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THROWN INTO A CONSTRUCTION DISPUTE: THE PERSONAL TOLL OF AGGRESSIVE CLAIMS MANAGEMENT

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This practitioner research investigates the impact of aggressive claims management on project team members. I autoethnographically explore experiences on a construction project. While I maintained a cooperative relationship with the client and design team, another contractor employed aggressive claims management. The unfolding conflict provides the material - observations and experiences for this autoethnography. In addition, I use Heidegger's thrownness as a theoretical lens to understand the unfolding processes. The investigation shows that aggressive claims management raises stress levels in the team members resulting from the need to justify and defend oneself. Tactfulness mitigates the effects but is often insufficient due to robust economic necessities and raised emotional involvement. The stress and pressure almost inevitably lead to counter-aggression and the erosion of moral standards and values for economic survival, resulting in a vicious circle of even more severe conflict. I provide no answer to how to deal with the conflict, but I show its effects by using Heidegger's thrownness to explore where it originates.

Keywords: Autoethnography; Heidegger; claims management; emotions; stress

INTRODUCTION

The economic impact of aggressive claims management has received much academic attention, however the emotional consequences on the professionals involved has gained only very limited interest in scholarship. Therefore, I explore my experiences of exceptionally aggressive claims management on one of my projects autoethnographically. I emphasise the personal and emotional effects of such activity - what it does to construction professionals. First, I give some background to autoethnography - the approach used here. Then I provide vignettes of my experiences during the ensuing conflict about filed claims. Concurrently, I connect them to the literature. To understand the events and the (re-)actions of the participants (me included) I use Heidegger's thrownness. Finally, I argue what aspects of claims management have been neglected so far.

AUTOETHNOGRAPHY

Primarily, I am writing my own story; I share my experiences to inform others. Rooted in ethnography, the approach relies on the researcher to write about their

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experiences and observations in the field they study (Emerson, Fretz and Shaw 2011, Hammersley and Atkinson 2007). The researcher usually takes brief notes and later develops these into longer fieldnotes. Exploring this material builds the basis for the findings and interpretations. Whereas 'conventional' ethnographers may explore any accessible setting, autoethnographers study their environment, experiences, and personal issues. Autoethnography is especially useful for explorations like mine since I can use an insider's perspective to explore a phenomenon that is otherwise difficult to access (Grosse 2019). Subsequently, I only describe how I use autoethnography.

While the conflict unfolded, I took brief notes in meetings, after phone calls and about conversations on and off-site. Later, often in the evenings, I developed them into longer fieldnotes and reconstructed the vignettes offered here. As I wrote, I simultaneously read literature, thought, and further explored, as Richardson and St. Pierre (2005) outline. Like Ellis (2019), I reviewed emails, meeting minutes and other materials to recollect the experiences. However, I do not chronicle the events to create a boring list of who did what and when (Ellis 2019). Instead, I present single events that reflect the situation and give an impression of what was happening. I emphasise the emotional side of aggressive claims management. The reader should feel the event rather than be given a rational explanation of consecutive events. My contribution is, therefore, not a theoretical implication in rational terms but rather an impression of the events understood as alternative theorising (Cunliffe 2022). Hence, an engaging, lively description aims to reach beyond purely rational explanations.

Therefore, I cannot describe the events from a neutrally and detached stance. Although I am trying not to cast a judgement about claims management, I cannot avoid my personal judgements influencing what I write. I have firmly vested interests and values. Therefore, my writing does not offer "accurate reporting" (Rooke, Seymour and Fellows 2004: 660). Instead, it explicitly provides an engaged and involved picture and it remains partially judgemental. Otherwise, I would not offer the lived experience needed to convey the emotional aspect of claims management practices.

UNFOLDING CONFLICT

In late 2016, we signed a contract for an urban building comprising of flats, offices, and a restaurant. We had already worked with the employer, their architects, and engineers. I would call the way we worked together 'smooth sailing'. Sometimes we argued about minor issues. But, in general, we discussed emerging problems and solved them with mutual agreement. Once we started working on the new project, smooth sailing continued as usual. Here and there, there was a site visit and a discussion about details and technical solutions.

This cooperation was not just a short "'honeymoon' period" at the start (Whaley 2020: 209) but lasted throughout the project. It shows "[r]adical integrative attitudes" which "are found among engineers" and architects "who promote engineering values above the values of claims culture." (Rooke, Seymour and Fellows 2003: 174). We brought in a structural engineer with whom we knew we could deliver high-quality and cost-efficient solutions. We had already cooperated with him successfully and produced good results for the client.

This cooperation contributed to my thrownness which Heidegger (1927) understood as already being there. Understanding myself, I cannot start from scratch; I am already there with my personal history and background. I am not innocent but already shaped

by the events I have lived through. In this way, I understand my Dasein - being-there. However, this understanding inevitably departs from the inside. I am thrown into a situation with the 'backpack' comprised of my conceptions and values. From this viewpoint, I can only lift one layer after another. Still, I know I can never raise all the layers. Thrownness is "my rootedness in a culture, my already established preferences, skills, habits, and so on" (Hoffman 1993: 208).

On this project we cooperated. Of course, we had some differences, yet we managed our conflicting views productively (Loosemore and Galea 2008, Whitfield 2012) and delivered good results. Hence, my thrownness comprised of this good cooperation and prior experiences and values. But then things began to change.

In 2018, after we finished pouring concrete, our work was in essence finished. We only had to remove castings, support props and beams and complete a few minor tasks. However, the scaffolding remained under our contract and supervision. At this point, Miller, a new contractor for the cladding, windows, and doors, was brought in.

We discussed site logistics in one of the first meetings with Miller and the architect. Miller boldly demanded we remove all material and equipment from the site almost immediately. We agreed to free up most of the space for him, but we still had minor work and transports to organise. Then he made a considerable noise that we should remove our crane within a fortnight because he needed the space for his crane. Somehow my site manager arranged for it to be done on time. But then, for five weeks, nothing happened: no new crane, new material, nothing. My staff started to use the freed space for temporarily depositing material and equipment to be carried away, mainly because we could hardly move it around without a crane.

Although causing no significant problem for Miller, he claimed we had breached the agreed procedures. 'Yes, sure,' I thought, 'but what's the problem? Has (or will) any of your work or deliveries be affected? No!' There were no practical implications of us using the space temporarily.

Miller relied strongly "on strict contractual rights" (Whaley 2020: 45), which indicates toward a rather distributive approach of negotiating and managing (Rooke, Seymour and Fellows 2003). This insistence on formal procedures reminded me of the mechanism observed by Rooke, Seymour and Fellows (2004). I knew these mechanisms very well, but I did not like them. They ran counter to my thrownness, "my already established preferences, skills, habits, and so on" (Hoffman 1993: 208). I would have preferred a discussion about underlying interests but had to deal with positional bargaining. 'Well, a slight change in the way of working is not that dramatic' I thought, 'and, I will leave the project soon anyway.' But it was more than a slight change.

Not long after we had a meeting to discuss changes to the scaffolding and some minor alterations to a concrete wall. This discussion became more aggressive since the scaffolding couldn't be changed as fast as Miller wanted. He then accused me of delivering the building late to the schedule. I told him that my contract would have allowed for another three months. Miller, half a head taller than me, stood less than 30cm in front of me, much closer than was comfortable, and began shouting in my direction that my delivery was late. I gently push his torso away from me. "Don't touch me!" he yelled.

After that incident, I talked to the architect. 'It's unbearable,' the architect said, and I added that I'm not willing to continue such interactions. On our way home my site

manager said, "I thought he was going to punch you". In more than 25 years in the construction sector, this has never happened to me before.

It is a departure from what Rooke, Seymour and Fellows (2003) and others (e.g., Whaley 2020) describe. In their studies on claims management, emotions play only a subordinate role. Reviewing the research on claims management and conflicts in construction one finds advice on how to reduce conflict (Whitfield 2012), to manage conflict (Loosemore, Nguyen, and Denis 2000) and benefit from the positive effect of conflict (Loosemore and Galea 2008). But there is little notice of the emotional side of conflicts in construction. Feelings and emotions resulting from conflict and/or claims enjoy little prominence. Only some mention them at all (Kadefors 2005, Lindebaum and Fielden 2011, Nilsson Vestola and Eriksson 2023). Often conflict is just seen as a hinderance to e.g., lean construction (Albalkhy and Sweis 2021) or cost efficiency (Haaskjold, Andersen and Langlo 2023).

Therefore, I seek to highlight how the emotions within a dispute over claims unfolded, how they contributed to the conflict and how they were used to run the project almost against the wall. On this project, emotions, aggression, and even violent communication (Rosenberg 2015) were involved. Apparently, this was to generate more profit rather than to deliver a successful project.

To this end, autoethnographically researching own experiences offers unique insights. I can recount how emotions unfolded, what they do to the persons involved, how I sought to manage them and how I sometimes failed. In research on claims and resulting conflicts, interest in the economic consequences is evident but the above-mentioned aspects are underrepresented. The conflict had even more to offer.

The employer asked me whether I'm free for an urgent meeting. "We have a serious issue" the architect told me on the phone later. In the meeting, Miller explained that the front face of the house diverted by 100 mm from the axis planned. I sat there with wide-open eyes and couldn't believe what I had just heard. "Well," I said, "let me check that because it is completely new information, and I have to consult my foreman." I struggled to keep calm. I knew 100 mm would be massive and would cost a huge sum. I couldn't believe my men would have made such a mistake.

I felt like my back was pushed against a wall. If true, how could I come out of that? It was an extreme pressure that hit me without much warning. I could not act reflectively. I merely cruised on autopilot. Maybe there was some tact involved. Van Manen (1995: 42) explains tact as "a kind of situated practical knowledge that inheres in the act of tact itself". I haven't made the alleged mistake myself, however, I was accountable for it. I agree with Loosemore and Waters (2004: 129) that one of the "greatest sources of stress [...] were [...] implications of mistakes".

We left the meeting room and visited the site. I walked a dusty patch with Miller and my site manager in hearing distance behind us. "I'm sorry that I had to break the bad news to you," Miller said to me, referring to his claim that the one wall was 100mm crooked. I firmly believe that he sought to make a lot of money from this alleged mistake: from our pockets. To say that we felt this 'apology' was inauthentic is an extreme understatement. I must admit I thought, "You bloody liar!"

The impression I had in the moment was not that Miller needed to file claims for economic survival as it is often argued (Coggins, Teng and Rameezdeen 2016, Love *et al.*, 2017, Rooke, Seymour and Fellows 2004). Instead, I thought he wanted to make a profit. I thought Miller was happy having found something to base claims on

rather than feeling sorry for anybody. I suspected Miller of being very claims-conscious (Chan *et al.*, 2010). It is a different way of doing business that Miller employs. I am judgmental about it; one can easily read it from my thoughts.

After the meeting and the site visit, my site manager and I took some measurements. We found approximately 100 mm. Then we called the foreman, who is not too talkative, but he immediately mentioned the walls aren't rectangular to each other by roughly 100 mm. That was it. It was designed like that. When confronted that we built it according to plan and he must have missed it, Miller merely replied with an 'Okay'.

It is an emotional rollercoaster. First, one is stressed by the fear of making a mistake and equally relieved by finding out your team's work is satisfactory. Yet the period between is stressful and exhausting. The literature talks about stressful work on construction sites but fails to explore claims management's contribution to this stress. Furthermore, as Rooke, Seymour and Fellows (2004) show, disturbance in the project delivery are necessary to file claims. Contractors actively search for mistakes to exploit them. My impression is that conflicts are deliberately managed destructively to generate even more claims from the ensuing havoc. Strong emotions add fuel to the fire by leading to even more mistakes or bad decisions. In the case presented here, I got the impression it was a deliberate tactic.

In a letter addressed to the employer, Miller claimed the heights of the different floors were, on average, 20 mm too low. This was accompanied by a verbal claim for a couple of thousand Euros for refitting already fixed windows. After a brief discussion with my site manager and the foreman, the latter went to the building site and checked using a steel belt measure and a rotating laser level. We just found around a 5 mm difference to the planned heights—nothing to be concerned about.

When we presented our results in a relatively informal makeshift protocol - a printout with some numbers scribbled on it, Miller tried to discredit us; he talked about how unreliable and inaccurate our devices were. Instead, he bragged about the reliability of his surveyor's measurements, citing his most advanced laser scan technology. However, after an external surveyor confirmed our result - Miller's surveyor miraculously found similar results. In addition, in subsequent discussions with the on-site workers, we could only account for a fraction of the costs Miller claimed.

The client, architect and I all knew, contrary to Whaley's (2020) observations, that the claim was spurious and inflated and not just weakly substantiated: there was no reason for the claim, and the sum claimed was far from realistic. It was the second time Miller had argued on the wrong grounds. We wondered whether this was systemic.

My approach could have been different. Again, I judged him according to my thrownness (Heidegger 1927). It is not how I identify as an engineer and CEO. Maybe the following vignette depicts a way of dealing with that identity struggle (Sveningsson and Alvesson 2003).

During one of the next meetings, I had to let off some steam and said to him, look you have falsely claimed that the front face is 100 mm crooked, and your measured heights were wrong too, and you didn't even apologise for causing such upheaval. How dare you?

That could be seen as a sort of revenge or a demarcation of boundaries: "Don't do that again!" like Lindebaum and Fielden's (2011) description of expressing anger. It was unnecessary and probably of little help, but the emotional involvement led me to utter

it anyway. I felt I had to fight back. But this emotionality was not particular to me. Miller accused one design team member of not checking the heights properly. By their respective reaction one could feel their stress and anger. Apart from Loosemore and Galea (2008) mentioning it as cause of stress, previous research has not explored what it means to the person being held accountable for a mistake. Exploring cause and accountabilities for mistakes from a detached perspective is one thing, what that implies emotionally for the persons involved is something completely different. It is this strong subjectivity that is comprised in Heidegger's thrownness which shows its full bearing on the persons. The following underlines the emotionality:

'Henning it's better if you talk, you're so much calmer,' one of my staff members said before the meeting. Later he said, "Oh, I felt your emotionality." I thought, you don't know how hard I tried to keep calm. Another person involved in the project told me on the phone: "My wife hasn't heard me shouting like this on the phone before."

The two former vignettes show how the persons involved are drawn into the situation and realize that they did not act out their potential. It is the 'falling' that Heidegger describes. We do not act according to our potential; we are 'inauthentic' (Heidegger 1927). Yet there are the possibilities our thrownness offers us to be authentic. However, we fail to enact them and hence fall into dysfunctional conflicts.

The proneness to conflict is widely documented (Latham 1994). It often results in aggressive behaviour, which is a cultural norm expected from industry actors. Encheva was asked to "show [her]self more aggressively on the construction site [which felt for her like she] needed to adjust in a new way" (Encheva 2022: 44-5). She further observed that "[i]nstead of supporting the peaceful way of communication, I was given an example related to how the male-dominated [and conflict-prone] industry worked" (Encheva 2022: 45). As the vignette above shows, conflict has a self-fulfilling tendency, and I can only control my emotionality to a limited degree. Suggestions like the one Encheva heard reinforce the very problem.

Notwithstanding the merits of conflicting views (Loosemore and Galea 2008), the aggressiveness and the need to 'be right' lead to personal insults (Schopenhauer 2021). The economic circumstances - costly mistakes - are an almost insurmountable obstacle to accepting and admitting one's own mistakes. It is not about learning from mistakes but about covering up for them as much as possible because being proven wrong is exceptionally costly: even more so when it comes to overpriced and spurious claims. Hence, being right becomes a vital interest. We end up in terrible blame games, and learning is inhibited. This fact was brought home by the employer:

At a later meeting, the employer argued that he would not pay anything. Therefore, either the claims were justified, and I would be held to account, or the claims were not, in which case Miller would have to cover any additional costs.

I could get my liability insurance involved, but I didn't want that because they might charge me extra the next year or, at some point, terminate the contract altogether. Hence, I had to avoid being made accountable.

Self-interest dominates, cooperation is sidelined, and opportunistic behaviour becomes the rule. It is not about creating good collaboration (Nilsson Vestola and Eriksson 2023), strengthening personal ties (Liu, Huang, and Lu 2023) or adapting a lean construction path (Albalkhy and Sweis 2021). On the contrary, it is to create more and deeper conflict to opportunistically make more profit regardless of others and the project's success. This collides with the genuine values of engineers and architects.

Miller falsely claimed my workers built a faulty structure, he also undermined my efforts to resolve conflict to hold me accountable and indirectly claim money from my company. Now with some distance, I view it more calmly but thrown into the situation it was an effort to stay so calm and not to give in to my anger.

Although it looks as if I could have rationally chosen to align with this opportunistic behaviour it is not just a rational choice. My subjectivity, my thrownness played a major role in it. My values govern how I feel about being exploited and exploiting situations opportunistically too - whether I struggle with the choice and feel stressed or not. Yet the dispute about a faulty wall had ramification beyond the building site - into my company - which I must deal with. Such conflict has potential to spill over.

I had to admit that, as a company, we made our mistakes too. For example, two windows were 25 mm too wide and there were some other minor issues. I feel anger when I see work not appropriately done, but having worked myself for three years on-site, knowing first-hand that things go wrong even when taking great care, I mediate the anger. But knowing and feeling are two different things, especially when you may have to pay heavily for a minor mistake.

Here, my feelings and conception do not align with each other. I feel strongly about the mistake of the too wide windows. I know that it is, in principle, avoidable. But I also know that it happened to me too. So, who am I to judge? And then I see the massive claims made by Miller. These claims were far from reasonable. Just minor mistakes could cost huge sums. That shows how easily my anger and frustration can result in deteriorating relations with my staff - especially if the stakes are high. At that time, I talked to my partner.

One evening my partner told me she thought I had an easy job because I had flexible hours and was often quite relaxed. However, she was surprised about the intensity of the conflict and how stressed I was now that the conflict was boiling over.

She spotted the symptoms of the pressure. Perhaps, I could have written similar fieldnotes about other participants. As if this was not enough, Miller raised another alleged defect. One large wall was said to be winded. The how and what of the alleged defect were quite complex to explore:

I read industrial standards (DIN 18202, DIN 18710), publications of professional bodies and specialist literature for a couple of evenings. I even revised my knowledge about standard deviation, mean, average and 5%-quantile. My men took measurements of the complete wall, and I analysed their data, creating a couple of Excel sheets. Yet when presenting my findings, I lost almost everybody in the room after 2 or 3 sentences - numbers are boring. Only a specialist brought in by the employer could follow my arguments. I knew in some depth what I was talking about. I wanted to do it right. But since I had lost most people in the room, I wondered if it was worth the effort. After hearing my explanations and reading my handout, the expert noted, "I haven't checked it thoroughly, but as far as I can see, there is nothing I would complain about." Finally, someone argued on a substantial level.

Yet others thought he did not contribute much because he made no significant presence. I had the opposite impression since what he said was well-argued, although very brief. In a similar vein, the architect communicated. He appears to know even the tiniest detail yet often remains silent. However, when he has a point, he knows what he's talking about in minute detail.

The complexity involved in the project makes it very difficult to follow for a non-specialist: even more so if emotionality and raised voices are involved. Hence, being unable to communicate one's point leads to misunderstandings, more conflict, and, inevitably, even more stress. This does, however, lead to even more questionable practices.

During this investigation, I realised there was no way of proving that the alleged deficiency was my fault. Since we finished the construction work, we had already come to a reversal of the burden of proof. So, the employer had to prove me wrong, which was impossible since most of the evidence (surveyor's marks) had already been removed. I could claim that it was someone else's fault but that felt unethical, and I'm not the only ethical idiot here.

I adopted the same stance - I was only willing to act according to my contractual obligations and to use questionable loopholes to avoid liability. And I felt justified. Hence, there is no point in claiming the moral high ground. I can briefly summarise my experience with similar conflicts as, "in the end, everybody fights for themselves." I abandoned most of my values and moral/ethical standards for economic survival. Although these experiences and the "learned skills" were buried under the more recent cooperative history with the team on-site, they are inevitably part of my thrownness (Heidegger 1927). I found myself acting and thinking in ways I usually despise.

In turn, I have to say, I do not know (and probably will never know) what drove Miller's actions. He will have his justification. In principle, I am not so different. Then, by some chance, Miller left the project, and all started to resolve. The project continued more amicably, and we resumed working cooperatively. At that time, I met the architect. Maybe the architect's comments are what sum it up best.

We had a coffee in their kitchen, and he expressed his frustration about the last couple of weeks, saying, "I am sorry that you had to endure all that." I replied, "It isn't your fault and I assume you had to carry an even heavier burden." He paused for a moment and then calmly said, "You know, one bad apple can spoil the bunch."

SUMMARY

I have demonstrated how demanding and exhausting conflicts resulting from aggressive claims can be. Mistakes made while planning and building are often the grounds on which claims are based. Hence the persons accountable find themselves under great stress. It goes hand in hand with the need to justify oneself or prove oneself to be correct, which, as a side note, leads to missed learning opportunities.

The resulting stress for managers, design team members and tradespersons, to name a few, leads to further aggression and a vicious spiral of aggressively negotiated conflict and stress. I provided an example of the different aspects of a conflict. I have shown through my vignettes how unreflective - inauthentic (Heidegger 1927) - acting prevailed. Acting tactfully might mitigate the worst consequence. However, to understand what impact claims related conflicts have, Heidegger's thrownness helps to see there is much more than pure rational choices (Cunliffe 2022).

I think it is particularly exhausting for professionals brought up with a tendency towards efficient problem solving. They find themselves thrown into an environment where rules contradict their values and skills, causing immense stress and frustration. This leads to exhaustion, which many of my colleagues' report, and consequently results in an exodus of professionals from the industry. However, falling (Heidegger 1927) can lead to an ever-reinforcing spiral of aggression. Yet, mobilising moral

values inherent in thrownness, like moral anger (Lindebaum and Geddes 2016) can help us to challenge such practices. I am arguing from my perspective - my thrownness - my subjective, impressionist tale (Van Maanen 2011). However, it demonstrates a need which is yet unmet to investigate the personal consequences and the emotional aspect of aggressive claims management.

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