, when the subject-matter is land, the stakes are raised significantly, not least because to steal a person’s land is to steal not only their property but their territory – their ‘patch’.¹⁴ Western societies are characterised by an overwhelming bias towards the concept of private property and ownership rights.¹⁵ Ownership of property, and land in particular, is inextricably linked with certain social and cultural values. Land is much more than a precious natural resource which is vital for the sustenance of mankind; it is a potent and socially recognised symbol of material wealth, identity, social standing and financial security for the owner.¹⁶ The old mantra that ‘an Englishman’s home is his castle’ conjures up important notions of dominion and control, with ownership conveying a sense of ‘economic power, individual self-meaning, and personal self-worth’.¹⁷ Adverse possession represents a direct attack on these basic constructs and the feelings of happiness, well-being and personal satisfaction

10 For example, as a means of rectifying previous conveyancing errors or resolving the classic boundary dispute between neighbouring properties.

11 Stake (n 7) 2434–36.

12 For examples of this, one need look no further than at the campaigns conducted by sections of the popular press in relation to the squatting controversies of the 1970s, the hippy convoy of 1986, the Parliament Square camp of 2010 and the Dale Farm evictions of 2012. These portray squatters as folk devils of the very worst sort; an articulated, sophisticated and ruthlessly organised army of hippies, layabouts and drug addicts (many of them foreign) who lie in wait to take over your house as soon as you go on holiday and smash it up for the sheer pleasure of doing so. Their alleged aim is nothing less than the complete destruction of civilised society: see B Glastonbury and G Thompson, ‘Conspiracy, Criminal Law and Squatting’ (1976) 3 *British Journal of Law and Society* 233; N Anning et al, *Squatting: The Real Story* (Bay Leaf 1980) ch 5; P Vincent-Jones, ‘Private Property and Public Order: The Hippy Convoy and Criminal Trespass’ (1986) *Journal of Law and Society* 343; and P Scraton, *Power, Conflict and Criminalisation* (Routledge 2007) ch 1.

13 Ballantine (n 3) 135; and see also Martin (n 2) 133, describing the doctrine as a ‘legal way to get something for nothing’.

14 This notion of territory is, of course, something even animals recognise: see J Edney, ‘Human Territoriality’ (1974) 81 *Psychological Bulletin* 959; S N Brower ‘Territory in Urban Settings’ in I Altman et al, *Environment and Culture* (Plenum Press 1980); and R D Sack, ‘Human Territoriality: A Theory’ (1983) 73 *Annals of the Association of American Geographers* 55.

15 See, generally, Rudmin (n 5).

16 See N Davidson, ‘Property and Relative Status’ (2009) 107 *Mich L Rev* 757; and L Bloom, ‘People and Property: A Psychoanalytical View’ in F W Rudmin (ed), *To Have Possessions: A Handbook on Ownership of Property* (Select Press 1991).

17 R R Coletta, ‘The Measuring Stick of Regulatory Takings: A Biological and Cultural Analysis’ (1998) 1 *University of Pennsylvania J Const L* 20, 24. See also J T Powell, ‘The Psychological Cost of Eminent Domain Takings and Just Compensation’ (2006) 30 *Law and Psychol Rev* 215, 219 (property ownership is closely linked to a person’s ‘identity and feelings of well-being and security’); as well as M J Radin, ‘Property and Personhood’ (1982) 34 *Stan L Rev* 957.

associated with ownership. Little wonder that the doctrine raises hackles and gets the adrenaline pumping.

Psychological studies have established strong personal connections between individuals and their material possessions, an innate sense of ‘me’ and ‘mine’ that attaches to objects and generates positive emotions of the type just described.¹⁸ Such deeply rooted predispositions are hardly surprising, given that evolutionary stable patterns of behaviour could not have developed without some means of asserting control over finite commodities and resources. However, individual connections to land are even stronger, not just because of a deep sense of emotional attachment,¹⁹ but because every piece of land is unique and potentially irreplaceable. With this in mind, our instinctive responses to adverse possession are hardly surprising. As Coletta has observed:

Biologically, ownership of real property engenders a defined band of emotional attachments. Humans are conditioned to ground themselves in their physical environment and to claim nearby space with a characteristic absoluteness. Strong feelings surround this sense of ownership and any attack on its inviolability produces immediate outrage and defensive strategies. The idea that property is one’s individual domain ‘feels’ correct. Ownership carries with it the sensations of stability, security and well-being.²⁰

Physiological traits aside, the very concept of land ownership generates certain shared assumptions which also exert a strong influence on reactions to adverse possession. Ownership and respect for ownership play an important part in how we relate to others, and how we ‘imagine’ ourselves as part of a broader collective community and a civilised nation.²¹ Society expects individual citizens to respect the property rights of others and to act accordingly, in what might be described as a property-centric version of the biblical mantra to ‘do to others as you would have them do unto you’.²² As Rudmin puts it:

We know where our possessory interests and property rights reside and where they do not. We limit our behaviour accordingly, and expect others to know and do the same.²³

18 For an excellent analysis, see J L Pierce, T Kostova and K T Dirks, ‘The State of Psychological Ownership: Integrating and Extending a Century of Research’ (2002) 7 *Review of General Psychology* 84; as well as J A Blumenthal, ‘Property Law: A Cognitive Turn’ (2010) 17 *Psychonomic Bulletin and Review* 186 and “‘To Be Human’”: A Psychological Perspective on Property Law’ (2008–09) 83 *Tul L Rev* 609 and the various sources cited therein. See also J E Stake, ‘The Property “Instinct”’ (2004) 359 *Phil Transactions Royal Society B* 1763; and D B Barros, ‘The Biology of Possession’ (2001) 20 *Widener L J* 291.

19 This idea of emotional attachment has been well documented in the eminent domain or compulsory acquisitions context: see Powell (n 17), the author making the point that, while property owners are often paid the full market value of their properties, compensation for loss of emotional connections and (in some instances) loss of community are much more difficult to measure. See also E Sherwin, ‘Three Reasons Why Even Good Property Rights Cause Moral Anxiety’ (2006–07) 48 *Wm and Mary L Rev* 1927, 1939, where the author suggests that people build their lives and businesses ‘in the expectation of control over a type and quality of resources’ and ‘endow their holdings psychologically’.

20 Coletta (n 17) 72. Later in the same article, the author remarks: ‘Once I attach land as “mine”, my perspective is in many ways predetermined by my biology: external interference with my dominion and control is perceived as hostile and villainous’: 75.

21 See, for example, B Bowden, ‘The Ideal of Civilisation: Its Origins and Socio-Political Character’ (2004) 7 *Critical Review of International Social and Political Philosophy* 25, discussing inter alia the work of Norbert Elias (see N Elias, *The Civilising Process* (Blackwell Publishers 2000)).

22 Luke 6:31.

23 F W Rudmin, “‘To Own is to be Perceived to Own’”: A Social Cognitive Look at the Ownership of Property’ (1991) 6 *Journal of Social Behaviour and Personality* 85, 86. See also E M Peñalver and S Katyal, ‘Property Outlaws’ (2007) 155 *University of Pennsylvania L Rev* 101, 136 (‘property rights and the social norms that accompany . . . property ownership play an important role in ordering our interactions with other human beings’).

The sanctity of land ownership creates reciprocal notions of respect for property rights, based on broader constructs of social morality;²⁴ interference with these rights by a squatter is regarded as an immoral act, not just by the original owner but by the community at large.

Another important factor is the perceived role of the state as both law maker and law enforcer. Societal views of adverse possession are shaped by an expectation that the law provides strong (if not impervious) protections for private property rights. Such rights are subject to minimal state inference; they must be upheld and protected as one of the benchmarks of a so-called ‘civilised’ society.²⁵ Yet, in successful adverse possession claims, the state (having passed the relevant statute of limitations) allows a squatter to ‘take’ land from the original owner and is effectively sanctioning theft while failing in its duty to protect its citizens against what is perceived to be an unlawful appropriation by others.²⁶ In short, the role of the state ‘adds insult to injury’, thus fuelling the collective sense of anger and injustice associated with the doctrine. According to Stake:

[Adverse possession] strikes at the heart of our concept of property. ‘Property’ means rights – rights in a thing, that are enforced by the state. We support state enforcement of rights in things for reasons of both justice and efficiency. The fundamental idea of property is that it cannot be taken against the owner’s wishes . . . Yet that is what adverse possession does. The doctrine effects a transfer of state-sanctioned rights in land from owners to non-owners without the consent of the owner.²⁷

Adverse possession disregards entitlement as the state effectively colludes with and facilitates the squatter in appearing to reward egregious behaviour. Little surprise then that the doctrine often prompts simultaneous feelings of disgust, despair and disbelief – all of which contribute to the pervasive sense of moral outrage.²⁸ Meanwhile, the punitive element of the doctrine creates both confusion and a heightened sense of unfairness. Other areas of law, such as criminal law and torts, generally punish only those who have performed affirmative wrongful acts, or failed to act to avoid creating an unreasonable risk of harm. In contrast, adverse possession penalises landowners for inactivity that poses no threat to others; failing to use or attend to their land results in ‘poor, unsuspecting, innocent owners los[ing] all or part of [it] . . . without having done anything wrong’.²⁹ Of course, sentiments such as these reveal more than ingrained emotions; they speak to deeper societal fears realised in the spectre of a decent, law-abiding citizen who works hard, pays their taxes

24 ‘[P]roperty rights command widespread respect. This respect can only be provided by some version of morality that treats violations of possession . . . and other gross interferences with property as wrongs subject to widespread disapprobation’: T W Merrill and H E Smith, ‘The Morality of Property’ (2006–07) 48 *Wm and Mary L Rev* 1849, 1852–53. See also R S Auchmuty, ‘Not Just a Good Children’s Story: A Tribute to Adverse Possession’ [2004] *Conv* 68.

25 ‘Property rights . . . provide individual security and (in the process) diffuse political power. They create and protect material wealth and prosperity, necessary preconditions for social civility, social stability, and the maintenance of democratic governance.’: L S Underkuffler, *The Idea of Property* (OUP 2003) 138. The popular image of ownership as generating entitlements safeguarded by the state has also been enhanced by the rights-based culture of the latter twentieth century: see, for example, the protection of property provision in art 1, Protocol 1 of the European Convention on Human Rights, and compare art 44 of the Irish Constitution.

26 Of course, the irony here is that adverse possession is perfectly lawful, assuming that the requisite conditions have been met. This is discussed further below.

27 Stake (n 7) 2420. The author also makes the point later in the same article that: ‘if land is part of the self, its reallocation by the state is akin to physical or mental punishment, which the state ought not be able to impose without a finding of criminal behaviour’: 2456.

28 See Peñalver and Katyal (n 23) 103: ‘The overwhelmingly negative view of property lawbreakers in popular consciousness comports with the centrality of property rights within our characteristically individualist, capitalist, political culture.’

29 Stake (n 7) 2434.

and obeys the rules, yet is still vulnerable (through no perceived fault of their own) to having their interests subordinated to those who fail to respect the rights of others. And if the law allows this to happen to one individual, what is to stop the same thing happening to anyone else?

In contrast, advocates of adverse possession would argue that it does nothing more than reward the efforts and initiative of squatters who maximise the use of a finite and under-utilised resource.³⁰ At some basic level, the squatter's labour contrasted with the landowner's disregard for their property justifies a shift in ownership to the former. Psychological studies suggest that an association between a person and an object can validate ownership claims because that object means more to the person who currently possesses it and has invested their labour in it – in other words, a type of investment–attachment theory which favours the possessing individual.³¹ Transferring title in adverse possession claims rewards the squatter who appears to 'value' the land more because of an ostensibly greater and more contemporaneous physical, financial and emotional investment in it,³² while also giving effect to alleged social assumptions about who is the rightful owner based on the public appearance of an association between the squatter and the property in question.³³ As regards the landowner, the punitive element of adverse possession is entirely justified; 'lazy' owners who, through indifference, carelessness or wilful neglect, fail to remove a squatter as the limitation period ticks slowly by deserve to lose their property,³⁴ or at least be prodded into some sort of preventative action.³⁵

This analysis suggests that adverse possession is nothing more than a form of corrective justice, premised on dual notions of squatter investment and landowner culpability. Moreover, labelling squatters as land thieves is fundamentally wrong, since such individuals are 'doing nothing more than knowingly employing the law's own process for acquiring land'.³⁶ Yet, such views are not borne out in societal attitudes towards adverse possession and the basic stereotypes which are often applied to squatters. As Merrill and Smith have argued:

Someone who has deliberately taken the property of another is simply a bad person, and should not be rewarded for such behavior. The immorality of the original act of deprivation trumps all considerations of utility that can be argued on the other side.³⁷

30 See the various sources cited immediately below. It could also be argued that, in using someone else's land, squatters are merely acting on a basic human instinct to acquire property, with evolutionary theory suggesting that such instincts are derived from a basic competition for scarce or finite resources: see, generally, Stake (n 18).

31 See, for example, Rudmin (n 23) and J K Beggan and E M Brown, 'Association as a Psychological Justification for Ownership' (1994) 128 *Journal of Psychology* 365.

32 L A Fennell, 'Efficient Trespass: The Case for "Bad Faith" Adverse Possession' (2006) 100 *Northwestern University L Rev* 1037, 1064, highlights this idea of 'moving scarce resources into the hands of those who place the highest value on them'. See also the discussion in Peñalver and Katyal (n 23) 149.

33 'Active possession of the land for an extended period takes precedence over the documented title to the land . . . [T]he law recognizes that the active social perception of ownership is a higher order principle of ownership than the archival memory of ownership': Rudmin (n 23) 92. See also O Friedman and K R Neary, 'First Possession beyond the Law: Adults' and Young Children's Intuitions about Ownership' (2008–09) 83 *Tul L Rev* 679.

34 See J Netter, P Hersch and W Manson, 'An Economic Analysis of Adverse Possession Statutes (1986) 6 *International Review of Law and Economics* 217, 219.

35 See Stake (n 7) 2435.

36 Fennell (n 32) 1044.

37 Merrill and Smith (n 24) 1876. See also Peñalver and Katyal (n 23) 156, the authors noting that in most cases the 'desire for the property of another will be unworthy and unjustified, and society correctly responds to the lawbreaker's behavior by punishing her for her transgression'.

In short, for most of us, a legal doctrine cannot 'turn a moral wrong into a right'.³⁸ Adverse possession rewards and facilitates conduct that society generally regards as a form of wrongdoing; it provokes such overwhelmingly negative responses because it encourages what is perceived to be morally and socially unacceptable behaviour, while promoting the uncompensated loss of a valuable commodity.³⁹ In many instances, it appears, literally, to add state-sanctioned legal insult to injury.

2 Altering the emotional response: the influence of external factors?

Our instinctive reactions to adverse possession are also shaped by external factors, not least of which is the perceived identity or character of the squatter. In this respect, much will depend on whether or not such individuals are deemed to be guilty of whole-scale wrongdoing. We may be prepared to turn the proverbial 'blind eye' to boundary disputes or minor encroachments and to tolerate the innocent, 'good-faith' squatter who unknowingly trespasses on another's land; such claims are, perhaps, more likely to produce an emotionally neutral response. However, the same cannot usually be said of the opportunistic, 'bad-faith' squatter who deliberately sets out to acquire land by adverse possession and acts in full knowledge of the landowner's (initially) superior rights; here, the emotional response is much more pronounced because of an innate dislike for those who are contemptuous of the rights of others.⁴⁰

One of the most extreme examples of this occurred several years ago in Boulder, Colorado, in a dispute between two neighbouring landowners.⁴¹ The Kirlins had purchased land in 1984, intending to build their 'dream home' there some day; the lot in question was several blocks from the couple's current home and directly beside property owned by Richard McClean and his wife, Edith Stevens. For 25 years, McClean and Stevens used around a third of the Kirlins' lot as a garden and as a means of access to their own back yard; they also stored wood on the lot and held various social gatherings there. When the Kirlins realised what was happening (sometime in 2006), they started to fence a dividing line between the two properties (i.e. theirs, and the one owned by McClean and Stevens) but were prevented from doing so when McClean obtained a restraining order to stop the fencing. McClean and Stevens then claimed that one-third of the Kirlins' lot was theirs by adverse possession and were awarded title to part of it in October 2007, provoking public uproar. Hundreds of people gathered to protest the court's decision, while a barrage of negative media commentary surrounding the case (and adverse possession more generally) brought the matter to the attention of the Colorado General Assembly.⁴² The result was sweeping amendments to the law of adverse possession in the state of Colorado, making it virtually impossible for a similar claim to succeed in the future.⁴³

Public reactions to this particular dispute were so very pronounced for one reason: the fact that McClean was a retired district court judge and former mayor of Boulder and that

38 Fennell (n 32) 1054.

39 See, for example, Stake (n 7) 2433.

40 '[T]he cases do clearly show that the trespasser who knows he is trespassing stands lower in the eyes of the law . . . than the trespasser who acts in honest belief that he is simply occupying what is his already': see R H Helmholz, 'Adverse Possession and Subjective Intention' (1983) 61 *Washington University Law Quarterly* 331, 332.

41 *McClean and Stevens v DK Trust and Kirlin*, Boulder District Court Case No 06 CV 982 (filed 4 October 2006). For a more detailed discussion, see Martin (n 2).

42 See the discussion in Martin (n 2), text to fnn 80–90, for public reactions to the decision and associated reporting in the local media.

43 These amendments were rushed through in 2008 and are noted briefly in part 3 of this article.

Stevens was a practising lawyer. The Kirlin case was not only an example of deliberate 'land theft'; the conventional negative response to adverse possession was apparently amplified because Stevens was someone who was expected to defend the rights of others, while McLean was someone whose career had centred on the administration of justice and, having occupied public office, was expected to adhere to basic standards of honesty and integrity. The fact that the couple's actions were completely lawful was irrelevant; both were castigated as shameful hypocrites who had abused their respective positions, and were effectively labelled social pariahs.⁴⁴ Public sympathies lay firmly with the Kirlins, as seemingly upright citizens who had suffered a huge injustice and would no longer be able to build their dream home given the loss of part of their land and the \$400,000 in legal fees spent contesting the dispute.

The amount of land at stake and its value can also be a significant factor when it comes to our reactions to adverse possession claims. Most are contested boundaries, involving fairly small and relatively inexpensive parcels of land. Yet, when we think about adverse possession, our minds immediately conjure up images of squatters seizing uninhabited homes or large rural properties – something which effectively came to pass in the Kirlin dispute, and occurred in even starker form in the English case of *J A Pye (Oxford) Ltd v Graham*.⁴⁵ Pye was a development company which had purchased land in Berkshire in 1977; it included a large estate comprising 'Manor Farm' and the 23 hectares (57 acres) of land at the heart of the litigation ('the disputed land'). Manor Farm was sold shortly afterwards and eventually bought by the Graham family in 1982. Pye retained the disputed land, intending to develop it when planning permission could be secured, but issuing grazing licences over it to the owners of Manor Farm in the meantime. The Grahams had such a licence and, conscious of the fact that it would expire on 31 December 1983, contacted Pye asking if the permission could be renewed for another year. Pye refused, because of an anticipated planning application. Between December 1984 and May 1985, the Grahams made repeated requests to renew the grazing licence, but received no reply. In the meantime, nothing changed – Pye never obtained planning permission and had no further communications with the Grahams who continued to farm the disputed land as before. This continued until June 1997 when the Grahams claimed that the property was theirs by adverse possession. Pye subsequently issued proceedings to reclaim its land; following a lengthy and protracted legal battle, the House of Lords ruled in favour of the Grahams resulting in Pye losing title to 23 hectares of prime agricultural land with development potential and an estimated value of £10m.

Perhaps one of the most surprising aspects of the *Pye* litigation is that responses to the decision were fairly muted; despite the amount of land at stake and its value, there was none of the public outcry which the Kirlin dispute generated, and reports in the national media

44 See, for example, D Harsanyi, 'Property Rights Wrongfully Taken' *The Denver Post* (Denver, 19 November 2007) <www.denverpost.com/harsanyi/ci_7501264> accessed November 2012. The same article also suggests a certain pro-establishment bias in McClean being granted court orders by members of the judiciary with whom he once served.

45 The case was litigated at all three court levels in Britain: [2000] Ch 676 (Ch), [2001] Ch 804 (CA), and [2003] 1 AC 419 (HL). It was then appealed to the European Court of Human Rights in a long-running saga which eventually ended in August 2007 – *J A Pye (Oxford) Ltd v UK* (2006) 43 EHRR 3 and (2008) 46 EHRR 45. While *Pye* was an atypical adverse possession case given the amount of land at stake, it was essentially a dispute between private individuals (without any socio-economic or political objective) and falls within the category of 'domestic squattings' being looked at in this article.

were fairly anodyne despite the publicity generated by the case.⁴⁶ The Grahams knew their actions were wrong in the sense that they were not permitted to be on the land from 1984 onwards, and there is a certain counter-utilitarian aspect to the decision given that it resulted in land which Pye intended to use for housing being placed into private ownership. However, reactions were probably also influenced by the fact that Pye was a wealthy (and faceless) corporation with an abundance of land and was also in some way responsible for what had happened by failing to remove the Grahams. In short, while people might find the Grahams and their conscious 'taking' of someone else's property objectionable, they also tend to have little sympathy for indifferent or neglectful landowners like Pye who fail to act despite being fully aware that someone else is using their land. Indeed, such inaction is perhaps viewed as evidence that they cannot have had a strong emotional attachment to it in the first place.

Another significant difference between the *Pye* case and that involving the Kirlins is that the former involved land intended for development rather than a private residence. Whilst it may be true to say that people's relationships with places generally are frequently 'saturated with emotions',⁴⁷ this is doubly so in relation to a home. The concept of 'home' has spawned a vast amount of literature in recent years,⁴⁸ much of which serves to emphasise the complex and multifaceted nature of the idea.⁴⁹ Thus, for Fox, the notion of home connotes a physical structure, territory, identity and a social/cultural unit;⁵⁰ for Oluwole, it is at once heart, hearth, an area of autonomy and a source of social status.⁵¹ For Gurney, the home is, for good or ill,⁵² nothing less than an 'emotional warehouse';⁵³ for Low these emotions can be not only 'proactive' ones such as love, warmth, trust and security, but also 'reactive' ones associated with defensive feelings and a desire to be protected from real or imagined dangers.⁵⁴ The significance of these feelings in the present context is plain to see; taking someone's home is so much worse than taking other property because of complex emotional attachments to the home and the sense of shelter and security that it connotes. In the two cases discussed here, Pye simply lost its land; the Kirlins lost what was intended to be their perfect home in what was effectively a symbolic

46 For example, one of the more forceful headlines reporting on the House of Lords' decision was C Dyer, *The Guardian*, 'Britain's Biggest Ever Land-Grab', 9 July 2002, while *BBC News Online* simply referred to 'Windfall Hope for Farming Family' (4 July 2002) <<http://news.bbc.co.uk/1/hi/england/2094190.stm>> accessed November 2012. Media reporting of Pye's eventual defeat in the Grand Chamber of the European Court of Human Rights was equally lacklustre: see, for example, M Herman, 'Developer Loses Landmark Squatting Case' *The Times* (London, 30 August 2007); and J Rozenburg, 'Firm Loses Case Over £21m Loss to Squatters' *The Telegraph* (London, 30 August 2007). The respective parties in *Pye* had placed highly conflicting values on the land, ranging from £10m–£21m. However, the final figure appears to have been much closer to £10m.

47 B M González, 'Topophilia and Topophobia' (2005) 8 *Space and Culture* 193.

48 S Mallett, 'Understanding Home: A Critical Review of the Literature' (2004) 52 *Sociological Review* 62.

49 G D Hayward, 'Home as an Environmental and Psychological Concept' (1975) 20 *Landscape* 2; K Dovey, 'Home and Homelessness' in I Altman and C M Werner (eds), *Home Environments* (Plenum Press 1985) 34; H Easthope, 'A Place Called Home' (2004) 21 *Housing, Theory and Society* 183; I Oluwole, 'Home and Psycho-Social Benefits' (2011) 19 *Ife Psychologia*; and D B Barros, 'Home as a Legal Concept' (2006) 46 *Santa Clara L Rev* 255. For a more critical approach, see S Stern, 'Residential Protection and the Legal Mythology of Home' (2009) 107 *Mich L Rev* 1093.

50 L Fox, 'The Meaning of Home' (2002) 29 *JLS* 580, 590.

51 Oluwole (n 49) 3.

52 Thus, many critics have suggested that romanticised ideals of home are often at odds with the lived experience of many people, most notably those for whom it is a place not of safety but of terror: see Mallett (n 48).

53 C Gurney, 'Towards a more Affective Understanding of Home' in *Proceedings of Culture and Space in Built Environments: Critical Directions/New Paradigms* (2003) 33, as cited by Oluwole (n 49).

54 S F Low, 'The New Emotions of Home' in M Sorkin (ed), *Indefensible Space: The Architecture of the National Insecurity State* (Routledge 2008) 233.

shattering of the core values of the ‘American dream’: the concept of private property and protection of basic rights and freedoms.

The decision in *Pye* aside, other high-profile squatting claims show that public reactions can be just as strong in England as they are on the other side of the Atlantic, especially where the squatter’s actions are deliberate and the potential loss of valuable property (often, but not always, a home or private dwelling) creates a strong sense of injustice.⁵⁵ Such claims are also characterised by a tendency on the part of the media to vilify certain categories of squatter, and not simply because of their actions in claiming another person’s land; this would be bad enough on its own, but the fact that the squatter is classed as a certain ‘type’ of individual makes things even worse and heightens the emotional response. For example, those who engage in organised squattings are frequently portrayed as ‘scruffy layabouts’, scrounging off the rich by moving into affluent neighbourhoods and occupying private dwellings, or acquiring valuable council properties at the expense of the taxpayer.⁵⁶ Adverse possession has also occasionally been linked to the immigration debate, with certain newspapers suggesting that those who come to Britain from other countries are not simply changing communities and threatening citizens’ livelihoods but are now ‘taking our homes’ as well.⁵⁷ Although the likelihood that adverse possession will ripen into title is virtually nil here, the association of adverse possession with immigration, with all that this implies by way of broader societal fears and prejudices, makes it a much more contentious and divisive issue than it might otherwise be.

3 Mediating the emotional response: judges, legislators and the shift towards owner protection

Adverse possession is an example of the capacity of the law to generate negative emotion. Yet, there appears to be little room for an emotional response to contested land claims, at least insofar as the legal system itself is concerned. This is hardly surprising. Property law facilitates a dispassionate dialogue with its emphasis on rules and legal formalism, and the resolution of adverse possession disputes is no different. Mechanistic principles ignore such things as the landowner’s sentimental attachment to the property or its financial worth; the

55 Gray and Gray (n 3) 1167 cite public reactions to *Ellis v Lambeth LDC* (1999) 32 HLR 596 (loss of valuable council property in London to squatter who had been there for almost 15 years), as well as headlines such as ‘Squatters Sell Home For £103,000 . . . And it is Completely Legal’ *Daily Express* (London, 8 July 1996). See also C Gysen, ‘Squatter Becomes Owner of £100,000 Flat’ *Daily Mail* (London, 15 June 2001).

56 Some of the more lurid headlines include the following: J Hartley-Brewer, ‘Squatter’s Right to £200,000 Home: Council Blunder Gives Free Property Windfall to Man who has Lived in House for 16 Years without Paying a Penny in Rent, Rates or Taxes’ *The Guardian* (London, 21 July 1999); D Millwards, ‘Squatters are Evicted from Economist’s £1.5m Home’ *The Telegraph* (London, 25 August 2001); A Gillan, ‘Squatters Move into £20m House’ *The Guardian* (London, 9 November 2002); C Johnston, ‘Squatters Lock Pensioner out of her £1.5m House’ *The Times* (London, 30 April 2005); V Dodd, ‘The Party’s over for Squatters in £14m House’ *The Guardian* (London, 1 September 2006); H Pidd, ‘£6m House, 30 Rooms, One Careful Anarchist Collective: inside Britain’s Poshest Squat’ *The Guardian* (London, 7 November 2008); J Swaine, ‘Squatters Move into £4.5m Hampstead Mansion’ *The Telegraph* (London, 10 April 2009); and R Seales, ‘Squatters Who Took Over £4m Ten-bedroom Mansion Face Eviction after “Hitting Golf Balls from the Roof”’ *Daily Mail* (London, 20 March 2012). Although some of these could be described as ‘Robin Hood’ style, redistribution of wealth-type squattings wherein a lack of affordable housing for families and public-sector employees in expensive city areas clashes with the significant number of empty properties neglected by wealthy landowners, the various media reports tend to be critical of squatters regardless of their motives.

57 See, for example, M Horsnell, ‘Polish Builders do up Flat, then Stay as Squatters’ *The Times* (London, 11 November 2006); C Gray, ‘How Migrants Snatched our Homes’ *Daily Express* (London, 23 September 2010); J Matthews, ‘I Want an Even Bigger House says Latvian in £10 Million Squat’ *Daily Express* (8 January 2011); and M Wardrop, ‘Squatting Rises as Eurozone Crisis Drives Migrants into London’ *The Telegraph* (London, 8 June 2012).

squatter's motivations are also irrelevant, as is the sense of outrage and injustice which any successful claim might generate. However, this is not to say that courts have remained entirely neutral in their views.

While the various statutes of limitation stipulate a time after which a squatter can claim title to another's land, certain doctrinal requirements must also be satisfied such as exclusive physical control over the land and intention to possess to the exclusion of all others⁵⁸ – what might be described as a type of 'judicial gloss' on the legislation. The application of these rules does not tend to distinguish between so-called good-faith and bad-faith takings, with the result that the 'rapacious land-grabber' is treated no differently to the innocent, land-caring trespasser'.⁵⁹ Yet there is a subjective tendency on the part of judges to categorise some adverse possession claims as less deserving than others and to raise the legal threshold accordingly by making it more evidentially difficult for a squatter to prove intention to possess or factual control of the land, both of which must be established on the facts of the individual case. In other words, by subtly manipulating the doctrinal requirements of adverse possession, judges can sometimes ensure that deliberate land thieves, or those whose adverse possession claims appear to them to be less meritorious, find it more difficult to succeed.⁶⁰

We might describe this as an intuitive emotional response; instead of simply applying law to fact in a mechanical and deliberative way, judges may be swayed (in adverse possession claims where they ensure that title remains with the owner) by certain biological predispositions around notions of property and ownership, and by the negative moral connotations which squatting generates.⁶¹ As argued above, such factors strongly influence societal responses to adverse possession,⁶² and judges are no different, even if they can justify a particular outcome on the basis of legal rules as opposed to human intuition. It is also interesting to note that judges do not tend to criticise individual squatters or make negative comments about their actions, even where such persons are acting with blatant disregard for the rights of others.⁶³ Once again, this is hardly surprising given that squatters

58 These are the basic doctrinal requirements in English law, as established in cases such as *Powell v McFarlane* (1977) 38 P & CR 452; *Buckingham County Council v Moran* [1990] Ch 623; and the House of Lords decision in *J A Pye (Oxford) Ltd v Graham* [2003] 1 AC 419.

59 B Edgeworth, 'Adverse Possession, Prescription and their Reform in Australia' (2007) 15 APLJ 1, 15. However, the position will obviously be different where adverse possession laws for a particular jurisdiction specifically state that such a distinction should be made, as is now the case in the state of Colorado: see text to n 66.

60 Cooke notes a 'recurring theme' in English case law whereby judges 'have at times appeared to strive to make things difficult for the squatter by setting the [doctrinal] requirements . . . rather higher than they need be': see E Cooke, *The New Law of Land Registration* (Hart Publishing 2003) 134 and the examples cited therein. Similar trends have been noted in the USA, with courts being reluctant to award title to so-called bad-faith squatters: see Helmholz (n 40), 339–41.

61 For an analysis of the tensions between formalist and realist or intuitive models of judging, see C Guthrie, J J Rachlinski and Judge A J Wistrich, 'Blinking on the Bench: How Judges Decide Cases' (2007) 93 Cornell L Rev 1 and the various sources cited therein.

62 See part 1 above.

63 For example, in the *Pye* litigation, any negative expressions were confined to the outcome of the case and aspects of adverse possession more generally with Lord Bingham and Lord Hope reluctantly awarding title to the Grahams while criticising the absence of any compensation mechanism for Pye as well as the 'lack of safeguards against oversight or inadvertence' on the part of the owner: *J A Pye (Oxford) Ltd v Graham* [2003] 1 AC 419, 447, per Lord Hope. It is worth noting here that Lord Bingham actually suggested that the Grahams had 'acted honourably throughout' and were merely 'doing what any farmer in their position would have done' by continuing to farm the 23 hectares of land when no new grazing agreement materialised ([2003] 1 AC 419 at 426). This perhaps embellishes things somewhat, given that the Grahams knew of Pye's superior right and that their continued use of the land was unauthorised and unpaid for!

are merely taking advantage of what the law allows them to do, and there are probably numerous instances of judges having to apply laws which they disagree with on a personal level yet must uphold as a directive of the state.⁶⁴ Instead, manipulation of the doctrinal requirements for adverse possession can be seen as a discreet yet effective means of channelling judicial empathy for disenfranchised landowners, while also signalling a tacit disapproval for acts of deliberate squatting.

Public attitudes towards adverse possession have also influenced legislative responses to the doctrine, contributing to what we might describe as an increasingly 'owner-protectionist' stance in some jurisdictions. Law-makers have traditionally accepted (or tolerated) adverse possession as a necessary means of placing a time limit on lawsuits while ensuring that land records match lived realities as a means of promoting marketability. Yet, occasional high-profile or atypical squatting cases (especially those which involve deliberate land-taking) provoke public outrage and prompt calls for change, even if they also distort the more habitual application of the doctrine. The strength of the local reaction generated by the Kirlin dispute in Colorado⁶⁵ is a powerful example of law responding to emotion, the public's instinctive aversion to the outcome and perceived immorality of adverse possession prompting a knee-jerk reaction which saw the state legislature rush through new laws within a matter of months. These reward only good-faith trespassers and allow courts to force a victorious squatter to pay for any land acquired, as well as reimbursing the rightful owner for any property taxes paid by them during the limitation period.⁶⁶

In Britain, the driving forces behind recent changes to core adverse possession laws have been more subtle though no less significant in their effect. Public perceptions of the doctrine undoubtedly played a part, given some of the media headlines referred to earlier⁶⁷ and the sense that it was becoming almost too easy for deliberate squatters to succeed. However, other factors were also at play, in particular, arguments that adverse possession did not sit comfortably with a system of compulsory title registration and its definitive record of land ownership,⁶⁸ as well as issues around whether an uncompensated loss of land breached art 1, Protocol 1 of the European Convention on Human Rights and its right to 'peaceful enjoyment of possessions'.⁶⁹ Existing adverse possession laws in England and Wales 'suddenly seemed, in popular imagination, to endorse a form of land theft',⁷⁰ resulting in sweeping changes under the Land Registration Act 2002. Under this statute, a squatter cannot simply succeed by occupying land for the limitation period; after a period of 10 years, he must apply to the Land Registry to be registered as the proprietor of the land.⁷¹ The landowner will be alerted to the hostile claim and can object accordingly. At the

64 See, generally, E H Levi, 'The Nature of Judicial Reasoning' (1965) 32 University of Chicago L Rev 395; and A Mason, 'The Art of Judging' (2008) 12 S Cross U L Rev 33.

65 See text to n 42.

66 See C D Joyce and A J Laydon, 'Adverse Possession Claims in Colorado' <www.fwlaw.com/tabid/86/tabid/171/Default.aspx> accessed November 2012.

67 See text to nn 55–57.

68 See, in particular, the discussion in Law Commission, *Land Registration for the Twenty-First Century: A Conveyancing Revolution* (Law Com No 271, 2001) pt II.

69 Although the Grand Chamber of the European Court of Human Rights ultimately concluded that adverse possession did not infringe art 1, Protocol 1 in *JA Pye (Oxford) Ltd v UK* (2008) 46 EHRR 45, the background to the decision and growing awareness of human rights issues following the enactment of the Human Rights Act 1998 which incorporated the Convention into UK domestic law undoubtedly fuelled the debate on reform of adverse possession laws in England and Wales.

70 Gray and Gray (n 3) 1166.

71 The procedure is set out in sch 6 of the 2002 Act and only applies to registered land in England and Wales. For a more detailed analysis, see Gray and Gray (n 3) 1169–75.

risk of over-simplification, the squatter will only succeed where certain exceptions apply – for example, where he is entitled to the land under the doctrine of estoppel or occupies the land because of a mistaken belief as to its boundaries and ‘reasonably believed’ that the land belonged to him.⁷² Like Colorado, the new laws in England and Wales suggest an overwhelming shift towards protecting vulnerable owners, while the fact that bad-faith squatters will have little chance of success is perhaps indicative of some sort of legislative intent to address the potential injustices caused by adverse possession.

A more recent salvo against squatting in England and Wales was unveiled by Prime Minister David Cameron at a press conference on 21 June 2011, in which he announced a range of measures to be included in a raft of criminal justice reforms being introduced that day.⁷³ One of these was a new criminal offence of squatting, to be brought into effect after a short consultation exercise.⁷⁴ These proposals came as something of a surprise to MPs, the Justice Secretary having said nothing about them in his statement to the House of Commons that morning,⁷⁵ and some disquiet was expressed from both sides of the House at this presentation of important matters of policy to the media before MPs had had a chance to ask questions about them.⁷⁶ The Legal Aid, Sentencing and Punishment of Offenders Bill was duly given its first reading that afternoon,⁷⁷ and its second reading the following week,⁷⁸ but it was not until the beginning of November that the new provisions on squatting were introduced, being inserted into the Bill during the course of its report stage.⁷⁹ The effect of these provisions, which can now be seen in s 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, is to make it a criminal offence for a person to be in a residential building as a trespasser having entered it as a trespasser, where the person knows or ought to know that he or she is a trespasser, and is living in the building or intends to live there for any period.⁸⁰ The new offence is triable summarily and is punishable by imprisonment and/or a fine of up to £5000.⁸¹

Arguments around the state effectively underpinning the rights of the property owner seem intuitively strong; yet the purpose of this new offence is by no means clear and, unlike the Kirlin dispute in Colorado, there was no cause célèbre driving calls for legislative change. In summing up the debate on the clause which preceded s 144, the Minister of State declared that it was wrong to steal someone else’s home and that the new provisions were intended to address this,⁸² but at the end of the day these provisions have little or no bearing on the law of adverse possession other than to strip it of any notion of state legitimacy in cases to which the offence applies. As stated above, the acquisition of title by adverse possession in England and Wales had already been made virtually impossible (at least in the case of registered land)⁸³ by the Land Registration Act 2002. The real impact on adverse possession doctrine comes from the 2002 Act, and in any event few if any residential squatters of the sort contemplated by the new criminal law offence would ever have been likely to be allowed

72 2002 Act, sch 6, paras 5(2)–(4).

73 <www.number10.gov.uk/news/pm%E2%80%99s-press-conference-on-sentencing-reforms/> accessed November 2012.

74 *Ibid.*

75 HC Deb 21 June 2011, col 9WS.

76 *Ibid.*, col 190 (Hilary Benn and Peter Bone).

77 *Ibid.*, col 191.

78 HC Deb 29 June 2011, cols 984–1073.

79 HC Deb 1 November 2011, cols 864–94.

80 2012 Act, s 144(1).

81 2012 Act, s 144(5).

82 HC Deb 1 November 2011, col 889.

83 See n 71.

to remain in possession long enough to acquire title by these means. Nor does it do much to improve the protection given to homeowners; as was pointed out on several occasions during the parliamentary debates, s 7(1) of the Criminal Law Act 1977 already makes it an offence for a person who is on any premises as a trespasser, after having entered as such, to fail to leave on being required to do so by or on behalf of a 'displaced residential occupier' of those premises.⁸⁴ The consultation that preceded the enactment of the new provisions was somewhat perfunctory, and the responses received certainly did not indicate a major degree of public concern about the problem.⁸⁵ All in all, it is hard to disagree with the comments of Sadiq Khan, the MP for Tooting,⁸⁶ who suggested during the debate that the purpose of these and other punitive provisions inserted into the Bill was to give a 'tough' appearance to a piece of legislation that might otherwise have been perceived as being somewhat 'soft' on crime.⁸⁷ To borrow from a well-known song from *Mary Poppins*,⁸⁸ a spoonful of sugar helps the medicine go down in a most delightful way. Political symbolism aside, it is likely that the criminal law sanction against squatting will resonate strongly with private citizens and be viewed as a direct response by the state to the negative emotions generated by adverse possession, thereby ensuring some level of populist appeal.⁸⁹

Conclusion

Despite its existence in most legal systems for centuries, adverse possession is an emotive and divisive topic. The fact that reactions to the doctrine are so very visceral is hardly surprising. Property and ownership are ingrained human traits in Western societies; the fact that sentimental attachments to land tend to be even stronger, yet adverse possession allows a squatter to take it from the owner with relative impunity, unleashes a sea of hostile feelings. In this respect, the sense of state complicity only adds to the emotional maelstrom.

The present article has identified a number of paradoxes surrounding adverse possession and the emotions involved in it, be they on the part of those involved in the dispute, the wider public, the popular media, judges or legislators. The first paradox lies in the doctrine itself; a wrong becomes a right, in that what was originally a tort committed against the landowner becomes the basis of the trespasser's legal title. The second paradox

84 HC Deb 1 November 2011, cols 869, 875, 881, 884 and 945.

85 Government Consultation Paper, *Options For Dealing with Squatting* (CP12/2011) 7. Only 10 victims of squatting came forward in response to the consultation and, of those, only seven were residents while 25 other members of the public said that they were concerned about the problem. As against this, no less than 2126 respondents indicated that they were concerned about the impact of criminalising squatting on the problem of homelessness. Some 1990 of these responses were received in support of a campaign organised by a pressure group for squatters; even so, the rather feeble response from the other side of the debate is somewhat surprising given the hostile attitude to squatters expressed in parts of the media: see nn 55–57 above. Members of the legal profession have not expressed widespread support for s 144 of the 2012 Act; see C Baksi, 'Lawyers Berate New Law Criminalising Squatters' *Law Society Gazette* (London, 31 August 2012) <www.lawgazette.co.uk/news/lawyers-berate-new-law-criminalising-squatters> accessed November 2012.

86 HC Deb 29 June 2011, col 996.

87 Thus, for example, a significant feature of the Bill was the abolition of the indeterminate sentences for public protection introduced by the Labour government in the Criminal Justice Act 2003: see now s 123 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

88 Musical film produced by Walt Disney and released in 1964.

89 This use of legislation as an emotional palliative and to reassure the public that 'something is being done' is described by Sir Francis Bennion as 'law-churning': see B Hunt, 'Foreword', *The Irish Statute Book: A Guide to Irish Legislation* (Firstlaw 2007) 3. Compare M Lodge and C Hood, 'Pavlovian Policy Responses to Media Feeding Frenzies? Dangerous Dogs Regulation in Comparative Perspective' (2002) 10 *Journal of Contingencies and Crisis Management* 1; and see *Laws Based on Emotion* (Stockholm Criminology Symposium 2012) <www.criminologysymposium.com/symposium/event-information/2012/archive/news/2012-10-05-laws-based-on-emotion.html> accessed November 2012.

lies in the emotional responses to adverse possession, which seem to be strongest in those cases where there is little or no chance of the doctrine ever coming into effect, as in cases of residential squatting where the owner is only too anxious to evict the adverse occupants as soon as possible. The third paradox lies in the response of judges and legislators which, while not necessarily emotional in itself, may be motivated by the need to respond to and to generate emotion on the part of the public at large.

Of course, some adverse possession claims are more defensible than others, depending on how they are perceived and the influence of certain factors, including the amount of land involved and degree of apparent culpability on the part of the squatter. Yet, there is an overwhelming sense in which adverse possession is morally and socially wrong, and that laws which allow this to happen are unjust, unfair and in urgent need of change. Judges are limited in what they can achieve here, although recent legislative developments suggest that law-makers have been influenced by contemporary community attitudes. By shifting the emphasis firmly towards owner protection and more socially acceptable (or tolerable) notions of good-faith squatting, the law is responding to the negative emotions generated by adverse possession. While crossing boundaries and acquiring someone else's land without compensation is never likely to receive widespread approbation, reducing its scope may result in adverse possession being seen as less of an affront to basic societal ideals.

